



Massachusetts Society of Municipal
Conservation Professionals
c/o Conservation Office, 1000 Commonwealth Ave.,
Newton, MA 02459

December 4, 2024

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 1020
Boston, MA 02114
Via email: Rebecca.L.Tepper@mass.gov

RE: 30-Day Extension Request to the Public Comment Period on Proposed Regulations 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests

Dear Secretary Tepper:

We appreciate the opportunity to provide comments to the Executive Office of Energy & Environmental Affairs on the proposed regulation updates, *301 CMR 52.00: Change in Use or Disposition of Article 97 Interests*. Due to the 30-day comment period falling between the Thanksgiving and Christmas holidays, and the importance of these regulations to volunteer Conservation Commissions who own and manage municipal conservation land, the Massachusetts Society of Municipal Conservation Professionals (MSMCP) respectfully requests a 30-day extension for the comment period. Given holiday schedules, it is likely to be difficult for conservation commissions to hold posted meetings and prepare comments within this short comment period.

MSMCP is a non-profit 501(c)3 organization dedicated to serving the professional staff members that work for Massachusetts Conservation Commissions. MSMCP was founded to provide networking and educational opportunities to municipal conservation department professionals focused specifically on their needs. MSMCP works to raise the level of professionalism by providing a forum for information exchange, sponsoring technical and scientific seminars and conferences, and fostering cooperation among contiguous or regionally related conservation commission staff.

Thank you for your consideration of an extension to the comment period. Please contact us if you need additional information.

Sincerely,

Regen Jamieson
President

cc: Governor Maura Healey via email Maura.Healey@mass.gov
Representative Ruth B. Balser via email Ruth.Balser@mahouse.gov
Senator James Eldridge via email James.Eldridge@masenate.gov
Under Secretary Stephanie Cooper via email Stephanie.Cooper@mass.gov
Assistant Secretary Kurt Gaertner via email kurt.Gaertner@mass.gov
Michael Gendron via email Michael.Gendron2@mass.gov



Massachusetts Association of Conservation Commissions

protecting wetlands, open space and biological diversity through education and advocacy

December 4, 2024

Via Electronic Mail

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE: 30-Day Extension Request to the Public Comment Period on Proposed Regulations
301 CMR 52.00: Change in Use or Disposition of Article 97 Interests

Dear Secretary Tepper:

Thank you for the opportunity to provide comments to the Executive Office of Energy & Environmental Affairs on the proposed regulation updates, *301 CMR 52.00: Change in Use or Disposition of Article 97 Interests*. Due to the 30-day comment period falling between the Thanksgiving and Christmas holidays, and the importance of these regulations to conservation commissions who are responsible for stewardship of municipally owned Article 97 lands across the Commonwealth, the Massachusetts Association of Conservation Commissions (MACC) respectfully requests a 30-day extension for the comment period.

MACC is a statewide non-profit organization that supports more than 2,500 volunteer conservation commissioners in their mission to preserve wetlands and open space. Each of the 351 cities and towns in Massachusetts has a conservation commission responsible for administering the state Wetlands Protection Act and municipal wetland bylaws and ordinances, as well as managing municipally owned conservation land. Our association protects Massachusetts' natural resources through our education and advocacy efforts, and we have been doing this work since 1961.

Given holiday schedules and the need for conservation commissions to hold posted meetings to prepare and approve comments within this short comment period, we strongly urge the Executive Office of Energy & Environmental Affairs to provide a 30-day extension to the public comment period for 301 CMR 52.00.

Thank you for your consideration of this request. Please contact us if you need additional information.

Sincerely,

Dorothy A. McGlincy
Executive Director
dorothy.mcglincy@maccweb.org

Amy M. Ball, PWS
MACC President

cc: Governor Maura Healey
Representative Ruth B. Balser
Senator Jamie Eldridge
Stephanie Cooper, Undersecretary for the Environment
Kurt Gaertner, Assistant Secretary for Environmental Policy
Michael Gendron, Open Space Act Coordinator

Gendron, Michael (EEA)

From: Xiarhos, Steven - Rep. (HOU) <Steven.Xiarhos@mahouse.gov>
Sent: Monday, December 16, 2024 7:52 PM
To: Gendron, Michael (EEA)
Cc: Daniels, Stuart (HOU)
Subject: 301 CMR 52.00: Disposition or Change in Use of Article 97 Interests

Via E-mail: Michael.gendron2@mass.gov

December 17, 2024

Attn: Michael Gendron
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

To Whom it May Concern:

I am writing to provide comment to the Executive Office of Energy and Environmental Affairs concerning proposed regulations, 301 CMR 52.00: *Disposition or Change in Use of Article 97 Interests*, authorized by chapter 274 of the Acts of 2022, *An Act to Preserve Open Space in the Commonwealth*. These proposed regulations address procedures and requirements for proposals to change the use or dispose of land or interests in land subject to Article 97 of the Amendments to the Constitution of the Commonwealth.

I am proud to serve as the State Representative for the 5th Barnstable District on upper Cape Cod. My constituents and I are blessed to live in this area, which I dare say is one of the most beautiful and environmentally-pristine regions of the Commonwealth. This is due, in part, to a tremendous amount of open space that has been set aside for conservation. Sadly, our area also is one of the most-threatened areas of environmental concern. Our beaches, our wetlands, and our open spaces are under constant threat of environmental pollution, the effects of climatology, and development. I believe one of my fundamental responsibilities as a State Representative is to help to preserve our fragile environment, not only for those in the present day but also for our future generations.

Article 97 to the Constitution is a compelling statement of the public interest we have as a Commonwealth to preserve public lands. It establishes a process whereby a super-majority vote of the Legislature is required to change the use or dispose of lands under Article 97's extensive purview. This step is clearly intended to ensure that such actions are rare and only the result of an extensive process to confirm that the underlying transaction truly is in the best interest of the Commonwealth.

I readily admit that there are some cases where an Article 97 action is warranted and, indeed, desirable. I further believe that it is desirable to have a regulatory process in place to oversee the consideration of Article 97 actions in the future and to set forth established criteria and procedures for approving such projects. Such obviously was the intent of the Public Lands Preservation Act, under which the draft regulations are being promulgated.

However, the draft regulations under consideration also provide cause for concern. Namely, in the future will the process be used to reinforce the evaluation of proposed Article 97 actions and demand both transparency and exigency in that process, or will it be used as a way to streamline actions by non-state entities who wish to either accelerate the process or enhance the feasibility of proposed projects under Article 97?

This is a special concern in the current day on Cape Cod as private companies are seeking increased access to and across our beaches, wetlands, and conservation areas to facilitate the development of off-shore wind energy generation projects. These projects rely on the ability to bring power generated off-shore onto land and to connect to the power grid. There are communities within and adjacent to the district I represent that have been severely impacted by these projects. In some cases, high-voltage cables are slated to be brought across beach areas, just feet under where tourists congregate for summer recreation. From there, high tension lines are being brought through local residential neighborhoods and walking trails, and enormous substations are being built near houses to help distribute power. This causes me great concern.

I have already argued for greater state oversight regarding these projects to

make sure they are safe from public safety and public health standpoints, that they do not harm the economic security of the community, and that they do not pose a threat to our sole source aquifer. I would oppose any proposed changes to the Article 97 process that would make it easier for these or other companies to plan these and other projects, whether they are seeking to acquire conservation land for their own use or if they are seeking to acquire rights over such land. Mere overtures to provide alternative land or in-lieu-of payments to the state to compensate for rights that are given up is not necessarily satisfactory to protect the public trust. The Article 97 process is intended to be exceptional in nature and it must remain so.

I hope that you will take all steps necessary to make sure regulations under the Public Lands Preservation Act establish a rigorous process to evaluate future Article 97 actions, and that the overall purpose of Article 97 is enhanced and not undermined by this process. In particular, I hope that any regulations make the siting process for initiatives like wind energy projects and their supporting infrastructure even more rigorous, requiring greater input from the public and providing increased scrutiny and consideration for any possible negative effects to the community when Article 97 actions are proposed.

Thank you for your attention to these comments.

Sincerely,

Steven G. Xiarhos
Massachusetts State Representative
5th Barnstable District
Former Deputy Chief of Police
Gold Star Father
Massachusetts State House
Room 542
617.722.2488
ususususus



Date: December 17, 2024

To: Rebecca Tepper, Secretary, EOEEA

From: Doug Pizzi, Executive Director,
Mass Parks for All

Re: Public Lands Preservation Act Draft Regulations (301 CMR 52.00)

Dear Secretary Tepper,

Thank you for the opportunity to comment on the draft regulations (301 CMR 52.00) for the Public Lands Preservation Act (MGL c. 3 § 5A). As you know, it took approximately 20 years to bring this much needed legislation to fruition, so [Mass Parks for All](#) (MPA) is most grateful to you for extending the public comment period until January 22. We are also grateful for the work already done on the website, especially regarding the tracking tool that lists proposed Article 97 conversions. This brings a welcome layer of transparency to the process.

Our organization got involved in Article 97 conversion issues in earnest in 2018 when the City of Fitchburg and the Town of Westminster sought to take some 80 acres of Leominster State Forest to expand their shared landfill. By the time we learned about this egregious attempt to end-run EOEEA's conversion policy, the legislation had been filed, heard, and sent to House Ways & Means, where it was awaiting further analysis prior to being discharged to the House floor for a vote. The proponents of this legislation followed none of the conversion policy guidelines.

We visited the parcel in question and quickly realized that this project, if approved, would have destroyed the summertime respite provided to environmental justice communities in Leominster and Fitchburg, two Gateway Cities, whose residents use the beach at Crow Hill Pond. The legislation to diminish this resource followed none of the guidelines in the state policy governing Article 97 conversions. We pointed this out in an [op-ed piece published in the Worcester Telegram](#).

We joined with several other like-minded organizations to ask that the landfill bill not come out of Ways & Means. Following that success, this coalition continued to advocate for the PLPA legislation, culminating in the November of 2022 [signing of the bill by then Gov. Charlie Baker](#).

P.O. Box 300343, Jamaica Plain, MA 02130

www.massparksforall.org

phone: 508.251.2599 info@massparksforall.org

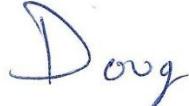
While MPA will be consulting with these organizations for a more detailed analysis of the draft regulations, our primary concern is that we would like to see the final regulations contain some enforcement mechanism to sanction those found in violation of the law. Municipalities, the majority of proponents seeking to take land out of Article 97 protection, should, at a minimum, become ineligible for discretionary grants, and/or face administrative penalties. Private entities should face civil action from the state Attorney General's Office.

We realize that these enforcement actions may take amending current or passing new legislation and would respectfully request this happen as soon as possible. In the interim, we would ask you to instruct your agencies to make municipalities ineligible for any discretionary grant programs awarded by EOEEA and its agencies.

The need for the Public Lands Preservation Act law became apparent because of frequent attempts to ignore the policy. The Fitchburg-Westminster Landfill was one of the more egregious examples. Now that we have the law, we respectfully request that it have the teeth to be enforceable.

Thank you very much for your time and consideration of this important issue.

Yours in conservation,

A handwritten signature in blue ink that reads "Doug".

Doug Pizzi
Executive Director
Mass Parks for All
doug@massparksforall.org

Gendron, Michael (EEA)

Subject: RE: Comments on proposed Article 97 draft

From: Stephen J. Morgan <steve@thegreathill.com>

Sent: Tuesday, December 24, 2024 10:58 AM

To: ENV Internet (EEA) <env.internet@mass.gov>

Subject: Comments on proposed Article 97 draft

Please note the following comments on the proposed regulations draft regarding article 97.

1. I see no enforcement mechanism
2. I do not see a section that covers the process for a hearing and fact finding when a project claims not to be an article 97 related holding but is one.
3. Review and punishment for violation including retrospective violation

These topics should be added to avoid what is current practice of claiming article 97 land is not protected and proceeding with projects without the legal approval required. It seems towns can simply not identify the land as article 97 land and proceed without consequence. These regulations do not appear to correct this shortcoming.

Gendron, Michael (EEA)

From: Jim Taylor <[REDACTED]>
Sent: Thursday, January 9, 2025 11:04 AM
To: Gendron, Michael (EEA)
Cc: David Buzanoski
Subject: Article 97

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Sir,

As a former engineer who managed projects requiring Article 97 approval, I see no reason that its requirements intended to protect our open space should be weakened. As a summer resident of Falmouth, I value our beach access. Allowing some for-profit corporation to impede our access because it's THEIR preferred route is exactly why Article 97 protection was created . Don't weaken it.

James Taylor
66 Pocasset St.
Falmouth MA

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Gendron, Michael (EEA)

From: Bruce Buch <[REDACTED]>
Sent: Thursday, January 9, 2025 3:44 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

This letter regards the proposed changes to Article 97 described in 301 CMR XX.00 "Disposition of Change in Use of Article 97 Interests"

The idea of repurposing land set aside as protected for conservation or preservation of historic or esthetic qualities to serve some urgency de jour is nothing new. That temptation has always been there, and it is a temptation that Article 97, which, in its current form, wisely puts in check by placing the hurdle of a two-thirds vote of the legislature in the path of changing such protections. The proposed change to Article 97 not only lowers the bar of that hurdle, it opens the door to non-public entities like corporations and developers to petition for depreciative changes to protected land.

The notion that entities outside of a community can consider land of equal size or monetary compensation as a fair substitute for land deemed by the values and history of a community to be worthy of protection disrespects those values and history. The intrinsic value of many protected areas are entirely due to their location, and no greater acreage anywhere else would replace them, unless developers figure out a way to move the ocean or a mountain.

The proposed changes are short-sighted, unwise, and erodes any alleged commitment of our government to conservation. We should not let ephemeral needs of the present rob from our children the treasures our fathers had the wisdom to protect.

Respectfully submitted,
Bruce Buch
Westborough, MA

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Friday, January 10, 2025 9:55 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

I serve as administrative assistant for the Southbridge Conservation Commission, and am writing today to comment on the draft regulations for the Public Lands Preservation Act. First, it would be prudent to state the goal of "no net loss" more clearly early on in the draft regulations to emphasize that as the benchmark. In addition, as someone who must deal with quorum and quantum of vote, it seems it is unclear whether or not a unanimous vote would be required for the Public Entity to dispose of Article 97 land. Another concern is that In Lieu Fees might become the default and too easily used instead of finding replacement land. Finally, multiple avenues of enforcement should be explicitly detailed.

Thank you so much for your consideration of these ideas.
Karen Loin, Esq.

Gendron, Michael (EEA)

From: Carol ONeil <[REDACTED]>
Sent: Saturday, January 11, 2025 10:24 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Sir,

Please make it known that my husband and I strongly oppose all projects that destroy FALMOUTH, MASSACHUSETTS land!

***Thank you,
Carol and Peter O'Neil
16 Lake Leaman Road
Falmouth, MA 02052***

C: [REDACTED]

(Please note: If you don't receive a response to your emails within 24 hours please call me on my cell. Thank you.)

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, re-transmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

 Please consider the environment before printing this email.

Gendron, Michael (EEA)

From: Greg Mazmanian <[REDACTED]>
Sent: Saturday, January 11, 2025 11:38 AM
To: Gendron, Michael (EEA)
Cc: dylan.fernandes@mahouse.gov
Subject: Proposed Article 97 Changes

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

I recently learned of the Healy's administration proposed changes to Article 97 of the Massachusetts Constitution. I'm shocked, to say the least, that the governor would entertain lessening the rights and protections of the citizens of Massachusetts to give corporations, like Southcoast Wind and others, the ability to invade protected parks and open spaces. This effort by the administration is nothing more than an "over-reach" to diminish the freedom of the people.

One of the comments in amending Article 97 was to hasten the permitting process for off-shore wind. Well I don't see the merits of that action benefiting anyone exception corporations who's main thrusts are profits. Changing parks, ballfields and open spaces from community resources to industrial landfall sites is just nonsense.

It's time for the people and elected officials who voted in favor of protecting a clean environment, open space, natural, scenic, historical to stand up and just say NO to further lessening our rights and protect community resources.

Regards, Greg Mazmanian
Miami Ave., Falmouth, MA

Gendron, Michael (EEA)

From: John Sypek [REDACTED] >
Sent: Sunday, January 12, 2025 7:25 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Mr Gendron,

The push by Governor Healy to amend Article 97 has to be blocked and stopped.
This is just a response to let big business, and or developers acquire parcels of land for their needs.
Please help put a stop to this.

John Sypek
16 Worcester Ave
Falmouth Mass

EOEEA Draft Regulations
301 CMR XX.00: Change in Use or Disposition of Article 97 Interests
Peter Jackson Comments 1.10.2025

Introduction

The 2022 “An Act Preserving Open Space in the Commonwealth”, better known as the Public Lands Preservation Act, and more recently as the Open Space Act, was the result of a 20-year effort by open space advocates both within and outside state government to provide stronger protections for land with Article 97 protections. The primary objectives of the new legislation were to provide a more clear and transparent process, guided by regulation, based on a stronger consideration of alternatives, real estate and environmental values, and replacement lands, and to assure No Net Loss of public open space. Also, to advise the General Court of EOEEA’s findings prior to land use conversion legislation being adopted.

Article 97 of the Amendments to the Massachusetts Constitution states that:

“the people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.”

“Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court.”

By virtue of including Article 97 interests in the state constitution establishes these interests as a **fundamental right** of the citizens and demands the **highest level of scrutiny** by those charged by reviewing and approving conversion proposals. The Open Space Act places this responsibility on the Executive Office of Energy and Environmental Affairs (EOEEA).

The Open Space Act is silent around issues of the EOEEA review process and engagement of the public in the review. It leaves to the EOEEA, through these regulations to define a process and articulate a role for the public and outside conservation interests to participate in the review of proposed Article 97 actions.

Neither the EOEEA Guidance Document nor the Draft Regulations allow for any interaction or engagement between EOEEA and the public on Article 97 actions. This is just the opposite of the transparency envisioned in the Open Space Act. Nor does this fulfill the responsibility of EOEEA for a high level of scrutiny of these proposed actions.

In the Draft Regulations EOEEA fails to take responsibility for soliciting, reviewing, and responding to citizen comments on Article 97 actions. The guidance document developed by EOEEA states: "Solicitation and collection of and response to public comment are encouraged of all PLPA proponents and required for those seeking a finding allowing funding in lieu. Public comment is the sole responsibility of proponents and not the responsibility of EEA."

Solicitation, collection, and response to public comment must be **required** by all proponents and by EOEEA. It must be the responsibility of EOEEA even if funding in lieu is not requested. Whether funding in lieu is required is directly tied to the Evaluation of Alternatives and the Real Estate Appraisal. We cannot depend on proponents to solicit nor fairly review comments nor to conduct objective, unbiased, and comprehensive processes.

Specific Comments

XX.02: Definitions

Comparable Location and Use means in the same geographic area,... and serving substantially the same population, **and suitable for the same use** as the land...

Natural Resource Value means...climate change mitigation, **heat moderation, carbon sequestration, stormwater/flood mitigation, wildlife habitat values, and recreation opportunities.**

The regulations should also include definitions for **No Net Loss** and **Feasible Alternative**.

XX.03 Pre-submission consultation

1....shall consult that public entity **with specific information relative to the land proposed to be converted and the replacement land proposed to be provided. This consultation shall provide a full analysis of all parcels including real estate valuations, suitability for the intended use, and environmental values.**

2. Prior to taking any Article 97 Action, any Proponent **shall** consult...

e. ...Replacement Land.... **If a field review of affected properties is scheduled, all interested parties shall be invited to participate.**

h. Whether a real estate appraisal meets EOEEA Appraisal Standards;

XX.04: Requirements

After 2. Conduct an Alternatives Analysis... add

3. Submit a real estate appraisal of all affected properties consistent with EOEEA Appraisal Standards; and

4. Solicit, review, and respond to comments on all of the above elements from those holding interests in all the properties and the general public.

Change 3 to 4.

5. Where proposed Article 97 Action involves conversion of more than one party, each party shall be compensated as a separate transaction.

6. File an Environmental Notification Form (ENF) to initiate MEPA review of the proposal.

7. Once all required elements for a proposal are filed, EOEEA must notify the public and conduct a public hearing, with a 30-day period to submit written comments, to receive testimony from all concerned on the specifics of the proposal. EOEEA must post a summary of the hearing, including the comments and responses on the PLPA Tracker.

XX.05: Notification

3. b. a description of the public notice, comments received, and responses provided as required...

c. Real Estate Appraisal

Change d and e to e and f

XX.06 Alternatives Analysis

1. After “minimize an Article 97 action.” These shall include potential alternatives identified by the holder of Article 97 interests, the public, and the Secretary.

2. f. and a unanimous vote by the Public Entity, if applicable.

XX.07 Replacement Land

2. d. at end add; Proponent shall provide certification by Proponents Counsel that none of the requirement land is protected under Article 97.

XX.08 Determination of Natural Resource Value

4. The Secretary shall issue a draft finding whether...the impacted Article 97 Interest. Such draft finding shall be issued for review and comment by affected parties and the public.

XX.09 Funding in Lieu of Replacement Land

Subsections 3 Report of Finding by Secretary and 5. Appraisal, should not be limited to the In Lieu section. The provisions for the Appraisal and the Publication of findings by the Secretary should apply to all Article 97 actions whether in lieu of funding is requested or not.

XX.11: Report of Finding by Secretary

The Secretary of Environmental Affairs shall issue a statement of findings including all aspects of the investigation and recommendations related to the proposed Article 97 action. The finding shall include:

1. A description of parcel(s) and interests, protected by Article 97, that are proposed for conversion.
2. A finding that a comprehensive analysis of alternatives to avoid or limit impacts to land protected by Article 97 has been completed and reviewed and found to be acceptable.
3. A description of all parcels proposed as replacement for Article 97 interests being impacted including certification that none of the parcels are currently protected by Article 97.
4. A finding that an Appraisal has been completed and that complies with EEA Appraisal Standards, that it has been reviewed and found to be reasonable to establish values and resources as required.
5. A finding that the proposal results in No Net Loss of resources, is in the public interest, and will have no adverse impact on an Environmental Justice Population.
6. Conditions necessary to comply with the finding, to be completed in advance of initiating the proposed action.
7. A Draft finding shall be issued and noticed in the Environmental Monitor and on the PLPA Tracker and a 30-day period to submit comments should be established.

Additional Comments

1. I know that there is a broad variety of Article 97 actions to be reviewed. Of 22 bills passed 2023-2024, 8 had no acreage impacted, 8 were less than 1 acre, 3 were between 1 and 5 acres, and only 3 were over five acres. Many are small transfers for curb cuts or traffic improvements. It is likely that a limited or expedited review can be established for smaller and more straight forward proposals.
2. Is it likely that legislative leadership will agree not to take up Article 97 requests until EOEEA completes its review and issues findings.

January 15, 2025

94 Leach Street
Salem, MA

Secretary Rebecca Tepper
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, 10th Floor
Boston, MA 02114

Re: Written testimony on the upcoming regulations for Chapter 222 of 2024, the Open Space Act

Secretary Tepper:

I am writing to following up the verbal testimony I provided during the public hearing of December 17, 2024.

While my verbal testimony was wide ranging, it led off with what I consider a fundamental question: Will EEA have a strong, substantive role in the shaping of all upcoming Article 97 proposals? If not, then my follow up question is: How will all the relevant issues germane to the release of Article 97 interests here in our Commonwealth be addressed? Many of these issues, together with my nine recommended actions, are described below.

The regulations, in their final form, should enable a thoughtful, detailed, publicly vetted review of Article 97 proposals before they advance to the General Court. I urge you to ensure that a thorough, well-structured process be established now, as Chapter 222 of 2024 moves from authorization to implementation.

Since testifying at the December hearing, my perspective has evolved. I have grown increasingly more confident that a fine tuning of the “idealized open space act process” under development by EEA staff will serve to ensure that only those proposed Article 97 actions that are fully vetted will be reported to the General Court for action. In this first part of my written testimony, recommendations 1-3 address this topic.

Recommendation 1: Upon the conclusion of its review of a proposed Article 97 action, EEA shall submit to the General Court (and post on the EEA portal) a standard Transmittal Package that is defined in XX.02. The Transmittal Package shall include:

1. Transmittal Form^A signed by all the principles
2. Executive Summary^B
3. Map(s) illustrating the location of each the subject properties
4. Due Diligence (Appraisals, Title Reports, ESAs)
5. The alternatives analysis^C
6. Confirmation of No-Net-Loss^D
7. A preliminary draft of the bill

1. EEA Process

- A. Amend the standard form that EEA agencies prepare for the approval of dispositions to include all the public entities as described in c. 222 of 2024.
- B. The executive summary shall describe the history and chronology of the proposal, characterize existing conditions of each of the subject properties, highlight efforts to avoid adverse impacts to sensitive resources, and discuss how any controversial issues have been addressed during the planning process.
- C. The alternatives analysis must occur early enough in the planning process to invite a wide range of meaningful public comments.
- D. The Confirmation of No-Net-Loss must address each of these topics individually: acreage, natural resource value, fair market value and utility.

Recommendation 2: All due diligence being submitted to the General Court must comply with current Commonwealth specifications for real property transactions.

In my verbal testimony I stressed the importance of having regulations that establish Minimum Standards for Due Diligence and that these standards reflect current state practice.

Further discussion on due diligence

Appraisals

Of particular concern are appraisals that do not follow the EEA specifications which are held in high regard. These appraisal specifications reflect decades of real-world application, documenting the market value of thousands of real estate transactions since the 1990's. EEA's appraisal specifications are reviewed routinely and are updated frequently.

- The Open Space Act regulations should require that EEA staff: 1) review and approve all appraisal scopes before RFPs are finalized and 2) require that all appraisal reports be prepared by firms selected from the Commonwealth's list of prequalified appraisers.

It is very important that the regulations guard against allowing proponents to structure Article 97 releases based on appraisals that are conducted without EEA having reviewed the scope &/or by firms that are neither familiar with Commonwealth specifications nor pre-qualified to work as a vendor of the Commonwealth.

Titles

The starting point for every real estate transaction is clear, marketable title

- Proponents must be required to demonstrate that every parcel related to the Article 97 conversion has undergone a title examination that was certified by an attorney who carries errors and omissions insurance.
- In some limited cases, a signed affidavit from a city solicitor or a town counsel may be considered sufficient

It is not enough to have a municipal official verbally confirm that 'everything is fine'.

Environmental Site Assessments

- The regulations should require an ESA for every proposed replacement parcel

Recommendation 3: **At the time a proposed Article 97 action is considered an official submission, the proponent(s) must provide a signed affidavit confirming that everything being presented is factually accurate.**

While this step should not be necessary, recent experience has shown that proponents will sometimes make statements that they know, or should have known, are untrue.

Recommendation 4: **Do not eliminate the longstanding state agency practice that requires replacement land for all permanent easements, but do provide some discretion for easements that are less than 3,000 sq. ft. and that are proven to cause very limited impact.**

In my oral testimony I raised strong concerns regarding proposed language that would allow permanent easements to be deemed to affect zero acres of Article 97 land. This would be a significant change to current state agency practice and would severely diminish existing protection of Article 97 interests.

As an example, the proposed language appears to allow the authorization of new utility easements through long stretches of DFG Wildlife Management Areas and DCR State Forests without replacement land and perhaps without steps being taken to address construction impacts within sensitive locations.

Further discussion on permanent easements

- The professional judgement that appraisers exercise when estimating the fair market value of permanent easements often results in a wide range of opinions of value
- When appropriate, the appraised value of the easement should consider opportunity costs (i.e. What future uses are precluded because an easement crosses the site?)

USPAP allows many ways to value easement interests, in my opinion not all of them pass the “test of reasonableness”

Recommendation 5: **Add a definition for No Net Loss and describe the Article 97 interests that must be protected from loss: Resources^E, Market Value and Utility.**

E. Include Natural, Historic, Recreational, Water Supply, Climate Resilience and Scenic values within the list of Article 97 resources that must be protected from loss

Of particular concern are Article 97 proposed within sensitive environmental settings. At the outset, proponents of Article 97 releases within sensitive settings should respond to two questions:

- How might the proposed change of use adversely impact sensitive resources located on the property?
- What will be done to avoid, minimize or mitigate these impacts?

Recommendation 6: Define Comparable Location more broadly to allow Replacement Land that is directly tied to the conservation interests of the current owner.

As drafted, the definition captures several important public interests, but when strictly applied it brings unintended consequences, particularly with Article 97 actions that involve state lands.

Historically EEA agencies have worked successfully with Article 97 proponents to identify replacement land that would not fit the proposed definition of Comparable Location even though both the proponent and the EEA agency agree that the replacement land is appropriate and will provide meaningful public benefits.

Consider revised language that ties the location of replacement land to the interests of the current owner and the relevant geographic setting. E.g. when the property proposed for an Article 97 action is:

- Held by a municipality, then the replacement land should be kept locally
- Held by a regional water board, then the replacement land should be within the geographic jurisdiction of the water board, and especially
- Held by the Commonwealth, where state agency staff are in the best position to identify suitable locations for replacement land

Recommendation 7: Define Public Notice in a way that allows meaningful opportunities for the statewide conservation community to comment on and otherwise shape the proposed Article 97 action.

Public Notice should include a local component and a statewide component (e.g. the Environmental Monitor or Central Register) and should precede the start of the alternatives analysis process. Early involvement by local interest groups and by the state-wide environmental community will serve to improve most every proposal. Delayed public notice, that is to say, public notice that occurs after proposed Article 97 actions are more or less fully formed, lead to frustration and resentment.

Recommendation 8: Allow for leasehold interests.

The draft regulations make no mention of leasehold interests. During my oral testimony I made a brief reference to the beneficial use of ground leases by the former BRA, now Boston Planning and Development Agency. This agency will often opt to execute long term ground leases rather than sell its land outright, creating predictable revenue streams that grow over time as the real estate market appreciates in value.

Two reasons to structure proposed Article 97 actions as ground leases are: 1) the fee simple interest remains with the public entity, and 2) a predictable revenue stream is established to support Article 97 interests.

Recommendation 9: Require a four-season ecological assessment whenever known sensitive sites are being considered for a proposed Article 97 action.

Funded by the proponent, the assessment will document existing conditions and identify best practices for design, construction and maintenance. EEA (or agency ecologists) should approve the scope of work, oversee the field work and approve the final assessment report.

This recommendation addresses those rare occasions when say a rare species habitat or large sections of one of our Wildlife Management Areas can't be avoided. Ensuring No-Net-Loss of ecological values within known sensitive locations requires setting high performance standards for which the proponent accepts responsibility.

A short list of informal recommendations

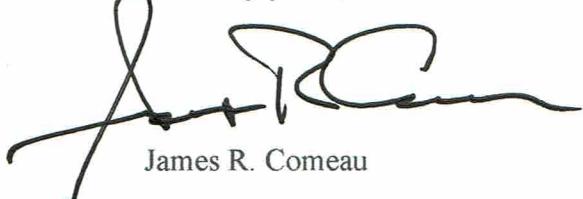
- Require MEPA review for every Public Entity, not just Article 97 land held by the Commonwealth
- Provide funding that allows EEA staff the ability to conduct supplemental Due Diligence
- Continue to update the Mass GIS open space layer
- Include a sunset clause to Article 97 authorizations, providing for an automatic expiration after ten of inaction. Right now, there are many authorizations lingering from the distant past that would cause problems if revived
- Require a reversion clause in instruments that release Article 97 interests
- Review the regulations after a 'shake down period', say after ten years
- Investigate how other states and the Federal Government evaluate and approve the release of interests in land held for conservation purposes

I will close with a lingering concern, best expressed as two questions:

Will the regulations prevent proposed Article 97 actions from advancing to the General Court without having first undergone a thorough programmatic review that confirms no Article 97 interests will be lost?

If not, then what was the point of passing Chapter 222 of 2024?

Sincerely yours,



James R. Comeau

Gendron, Michael (EEA)

From: Mary Dunn <[REDACTED]>
Sent: Wednesday, January 15, 2025 2:47 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

Follow Up Flag: Flag for follow up
Flag Status: Flagged

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

I'm writing to express my support for a strong 301 CMR 52. As Co-chair of the Town of Hanover's Open Space Committee, I am well aware of the need to keep conservation land better protected. Short-term fiscal needs can easily prompt poor long-term decisions, converting open land into cash or other uses. It is often difficult for Town officials to resist calls for reducing the tax burden in this manner. A regulation that requires an oversight process, including a high standard for "comparable land" before proceeding would be welcome.

Sincerely,
Mary Dunn

TO: Mr. Michael Gendron
Executive Office of Energy and Environmental Affairs

CC: Secretary Rebecca Tepper
Undersecretary Michael Judge

RE: Public Comment to Proposed Article 97 Regulations

DATE: January 14, 2025

This public comment is submitted on behalf of the *ad hoc* citizens' group Save Greater Dowses Beach (SGDB) and is in response to the Secretary of Energy and Environmental Affairs proposed Article 97 regulations. Our advocacy in recent years has focused on the preservation of Article 97 protected lands in the Town of Barnstable and specifically the recreational beaches on Nantucket Sound that have been targeted for "alternate use." We are of the opinion that the intent and substance of Article 97 of the Massachusetts Constitution have been and are being compromised by the current administration's program to advance the construction of renewable energy infrastructure while giving little heed to the public's right to open space. We contend that no "public purpose" should supersede an existing public purpose that bears the sanction of constitutional protection. Our objections to the proposed regulations are as follows:

1. We question the legitimacy of the proposed regulations as they violate a key provision of the 2022 "Act Preserving Open Space in the Commonwealth," also commonly referred to as the Public Lands Preservation Act. SECTION 2 of this act clearly states: "The secretary of energy and environmental affairs shall promulgate regulations to implement subsections (a) and (b) of section 5A of chapter 3 of the General Laws **within 18 months after effective date of this act.**" The act was approved on November 17, 2022. We assume the traditional practice of a three month period following enactment of a general law prior to an effective date of a statute. Accordingly, the secretary had until August, 2024 to write regulations for the implementation of the provisions of the act. The deadline to promulgate new Article 97 regulations was not met within the time frame established by the Act. We maintain that the existing policy, therefore, must remain in place.
2. We recognize in the language of the proposed regulations a congruence with recent actions taken by the legislature and with policies implemented by the current Administration to fast-track renewable energy infrastructure and reduce the authority of municipalities, and the general public, in zoning and siting these facilities. The proposed Article 97 regulations, specifically XX.07 sec. 4, further advances this tendency via the invention of a category of "Certain Easements." This language stipulates that "subsurface" use will "be deemed to effect zero acres" and not require "Replacement Land." The four provisions (a. through d. in this section), from our perspective, have no relationship to any prior consideration in legislative or policy terms and would therefore

effectively reduce certain Article 97 dispositions, such as those facing the Town of Barnstable, to a *pro forma* exercise that would undermine the intent of the Commonwealth's constitutional protection of public land. Protected public land has never been seen as only the surface of the land with no consideration for what lies below or above. Furthermore, if no requirement for replacement land is determined to exist, we assume that no "in lieu of" funding would be required either resulting in a total deprivation of the public's interest in protected land. This entire section of the proposed regulations should be omitted.

3. The proposed regulations do not include unequivocal language making clear to the people that the secretary of EE&A "shall not support any Article 97 disposition unless ... exceptional circumstances exist." (existing Article 97 Policy, EE&A website) These circumstances are defined in section II of the current policy, and refer to complete avoidance of Article 97 lands, disapproving of change of use that could "destroy or threaten a unique or significant resource." This prohibitory language is missing from the proposed regulations. There are not only two alternatives -- replacement land or payment in lieu of, when a disposition proposal is made. The third option is **denial** of the proposal in consideration of the clear language of Article XVII: "The people shall have the right to clean air and water, freedom from unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment" This is a constitutional right that the amendment declares to be a "public purpose," one that should not be superseded by exigency created by some future consideration. Should the secretary, despite our objection that the deadline for writing new regulations was not met, persist with this proposal, we insist that "no net loss" of public lands be the guiding principle in any proposal for disposition of Article 97 land, and denial should be the first and most often taken action.
4. In our experience, leaving the "Alternatives Analysis" to a Proponent of an Article 97 disposition results in self-serving excuse-making for why only a certain parcel of public land is suitable for change of use. We have seen this as part of a Draft Environmental Impact Review prepared by a developer for MEPA, wherein a number of reasons given for rejecting alternate sites actually describe the targeted parcel (EEA#16611). Alternatives should be equally assessed by either the public entity with the Article 97 interest and/or a disinterested and impartial third party, especially if the proponent has substantial financial interest.
5. Under XX.05 concerning notification of a Proponent's request for disposition, item 2 indicates that the public would be allowed 21 days to review and comment on the proposed action as well as the submitted Alternatives Analysis. This is a wholly unacceptable, insupportably short period of time allotted to the public, whose interests are protected under the constitution, to mobilize, analyze, and prepare "public comment" relative to an Article 97 disposition. Again, this language is emblematic of recent trends to rush through approvals related to siting and permitting. However, protected land

should be given far more consideration than this section seems to warrant, and the process for public involvement in decision-making about such land should be given much precedence over the wishes and interests of proponents, especially concerning the determination of “value in use.” We feel that public comment opportunities (including this) on land use in recent years has become nothing more than a “check the box” exercise in Massachusetts, and the inordinately short time frame suggested in these proposed regulations reflects that tendency. We would prefer to see a minimum 60 day period of time for study, comment, hearings, and other possible actions.

6. Section XX.09 gives the Secretary sole discretion as to whether or not Article 97 land serves “a significant public interest.” Any land protected under Article 97 is open land with historical and social purpose and benefit. Public interest in this land should be presumed rather than questioned, especially when undertaken as a means to declare a superseding public interest that does not qualify for protection under the Massachusetts Constitution.

Thank you for the opportunity to submit these comments on the proposed new regulations regarding change in use of Article 97 interests.

Susanne H. Conley
Chair, Save Greater Dowses Beach
Osterville, Massachusetts

Gendron, Michael (EEA)

From: Lydia Eldridge <leldridge@northreadingma.gov>
Sent: Thursday, January 16, 2025 1:48 PM
To: Gendron, Michael (EEA)
Subject: Comments re: 301 CMR 52

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Hi Michael,

Please see below for my comments and recommendations on the draft PLPA regulations:

1. State the Goal of “No Net Loss” in Section 1 - Purpose and Applicability:

The goal of “No Net Loss” should be stated explicitly at the beginning of the regulations To underscore the importance of protecting public lands.

2. Explicit Requirement for Declaration of Surplus Land:

The regulations should clearly require the Public Entity to declare that the land in question is surplus to Article 97 needs before initiating any disposition or change in use.

3. Clarify and Maintain the Quantum of the Vote for Disposition:

The requirement for a unanimous vote by the Public Entity to dispose of Article 97 land is an important safeguard and should be explicitly stated in the regulations.

4. Framework for Evaluating Compensatory Land:

The regulations should include a robust framework for evaluating the natural resource values of compensatory land. This framework should require input from the Public Entity and could be modeled on the Riverfront Alternatives Analysis assessment. Such a tool will help decision-makers determine compliance with Article 97’s intent.

5. In Lieu Fees as a Last Resort:

The provision of In Lieu Fees should be the exception, not the norm. The regulations should require clear documentation of efforts to find suitable replacement land and specify the conditions under which In Lieu Fees may be considered a feasible option.

6. Clarification of Enforcement Mechanisms:

The regulations must clarify the enforcement options available to EEA. The recent SJC decision in the MBTA Communities case highlights the Attorney General’s critical role in enforcing state laws, even when such a role is not explicitly stated. The regulations should address this role to ensure compliance with Article 97 protections.

Thank you for considering these comments.

Best,

Lydia Eldridge
Conservation Agent, Town of North Reading
(978) 357-5257 (office)
leldridge@northreadingma.gov

Gendron, Michael (EEA)

From: Russ Cohen <[REDACTED]>
Sent: Friday, January 17, 2025 11:04 AM
To: Gendron, Michael (EEA)
Subject: comments on 301 CMR 52

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Hello Michael - Thanks for the opportunity to comment on these proposed regulations [301 CMR 52.00: Disposition or Change in Use of Article 97 Interests](#)

I hope that the regulations, once promulgated, accommodate and include the following points:

- The Public Entity should be a partner and collaborating on the disposition throughout the entire process
- The requirement by the Public Entity to declare the proposed land for disposition as surplus to Article 97 Interests and needs and a unanimous vote should be included in the Regulations.
- Notification should be made at both the local and statewide level on platforms that provide a regular email notification, include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land.
- The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- In Lieu Funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed, funding increased to 150% of the fair market value or Value in Use, and improved coordination with the Public Entity to determine available staffing and resources to complete the Action.
- Clarification of definitions, difference between Waivers and Certain Easements sections, and logistical improvements to the process.

Thanks for considering my views on this subject.

Russ Cohen
Arlington, MA

Stephen M. Kelleher

93 Nancy Road

Milton, MA 02186

Email [REDACTED]

January 18, 2025

VIA - EMAIL

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
Boston, MA 02114

RE: Open Space Act and Draft Regulations – 301 CMR 52.00: Disposition or Change in Use of Article 97 Interests

Dear Mr. Gendron:

We have had multiple conversations regarding the Town of Milton Article 97 land conversion, and I am providing this letter as written commentary for the proposed **Open Space Act and Draft Regulations – 301 CMR 52** during the comment period, which I know has been extended to January 22, 2025. Thank you for providing an overview of the proposed regulations during the December 17, 2024 call with the Massachusetts Association Conservation Commissions. I have provided an outline of the issues with proposed regulations, and used the issues with the Town of Milton Article 97 land conversion associated with MA legislative bills S.2840 and H.4883 to show examples.

1. **How will the proposed regulations 301 CMR 52 be used by other state agencies such as the Massachusetts School Building Authority (MSBA)?** The Town of Milton has applied to the MSBA multiple times. Milton was notified in response to the sixth-year application in December 2024, that Milton was one of the towns selected to move forward with the next steps in the process. The MSBA will be required to go through a feasibility process, requiring review of outstanding issues outlined below with MA legislative bills S.2840 and H.4883, as well as start a new review process looking at alternative sites.
2. The proposed 301 CMR 52. 07 & 08 regulations have specific conditions around replacement land with No Net Loss criteria. **How is the No Net Loss being documented, as this condition was not followed with legislation voted on by the MA legislative bills S.2840 and H.4883?** The Executive Office of Energy and Environmental Affairs sent a letter dated June 13, 2024 to Milton officials, stated the following: *"This determination constitutes solely a determination of natural resource value pursuant to M.G.L. c. 3 § 5A(a)(ii) and does not indicate that the Secretary of Energy and Environmental Affairs takes any position on the Project or on whether it complies with the Executive Office of Energy and Environmental Affairs ("EEA") Article 97 Land Disposition Policy. This determination reflects the independent analysis of EEA for advisory purposes and does not create any right, benefit, or duty, substantive or procedural, enforceable at law or equity by any party in any judicial or administrative matter."*

No additional correspondence or final approval has been sent by the EEA regarding MA legislative bills S.2840 and H.4883. The State House Press reported ~70 comments submitted during the legislation commentary period, as there is extensive documentation regarding the Net Loss with MA legislative bills S.2840 and H.4883. There has been no approval provided by the EEA for MA legislative bills S.2840 and H.4883 as required by the current regulations and the proposed future regulations. The proposed regulations have the following language in Section XX.07 Replacement Land, "A Proponent shall identify Replacement Land to mitigate the impact of an Article 97 Action, except as otherwise provided in 301 CMR XX.09 or 301 CMR XX.10." **What will the process be for ensuring that there is No Net Loss with replacement land to ensure compliance with regulations?**

3. **What happens if the Public Entity known in most cases as the municipality does not have a public process as required under the proposed regulations?** Below are two examples with the Town of Milton that had violations of the Open Meeting Laws related to MA legislative bills S.2840 and H.4883.

- Milton School Building Committee -- Open Meeting Violation Letter dated May 15, 2023 - The selection of the Article 97 land site was done in executive session by the Milton School Building Committee with no opportunity for citizen input. The Milton School Building Committee received an Open Meeting Violation dated May 15, 2023 from the MA Attorney General's office for these actions. There was no transparency in the school site selection process. The Open Meeting Law Violation signed by Kerry Anne Kilcoyne, Assistant Attorney General, had the following conclusion, "We find that the Committee violated the Open Meeting Law by failing to timely respond to a request for executive session minutes and by improperly discussing the use or suitability of town-owned property in executive session under Purpose 6. We order immediate and future compliance with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law."
- Open Meeting Violation dated December 29, 2023 - The letter includes the following statement: we find, that the Committee failed to timely approve several sets of meeting minutes. The Open Meeting Law requires public bodies to create and approve meeting minutes, for both open and executive sessions, in a timely manner. G.L. c.30A, § 22 (c). Timely manner means within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. 940 CMR 29.11; see OML 2018-48. The Committee acknowledges that, as of July 10, 2023, the Committee had not yet approved minutes for meetings held on November 21, December 6, and December 12, 2022, and January 23, February 6, March 6, March 11, April 6, and May 23, 2023, despite that more than three meetings and 30 days had passed since each meeting. Therefore, the Committee violated the Open Meeting Law by failing to timely approve meeting minutes.

4. **What happens if the proposed Article 97 land conversion has an adverse impact on an Environmental Justice Population, which is not allowed under the proposed regulations?** The Town of Milton Article 97 Land Conversion for MA legislative bills S.2840 and H.4883 is within an Environmental Justice Population (M.G.L. c. 30, § 62) and will potentially have an adverse impact with anticipated flooding as a result of the

removal of the Article 97 upland forest. The flooding will be further worsened by the proposed impervious artificial turf field that will accelerate the contamination of Perfluoroalkyl and Polyfluoroalkyl substances (PFAS), also known as forever chemicals entering into Pine Tree Brook. The upland Article 97 land abuts a proposed artificial turf field which, in turn, abuts and empties into Pine Tree Brook a designated Cold-Water Fishery. The Pine Tree Brook is about one mile upstream from a high-priority U.S. Environmental Protection Agency-designated Superfund site at Lower Mills on the Neponset River. The Town of Milton, Conservation Commission, in a 4-3 vote, issued an Order of Conditions dated December 11, 2023, for proposed construction of an artificial turf field on approximately 1.3 acres on lower Gile field adjacent to Article 97 land. A Superseding Order was filed on December 26, 2023 and is still under review, with the MassDEP stating that the Milton Conservation Commission did not follow their resource protection duties M.G.L. c. 131, § 4 and requesting that MassDEP find that the impervious artificial turf proposed is not consistent with requirements for protection of Environmental Justice Communities as established by the Climate Road Map Acts, 2021 and the EEA Environmental Justice Policy and Executive Order 552. The Order 552 mandates that EEA agencies including MassDEP initiate strategies to "proactively promote environmental justice in all neighborhoods in ways that are tailored to their agencies' mission.

The Community Advisory Group has a meeting scheduled on January 21, 2025 to discuss the future plans for the area of the Federal Environmental Protection Agency's Superfund cleanup work of lower Neponset River. The target of an extensive cleanup process has been the 3.7 mile stretch of the lower Neponset that runs from the confluence with Mother Brook in Hyde Park downstream to the Walter Baker Dam in Milton,

5. **What is the process for reviewing land acquired with state and federal funding, as this requires significant review before the state and federal agencies will consent to withdrawal of protection of the land? I would suggest language be added to the Open Space Act and Draft Regulations – 301 CMR 52 requiring compliance with federal and state review for land receiving state and federal funding.** Specifically, any property so acquired and/or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of both the Secretary of the Treasury pursuant to the Land and Water Conservation Fund Act (54 U.S.C. § 200305(f)(3)) and the National Park Service pursuant to the conversion requirements outlined in regulations (36 C.F.R. § 59.3).

In light of the foregoing, I request that you coordinate your review of the Article 97 Land Conversion with MA legislative bills S.2840 and H.4883 proposed in the Town of Milton with the Department of the Treasury, the National Park Service, and any other relevant federal agency that is a stakeholder in the preservation of our natural heritage.

Aimée and Rosamond Lamb protected their land forever in their deed to the Town of Milton which created a conservation restriction, as defined in M.G.L. c.184 Section 31, that the land be managed and controlled by the Conservation Commission of the Town of Milton for the promotion and development of the natural resources and for the protection of the watershed resources of the Town of Milton. This deed restriction has the further benefit of Section 32 which provides that a conservation restriction held by a governmental body shall not be unenforceable for lack of privity of estate or contract or

lack of benefit to particular land "provided (a) in case of a restriction held by a city or town ... it is approved by the secretary of environmental affairs if a conservation restriction." The Lamb sisters were intentional on this conservation restriction as the abutting land they owned was intended for an elderly community now known as Home Opportunities Milton Elderly Inc. (H.O.M.E., Inc.).

The 30-year limitation on enforceability in M.G.L. c.184 Section 27 is not applicable because the restriction is a conservation restriction and is inapplicable because the land subject to the restriction is held by a municipality. See 135 Wells Avenue, LLC v. Housing Appeals Committee, 478 Mass. 346, 359 (2017) where the Supreme Judicial Court said:

"Restrictions on the use of property are valid only if they are beneficial. 'No restriction shall in any proceeding be enforced ... unless it is determined that the restriction is at the time of the proceeding of actual and substantial benefit to a person claiming rights of enforcement.' G.L. Chapter 184, Section 30. In general, we have noted that restrictions on land are disfavored and should be as limited as possible [citation omitted]; G.L. Chapter 184 Section 23 (restrictions in deeds that are "unlimited as to time are limited to term of thirty years). That is not the case, however, for restrictions on municipally-owned land; municipal deed restrictions are explicitly exempt from the provisions of G.L. Chapter 184, Section 30, and are enforceable in perpetuity."

The land was intended to be a public trust as the Town of Milton accepted the deed restriction and paid less than fair market value for the property. The Town of Milton also acted on the Lamb sisters' intent by transferring the land to the Conservation Commission, as required by the Town Meeting vote and the deed.

6. **Will a unanimous vote be required by the Conservation Commission?** The existing EOEEA Article 97 Land Disposition Policy dated February 19, 1998, Section IV. 1, requires the following: "obtain a unanimous vote of the municipal Conservation Commission that the Article 97 land is surplus to municipal, conservation and open space needs. Why have regulations in place, if they are not being adhered to as is the case with MA legislative bills S.2840 and H.4883. The Milton Conservation Commission didn't have a unanimous vote as required by the current regulations, so why wasn't this addressed as the MA legislative bills S.2840 and H.4883 are noncompliant?
7. **The existing EEA Article 97 Land Disposition Policy dated February 19, 1998, Section IV. 5, requires the following:** "comply with all requirements of the Self-Help, Urban Self-Help, Land and Water Conservation Fund, and any other applicable funding; sources". **What regulations are in place to mandate compliance with Land and Water Conservation Fund Grants?**

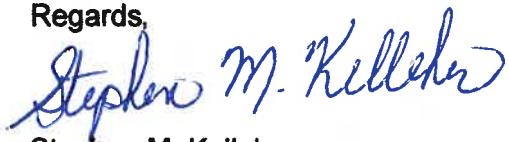
The Town of Milton accepted State and Federal Funds conditioned on their use for purchase of land for conservation purposes. In 1979, the Town of Milton accepted \$28,333.00 from the State's Self-Help Conservation Program (Exhibits A and B), and in 1980 accepted a matching \$28,333.00 grant from the Federal Land and Water Conservation Fund (Exhibit C). There are strict conditions placed upon the acceptance of such funds that presume that the land purchased/developed therewith shall remain in conservation and the Town's acceptance of that money, in light of the overall conveyance scheme, is indicative of a conservation restriction.

Conversion of use of land acquired with state and federal funding requires significant review before the state and federal agencies will consent to withdrawal of protection of the land. Specifically, any property so acquired and/or developed shall not be wholly or partly converted to other than public outdoor recreation uses without the approval of both the Secretary of the Treasury pursuant to the Land and Water Conservation Fund Act (54 U.S.C. § 200305(f)(3)) and the National Park Service pursuant to the conversion requirements outlined in regulations (36 C.F.R. § 59.3).

8. **Why was Town of Milton allowed to use existing Article 97 land as part of the replacement land with MA legislation S.2840 and H.4883, and what measures are in place for this not to happen in the future?** According to regulations replacement land must meet requirements set out in the Public Lands Preservation Act: Replacement land cannot already be subject to Article 97 or otherwise protected in perpetuity.
 - 1971 Town of Milton Town Meeting voted for the acquisition of Highland/ Canton Parcel K 2 1A (5.10 acres) for resource protection and open space preservation. This action taken by Town Meeting designates this land is existing Article 97 land, so this land can't be used as replacement land under the Open Space Act, formerly known as Public Lands Protection Act (PLPA).
 - 1963 Town of Milton Town Meeting voted for the acquisition of Pope's Pond land consisting of 41 acres for resource protection and open space preservation. This action taken by Town Meeting designates this land is existing Article 97 land, so this land can't be used as replacement land under the Open Space Act formerly known as PLPA. The legislation also includes transferring 4 acres of the Article 97 land to active recreation with the Parks Department. However, the language and vote taken did not include any replacement land from the Parks Department in exchange for the four acres. A proactive citizens group signed a petition and submitted an Article for Town Meeting to move the entire 41 acres to the Conservation Commission, which is consistent with the 1963 Town Meeting. This Article did not pass Town Meeting vote.
 - Town of Milton. Map I Block 38D Lot 10A4 documents shows 5.5 acres of Article 97 land that can't be used as replacement land under this conversion.
9. **What will be the criteria to ensure whether the Alternative Analysis is adequate as required under the proposed regulations?** The Milton School Building conducted the site location of the Article 97 land conversion for MA legislative bills S.2840 and H.4883 during a closed meeting with no open public discussion, as was documented in the Open Meeting violation noted above. **What will the criteria be to ensure that the Alternative Analysis is sufficient and meets the criteria of the regulations?**

I am a strong advocate for Open Space, and feel it is imperative that the proposed **Open Space Act and Draft Regulations – 301 CMR 52** has the appropriate language to mandate compliance, as this has not occurred with Town of Milton Article 97 conversion with MA legislative bills S.2840 and H.4883. There is also more work to be done regarding S.2840 and H.4883 as outlined above.

Regards,



Stephen M. Kelleher
Milton Town Meeting Member, Precinct 8

cc: U.S. Senator Elizabeth Warren
U.S. Senator Edward Markey
Congressman Stephen Lynch
Ryan Smet, Legislative Correspondent & Aide, Office of Representative Stephen Lynch
Rebecca Tepper, Secretary (EEA)
Kurt Gaertner, Asst. Sec. Environmental Policy (EEA)
Robert Wilber, Director (EEA)

Gendron, Michael (EEA)

From: ROBERT and JOAN GONFRADE <[REDACTED]>
Sent: Sunday, January 19, 2025 2:48 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52 Comments

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Hello Michael,
I am very opposed to the Article 97 changes.
It is very concerning to me that the towns/ municipalities discretion and control is being so taken over by the State and developers. 40B is destroying our historic buildings, MBTA is changing our zoning and now they are coming after our protected land.

Ashland has made major investments in our Town Forest, Open Spaces and preservation for the benefit of all residents. Private entities should absolutely not be able to initiate changes.

Any changes needed to protected land for the benefit of the town (i.e. schools etc.) should be initiated at the town level by a 2/3 vote at Town Meeting. It doesn't even sound like it requires Town Meeting to approve a change. Private entities (Proponents) should NOT be able to initiate changes to protected lands. This should not pass.

Respectfully,
Joan Gonfrade
1 Shore Road
Ashland
Member of the Ashland Historical Commission, writing as an individual citizen.

Gendron, Michael (EEA)

From: E R ST.GERMAIN <[REDACTED]>
Sent: Sunday, January 19, 2025 2:48 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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With regard to proposed changes to the Article 97 Open Space Regulations, I whole-heartedly support the "no net loss" policy and any other change that strengthens Article 97. I offer this example to substantiate the need for this change.

I am a long-term member of the Ashland Town Forest Committee and I am actively involved in the current purchase of a 53 acre addition to the Town Forest. The seller of this property has a financial need. This land might have been sold to a developer but the owner also has a strong desire to conserve the property. Article 97 offered some protection but the possible loophole allowing the property to be used for something other than conservation was troubling to them. Luckily, we are also adding a Conservation Restriction to the purchase.

There are other property owners willing to donate or sell their property to us, and conservation in perpetuity is a big concern. Strengthening Article 97 is a step in the right direction as we work with land owners and reassure them that their preservation goals will be honored.

Thank you for all you are doing to make land conservation a reality.

Robert St.Germain
Member - Ashland Town Forest Committee

Gendron, Michael (EEA)

From: Philip Moser <[REDACTED]>
Sent: Sunday, January 19, 2025 8:50 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Dear Mr. Gendron,

I'm writing to offer the following comments on 301 CMR 52:

1. State the goal of "no net loss" right up front in Section 1 - Purpose and Applicability
2. Make explicit in the regulations the requirement for the Public Entity to declare the land as surplus to Article 97 needs. Notification should be made at both the local and statewide level on platforms that provide a regular email notification, include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land.
3. The voting requirements by the Public Entity to dispose of Article 97 land should be clarified and clearly written into the regulations. The current policy is for a unanimous vote and this should be maintained
4. Ensure that the regulations include a framework for a meaningful evaluation of natural resource values for the compensatory land and require the opinion of the Public Entity on the compensatory land. Recommend using the Riverfront Alternatives Analysis assessment framework as a model to provide decision-makers with a tool to determine compliance.
5. Provision of In Lieu Fees should be the exception with every effort made to find replacement land during the process. The regulations should be more explicit about what efforts are needed to document that In Lieu Fees are the only feasible option. Furthermore, In Lieu Funding should be increased to 150% of the fair market value or Value in Use, and improved coordination with the Public Entity to determine available staffing and resources to complete the Action.
6. The regulations must clarify the enforcement options available to EEA. It is clear from the recent SJC decision in the MBTA Communities case that the AG's office plays a key role in the enforcement of state laws, even when their role is not explicit in any given statute.
7. The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
8. Clarification of definitions, difference between Waivers and Certain Easements sections, and logistical improvements to the process.

Sincerely,

Philip S. Moser, P.E.

Waltham resident

Gendron, Michael (EEA)

From: Mark Bentley [REDACTED]
Sent: Monday, January 20, 2025 12:10 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Dear Mr. Gendron,

I am a resident of Falmouth Heights, residing at 19 Miami Avenue, which borders on Little Pond.

I fully support 301 CMR 52 which as I understand it will make siting and permitting easier for offshore wind developers.

It's imperative that we develop clean, alternative energy sources.

It's unfortunate that the Falmouth Heights neighborhood association has used a stream of disinformation to block the advancement of offshore wind power. Although this group is vocal, I can assure you that many of us in the Heights fully support moving forward on offshore wind power.

Sincerely,

Robert Mark Bentley
19 Miami Avenue
Falmouth, MA 02540

Gendron, Michael (EEA)

From: C Rooney <[REDACTED]>
Sent: Monday, January 20, 2025 2:15 PM
To: Gendron, Michael (EEA); jack.lewis@mahouse.gov; Karen Spilka; [REDACTED]
Subject: Article 97 Changes

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Dear Mr. Gendron, Representative Lewis and Senate President Spilka,

I am seriously opposed to any changes to Article 97 that would weaken this law, make it easier for developers and town administrators to over develop our precious resources that were wisely secured and protected by citizens in previous years, decades and centuries.

Article 97 properties clean and filter air, water, protect cold water fisheries, drinking water, recreational waters, habitat, and provide millions of the inhabitants of the Commonwealth respite every day from our crazy busy lives. In addition the protected habitat supports pollinators and birds which all contribute to the robust local farm sector in the Massachusetts economy - without pollination, we will NOT have food. Local food supplies bulwark the Commonwealth and its citizens from some of the supply chain issues that global warming is now creating in real time.

If we are so desperate for affordable housing, perhaps we should have a program to underwrite towns and citizens who cannot afford the upkeep on their properties to defer taxes, and be eligible for interest free loans to do the upkeep, and the property would become deded affordable once the current owner passes on or sells.

What are you thinking?

I VOTE no!

Please reconsider this ill thought out change.

Thank you very much for your time and attention to this matter!

Catherine Rooney
136 Fountain Street,
Ashland, MA 01721
[REDACTED]



Town of Ashland, *Office of Conservation*

DATE: January 14, 2025

Subject:

Comments Regarding Draft Open Space Regulations 310 cmr 52.00

To:
Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

The Ashland Conservation Commission (The Commission) has reviewed the document "*Draft Open Space Act Regulations 310 cmr 52.00*". The Commission thanks the EEA for their work on writing these regulations and the efforts to get the most recent Act Preserving Open Space in the Commonwealth passed. The Commission provides the following comments:

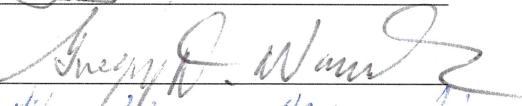
Under Section XX.09 4.c

The regulations allow for pay for the receipt of payment in lieu of the Replacement Land. This section states funding must occur within 3 years of Article 97 Action the funding must be used to acquire Replacement Land in a Comparable Location and be dedicated for Article 97 purposes.

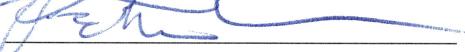
1. The regulations should be advised to provide guidance on what to do if the Town cannot acquire replacement land within the 3-year timeframe due to the originally intended property becoming unavailable, legal issues, or additional funding issues
 - a. What are the consequences if this occurs?
 - b. Example: what if there was an agreement for land to be purchased at the time the original land is taken out of Article 97 for payment, but the seller of the Replacement Land backs out?
2. Are there limitations on how the money can be utilized? This should be clarified in the regulations.
 - a. Does the land being purchased as Replacement Land need to be of the same nature as the original land that is released? E.g., undeveloped forest land must be replaced with undeveloped forest land, not a park or field.
 - b. Do the funds need to be used for Replacement Land, or can it be used for other purposes so long as Replacement Land is procured by other means?
 - i. Example A: if Replacement Land is acquired using grant funding does the remaining funds still need to be used for additional Replacement Land?

- ii. Example B: Land that is already conserved or owned by the municipality, but not currently protected under Article 97, is put into Article 97 as Replacement Land, can the remaining funds be used for other means?
- 3. Can the municipality partner with other municipalities, land conservation organizations or the state to acquire the land?
 - a. Example A: A municipality seeks to purchase a piece of Replacement Land in partnership with a land conservation organization or land trust such as Sudbury Valley Trustees or MassAudubon under a Conservation Restriction, or similar means.
- 4. Can the land be purchase outside the municipal boundaries of the original Article 97 Land if it is still within a comparable location, such as to provide benefit to the original municipality in regard to wildlife habitat/ corridors or watershed protection?
 - a. Example A: if the original municipality seeks to purchase land within a watershed adjacent to their boundaries for watershed protection, or further upstream within the watershed?
 - b. Example B: if the town owns a large conservation area and can purchase additional abutting property in an adjacent town to expand the existing conservation area? Many municipalities own land in adjacent municipalities.
 - c. Example C: if a well-developed city such as Boston or Worcester has an undeveloped parcel in Article 97 that is taken out, and cannot find land in their bounds of similar condition that is undeveloped, but can in an abutting municipality.

Sincerely,





Ashland Conservation Commission

Town of Ashland
101 Main Street
Ashland, MA 01721

Becca Solomon, Conservation Agent
bsolomon@ashlandmass.com
508-532-7924

Sofia Chrisafideis, Assistant
schrisafideis@ashlandmass.com
508-532-7906

Website: ashlandmass.com



Gendron, Michael (EEA)

From: mark cool <[REDACTED]>
Sent: Tuesday, January 21, 2025 10:21 AM
To: Gendron, Michael (EEA)
Cc: Dave Vieira; Moakley Thomas - Rep. (HOU); dylan.fernandes@masenate.gov; Nancy Taylor; Falmouth Selectboard; Jed Cornock
Subject: Re: 301 CMR 52 - Disposition or Change in Use of Article 97 Interests

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

RE: Please add the following as an additional concern to the submission made by Mark and Annie Cool dated January 16, 2025.

Greetings again,

A very concerning issue has been brought to our attention regarding the proposed regulations involved with the Disposition or Change in Use of Article 97 Interests.

Specifically, the section of XX.07 Replacement Land - 4. Certain Easements - where it states “subsurface or air rights easement... will be deemed to affect zero acres and therefore not require Replacement Land... “

A change in the sub-surface or air ascetic purpose of designated Article 97 protected land can hardly be deemed to affect zero acres. Rather, a subsurface or air rights easement significantly changes the natural resource and recreation value meant to be protected.

This measure of the proposed regulation can only be recognised as “cherry-picking” valued elements of designated Article 97 protected land. The comprehensive value of the land must be examined in totality. That examination, as well as the determination of change of use or disposition should only be made by the consent of the public entity having governing authority over the Article 97 protected land.

The nature of this portion of the proposed new regulation we've addressed is contrary to the established rights to a clean environment, including natural, scenic, historical and aesthetic qualities. It compromises the conservation of natural resources as a “public purpose. And it further erodes guiding principles of the Home Rule Act.

Respectfully submitted,

Mark and Annie Cool
Fire Tower Rd.
Falmouth MA

On Thursday, January 16, 2025 at 03:03:44 PM EST, mark cool <markjcool@yahoo.com> wrote:

Greetings ,

My wife Annie and I extend our very best wishes to you and yours for a great New Year .

We have reviewed the guidance, frequently asked questions, Article 97 policy, and other materials available on EEA's Article 97 webpage.

These are our thoughts:

1. The Alternatives Analysis is a welcomed part of the new process as it will provide better transparency and direct public input.
2. We understand Article 97 land held by a public entity to be solely under the jurisdictional authority of said public entity, and Secretary of Energy and Environmental Affairs powers regarding proposed new rules (i.e. Replacement Land, Determination of Natural Resource Value, Funding In Lieu of Replacement Land and Waiver or Modification) will have no jurisdictional authority of Article 97 land governed by another public entity (i.e. board, bureau, commission, committee, council, county, department, division, institution, municipality, officer, quasi-public agency, public instrumentality or any subdivision thereof) unless subject public entity deems it so.

I have an example. The public entity of the Town of Falmouth has jurisdictional authority over determined Article 97 land. A change of disposition or use of Article 97 interest is proposed by a potential developer. A petition through Falmouth Town Meeting for the change of disposition or use of Article 97 interest is unsuccessful and then denied.

We understand the Secretary of Energy and Environmental Affairs cannot overrule the Town of Falmouth (public entity) no matter the “greater public benefit” or “service to a significant public interest”.

3. If a public entity, as given in the Falmouth example, can be overruled by Secretary of Energy and Environmental Affairs powers described in the proposed new rules, until modifications are made to the draft, we most definitely OPPOSE the new rules implementing the Act Preserving Open Space in the Commonwealth (M.G.L. c. 3, § 5A) !

Respectfully submitted,

Mark and Annie Cool
Fire Tower Rd.
Falmouth MA

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Tuesday, January 21, 2025 10:49 AM
To: Gendron, Michael (EEA)
Subject: Proposed Open Space Act Regulations 301 CMR 52

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January 21, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Open Space Act Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests

Dear Secretary Tepper,

Thank you for the opportunity to comment on the draft Open Space Act regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests.

I am a resident of Boxford, was the Conservation Administrator in Topsfield for 17 years, overlapping 24 years of volunteer service on the Boxford Conservation Commission, and currently serve on the MACC Board of Directors. I offer the following comments related to the draft regulations:

- * Purpose. Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- * Notifications. Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition, include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able and invited to collaborate on the disposition throughout the entire process.
- * Documentation of Surplus Vote by Public Entity. There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the

regulations should require at least a 2/3 vote of that entity in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

* Public Comment Period. A public comment period of a minimum of 21 days should be required for all Article 97 actions, not only for those proposing In Lieu Funding.

* Natural Resource Values. The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).

* In Lieu Funding. In lieu funding should be available only after the Proponent has demonstrated the Action would avoid and minimize any disposition contrary to the intent of Article 97, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

* Enforcement. The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction, and ineligibility for future state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,
Lana Seguin-Spillman, Ph.D.
20 Pearl Road
Boxford, MA 01921-1203

Gendron, Michael (EEA)

From: Murray Miller [REDACTED]
Sent: Tuesday, January 21, 2025 10:54 AM
To: Gendron, Michael (EEA)
Subject: My concerns with the Proposed Changes to Massachusetts State Constitution Article 97 as outlined in the draft regulation 301 CMR XX.00

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Dear Mr. Gendron,

I am writing to express my strong opposition to the proposed changes to Massachusetts State Constitution Article 97 as outlined in the draft regulation 301 CMR XX.00. I am deeply concerned that these changes would significantly weaken the protections afforded to the people of the Commonwealth under Article 97, which safeguard clean air, clean water, and natural resources, while ensuring environmental preservation and local community input.

My specific concerns are as follows:

1. Erosion of Environmental Protections:

- Article 97 was enacted to protect the public's right to clean air and water, and to preserve the natural, scenic, and historic resources of the Commonwealth. The proposed changes prioritize expedited permitting for energy projects over these vital protections. This would set a dangerous precedent, allowing developers to bypass safeguards that ensure environmental and community well-being.

2. Diminished Local Input and Oversight:

- By streamlining permitting processes under a centralized state authority, such as the Energy Facility Siting Board (EFSB), the proposed changes would significantly reduce the influence of local governments and communities in the decision-making process. This undermines the voices of the residents who are most directly affected by these projects.

3. Impacts on Falmouth and Similar Communities:

- As a resident concerned about the potential designation of Falmouth as a cable landing site for the SouthCoast Wind project, I am alarmed by the implications of weakening Article 97 protections. Our community's natural resources and quality of life should not be sacrificed for the convenience of developers.

4. Lack of Public Awareness:

- Many residents remain unaware of the proposed changes and their long-term implications. The limited outreach and initial notice regarding the December 2024 public hearing suggest a lack of transparency in the process. Extending the comment period and holding additional hearings is a step in the right direction, but more effort is needed to ensure widespread public engagement.

5. Balancing Clean Energy Goals with Environmental Integrity:

- While I support clean energy initiatives, I firmly believe they must not come at the expense of fundamental environmental protections. The proposed changes shift the balance too far in favor of expedience, threatening the very resources that clean energy projects aim to preserve.

I urge the Executive Office of Energy and Environmental Affairs (EEA) to reject these proposed changes and preserve the integrity of Article 97. Protecting our natural resources and ensuring fair and transparent processes should remain a top priority as we pursue a sustainable energy future.

Thank you for considering my concerns. I would appreciate confirmation that my comments have been received and recorded.

Sincerely,

Thank you,
Murray Miller
60A Grand Ave
Falmouth, MA 02540
[REDACTED]

Gendron, Michael (EEA)

From: Lorraine lovanni [REDACTED]
Sent: Tuesday, January 21, 2025 12:50 PM
To: Secretary Tepper (EEA)
Cc: Gendron, Michael (EEA); Manchester Essex Conservation Trust
Subject: 301 CMR 52 - comments

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Attn: Secretary Rebecca Tepper
100 Cambridge Street, Suite 900
Boston, MA 02114

*via email: **Secretary.Tepper@mass.gov**. cc: **Michael.gendron2@mass.gov***

Re: 301 CMR 52 - comments

Dear Secretary Tepper:

Thank you for the opportunity to comment on draft regulations to implement M.G.L. Ch 3, section 5A, known as 'An Act Preserving Open Space in the Commonwealth' or 'the Open Space Act'. I understand that representatives of regional, statewide and national conservation and environmental organizations – who all share a commitment to the protection of public lands acquired for Article 97 purposes – respectfully submitted the following comments. I am writing to you as a resident to underscore my full support of these comments and the amazing signatories. I am in full support in advocating for the strongest possible regulations to protect the rights of all Massachusetts residents, as articulated in Article 97 of the Massachusetts Constitution. **I lend my support "to protect, preserve and enhance open spaces protected under Article 97 by establishing strict standards for approving any conversion of such land to other uses, and ensuring no net loss of Article 97 lands when conversions cannot be avoided."** I support the following:

- The regulations should open with a statement of the overarching purpose of this law – to protect, preserve and enhance open spaces protected under Article 97 by establishing strict standards for approving any conversion of such land to other uses, and ensuring no net loss of Article 97 lands when conversions cannot be

avoided. The regulations should clearly state the Commonwealth's intent that proponents will avoid conversion if at all possible, minimize conversions that are deemed unavoidable, mitigate conversions with comparable replacement land, and as a last resort, mitigate with in-lieu funding that will be directed to non-contemporaneous protection of comparable replacement land.

- Section 4 (Requirements): Instead of saying that requirements must be met "prior to taking an Article 97 Action" the regulations should require that the proponent must comply with all requirements before the landowning entity takes any vote to authorize the disposition. This will ensure that those responsible for taking such votes have the benefit of all relevant materials before they are asked to make a decision.
- Section 5 (Notification): Since every proposed change of use for Article 97 requires filing an Environmental Notification Form (ENF), the regulations should remind proponents of this requirement, and that proponents must follow the notice requirements for all ENFs. At a minimum, posting in the Environmental Monitor, and notice to community-based organizations and tribal organizations in accordance with the MEPA Public Involvement Protocol, should be required. In addition, EEA should require posting the public notice to the Open Space Act Tracker on EEA's website, to be supplemented by additional material as they become available. Finally, the proponent should be required to post a physical notice in a highly visible location on the subject parcel or parcels. For something as important as changing the use of protected open space, simply posting on the public entity's website is insufficient.
- Section 5.1 and 5.2: The minimum public comment period should be extended from 21 days to 30 days, and should be required for all Article 97 conversions, not just for those proposing In-Lieu Funding.
- Section 6.2. (Contents of Alternatives Analysis): Appraisals of the subject parcel(s) and any proposed replacement parcels should be included in the materials that proponents are required to post for the public and provide to EEA.
- Section 6.2.b. (Alternatives considered): Rather than saying that "Cost differences between land owned by the Public Entity and equivalent private land shall not be the sole basis for infeasibility", this section should say that such differences "shall not be the primary basis for infeasibility." For Article 97 and the Open Space Act to have real meaning, public entities cannot be allowed to convert land simply because it is most economically expedient to do so.
- Section 6.2.f. (Documentation of affirmative vote by Public Entity) and wherever votes are mentioned: A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- Section 7.2 (Replacement Land requirements). In addition to issuing the determination of Natural Resource Value specified in Section 7.2.b., EEA needs to communicate to the proponent and the legislature its determination of whether the replacement parcels meet requirements a. and c. – h. This responsibility could be reflected through revision of Section 8, or insertion of a new section in the regulations.
- Section 7.3 (Appraisal Standards). ALL appraisals submitted in support of a proposed change in use of Article 97 land should meet EEA, DCAM or Yellow Book appraisal standards. Self-serving appraisals that are not done to recognized standards will not advance the purposes of the Open Space Act. Monetary Value listed in the appraisal should be valid for one year, requiring updates if more than one year passes between the appraisal date and the date of anticipated vote on the petition by the Legislature.
- Section 7.4. (Certain Easements). As written, the proposed language indicates that no replacement land is required for easements that meet the enumerated conditions –implying all such cases are automatically deemed cash-in-lieu transactions. If that is the case, it must be stated plainly.. An additional proviso should be added to 7.4.c. to require that the appraisal take into account the value of loss-of-use resulting from temporary disturbance to the property, as well as the value of any Article 97 uses of the property that are foreclosed by the easement. Further, if the intention is that all such transactions be deemed cash-in-lieu transactions, it does not make sense to include the language in 7.4.d, which references requirements for replacement land. Instead, 7.4.d should require such transactions to meet the terms of Section 9.4., 9.5., and 9.6. which pertain to requirements of cash-in-lieu transactions.
- Section 8.2 (Considerations for a Determination of Nature Resource Value). The determination should reference field observations by EEA staff made during a site inspection of the subject parcel(s) and any proposed replacement parcels.
- Section 9.3.c. (Report of Finding by Secretary) This section should reference the required minimum comment period defined in Section 5.2 – which we request should be changed from 21 to 30 days. In addition, proponents should be required to submit all public comments received to the Secretary, the Finding should state that the Secretary has reviewed those comments, and the comments should be made available to the public as part of the Tracker on EEA’s website.
- Section 9.6.c.iii (Secretary’s Determination of Nature Resource Value on land acquired with In-Lieu Funding). For the Secretary to make a meaningful determination of Natural Resource Value of any non-contemporaneous replacement parcel, the regulations need to state when and how Proponents must notify EEA of their intentions *before* they acquire it.
- The regulations need to state consequences for non-compliance with the law and regulations. At a minimum, this should include invoking EEA’s civil enforcement, suspending any permits issued by EEA, and ineligibility for state assistance programs until the failures are cured to the Secretary’s satisfaction.

- Finally, EEA has stated its intention to release an updated Land Disposition Policy, which raises questions about whether confusion will ensue. The regulations should be edited to include any key guidance that is under consideration for inclusion in a new contemplated Land Disposition Policy.

I would like to add my own commentary for your consideration as well, as a resident and "outdoor citizen." As our State policies push to address housing needs, there is a natural inclination to look for land that is a premium, especially here on Cape Ann. The tension to protect human needs for outdoor space and our environment, and the density of housing has become very clear. We need to ensure that the health and well-being of all residents are protected by protecting the natural and human based need to be outdoors. We learned this lesson during COVID. We must not sacrifice protections to exchange land for expediency, profit, and opposing goals that are inconsistent with the health and well-being of people. I fully support tightening these protections and oversight for various reasons, including protection of the environment.

Thank you for your consideration of these comments, and for working to ensure the protection of Article 97 lands across the Commonwealth.

Sincerely,

Lorraine Iovanni
RESIDENT
MANCHESTER BY THE SEA, MASS

Joan Deely
14 Richardson Road Leverett, MA 01054

January 21, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Open Space Act Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft Open Space Act regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests.

I am a resident of Leverett and am the co-chair of the Leverett Conservation Commission. I am also a member of the Board of Directors of the Massachusetts Association of Conservation Commissions. I offer the following comments on the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated.

A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only for those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section must be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be available only after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Joan Deely, MS
14 Richardson Road
Leverett, MA 01054

TOWN OF CANTON
Conservation Commission
Pequitside Farm
79 Pleasant Street
Canton, Massachusetts 02021

Kevin Colmey, Chair
Melissa Mayer, Vice Chair
Paul Degnan, Clerk
Robert MacDonald, Treasurer
Gerald Carmichael
Thomas Birmingham
Carolyn Elkort



Regen Jamieson, Conservation Agent
Meghan Sullivan, Rec. Sec./Comp. Insp.
Robin O'Connell-McCarthy, Senior Clerk
Phone: (781) 821-5035

January 21, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114
Via email: Michael.Gendron2@mass.gov

RE: Proposed Regulations *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests (Open Space Act)*

Dear Mr. Gendron,

I want to express my appreciation for this opportunity to provide comments to the Executive Office of Energy & Environmental Affairs (EEA) on the proposed regulation updates, *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests*. As you know, Canton has the unique perspective being the first and only municipality to receive “in lieu” funding as replacement for land removed from Article 97 under the new law. Having been through the process this past year, we offer the following comments on the proposed regulations:

Key Summary Points

- The Public Entity should be a partner and collaborating on the disposition throughout the entire process
- The requirement by the Public Entity to declare the proposed land for disposition as surplus to Article 97 Interests and needs and a unanimous vote should be included in the Regulations.
- Notification should be made at both the local and statewide level on platforms that provide a regular email notification, include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the replacement land.

- The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- In lieu funding should be only available after the Proponent has demonstrated the action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed, funding increased to 125% of the fair market value or Value in Use.

We offer the following detailed comments:

1. Please add language from the No Net Loss Policy's need to declare land as surplus to Art 97 needs. With Climate Action Plan and EEA's noted discussions on increasing pace of conservation to 30% by 2030 and 50% by 2050, EEA should include regulatory language that emphasizes to proponents of a disposition that these actions should be a last resort. It would be beneficial if the regulations include a written sequencing of avoiding, minimizing, mitigating with replacement, then mitigating the with in lieu funding option.

XX.0

2. Please add a Preamble section that includes more information on the No Net Loss purpose, clarification of types of lands that qualify as Art 97, and examples of Art 97 interests and actions that qualify as "conversion" or "disposition".

XX.02 Definitions

3. Please add definitions for Change in Control, Feasible or substantially equivalent alternatives, Public Interest, Recreation Value, License of Limited Duration, Market Area and Surplus to Article 97 Interests.

XX.03 Pre-submission Consultation

4. Please add language to include collaboration throughout the entire process with the Public Entity holding the Art 97 Interest. The 1998 No Net Loss Policy required a unanimous favorable vote of the Public Entity holding the Art 97 Interest. The requirement should include a unanimous of the Public Entity holding the Art 97 Interest to declare the surplus needs and support the proposed replacement land, or in lieu fee if applicable.

XX.05 Notification

5. Please add a requirement for the public notifications to posted in a centralized location on EEA Website but also post it in the Environmental Monitor. Limiting notice to a municipal website would reduce equitable notice for out-of-town residents who might be using the land proposed for disposition or conversion. Notification should be in both a local and a statewide, centralized platform.
6. Please add posting of the notice at the proposed disposition property and a site inspection with the Proponent, Secretary, and Public Entity.

7. Public comment should be available for the disposition proposal not just the in lieu funding option. Please provide a minimum of a 30-day comment period.

XX.06 Alternatives Analysis

8. Contents of the Alternatives Analysis should include more detail like whether state or federal funding was received in the initial acquisition of the property proposed for disposal; description of existing Article 97 interests and natural resource values, description of how the disposition is not contrary to an Open Space and Recreation Plan, and declaration by the Public Entity that the land is surplus or not.

XX.07 Replacement Land

9. Place the Natural Resource Values section before Replacement Land and In Lieu Funding sections to emphasize the Natural Resource Value importance.
10. Appraisals should be provided to all parties and a mechanism for disputing an appraisal needs to be incorporated into the regulations. It should be made clear that easements also require appraisals.

XX.08 Natural Resource Values

11. Please more detail to the Natural Resource Values section. Natural Resource Values can't be described by aerial photography and mapping alone. While they are great tools, it misses the local knowledge component. An inspection of the land to be disposed and the replacement land should also be required.
12. In determining Natural Resource Values, the role the proposed Article 97 disposition land plays in meeting the Interests in Article 97, whether the proposed Article 97 disposition land provides a unique or significant resource, and whether the land is described within the Open Space and Recreation Plan (OSRP) should be added to the evaluation criteria. A site inspection should also be required of the land to be disposed and the Replacement Land by all parties.

XX.09 Funding in Lieu of Replacement Land

13. Please include more specificity for the In Lieu Funding to be dispersed to the Public Entity of the Art 97 Interest, rather than a Community Preservation Committee (CPC), who may not have the same understanding of Natural Resource Values that would be taken by a disposition or conversion. Also, CPC funding would need to be approved at Town Meeting. To avoid confusion, competing interests within the committee or accidental misappropriation of funds, the in lieu funding would be better held and used by the Public Entity holding the Art 97 Interest. Please remove the option to disperse the funding to the CPC.
14. In Lieu Funding of not less than 110% of the fair market value or value in use, is not adequate. This burden includes more than just the land purchase. It includes funding appraisals, title searches, new survey plans, time to negotiate with a landowner and significant staff time to complete the negotiations, title insurance and recording fees purchase, and the follow up reporting. In addition, land value in eastern MA will change significantly in 3 years. If it takes 3 years to find suitable Replacement Land, the land

value will have increased and 110% In Lieu Fee would not yield comparable acreage or Natural Resource Values. 110% is not enough funding. Please increase this to 125%.

XX.10 Waiver or Modification

15. Under Waivers, the Public Entity should agree that a waiver is appropriate and that the transfer from one Public Entity to another is done “*with no other change in use*”. For example, a local park under Conservation control transferred to the Recreation Department could continue to be managed as a park but if years later changed the park is changed to a ballfield then there would be a change in use and Natural Resource Values may not have been protected. Also, if Conservation land is transferred to a Water Department but then the Water Dept puts a new well or treatment facility on it, there would be a change in use and Natural Resource Values would not have been protected. The Secretary and Public Entity should collaborate on this determination.
16. Please identify the standards used to determine that Natural Resource or Recreation Values are “*insignificant*” in order to grant a Waiver.

Additional concerns

17. What is the enforcement mechanism or consequences of not meeting these Regulations? The consequences of noncompliance should be determined and clear to all entities.
18. EEA is requested to provide robust training on the Regulations once they are final, including how to use the EEA’s Natural Resource Tool and creating the screening reports.

Thank you for your consideration of these comments.

For the Canton Conservation Commission,



Regen Jamieson
Agent

Gendron, Michael (EEA)

From: Kenneth Doucet <[REDACTED]>
Sent: Tuesday, January 21, 2025 1:54 PM
To: Gendron, Michael (EEA)
Subject: SouthCoast Wind

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

It's my understanding that the Federal BOEM has approved the SouthCoast Wind project on the basis of all 2400 MW going to Brayton Point. As a resident of Massachusetts, and a supporter of alternative energy, I applaud this.

It's also my understanding that the approval includes "the variant of Falmouth in case of need". This I wholeheartedly do NOT support. As I understand it, the Falmouth variant, which calls for cables to bisect the Falmouth Heights beach and run below Worcester Court in the heart of Falmouth Heights, would be hugely disruptive to a densely populated residential community, and would deprive residents of valuable and heavily used open space.

I grew up in Massachusetts, moved away and returned to buy a home in Falmouth Heights as an adult because of my love for the town. I'm deeply concerned that the Falmouth variant, if implemented, would not only reduce the value of my investment, but would also negatively impact on my health and happiness.

I implore you to remove the Falmouth variant from the SouthCoast Wind project.

Thank you for your consideration.

Sincerely,

Kenneth Doucet
96 Lake Leaman Road
Falmouth, MA 02540
[REDACTED] (cell)



**Town of Winchester
Conservation Commission
Town Hall, 71 Mt. Vernon St.
Tel: (781) 721-7152 E-Mail: Evreeland@winchester.us**

January 21, 2025

Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02214
Attn.: Michael Gendron

Re: Proposed Regulations:
301 CMR 52.00 – Disposition or Change in Use of Article 97 Interests

Dear Mr. Gendron,

I am writing this letter on behalf of the Winchester Conservation Commission. The Commission believes that these regulations will provide specific guidance to municipalities regarding the protocols necessary to ensure that a thorough review is given to any disposition of protected open space.

To that end, we believe that the bar should be high to removing these lands from the public domain. Conservation Commissions, as those most familiar with the value of open spaces, should be cited to be included in the process. Under Massachusetts state law Ch. 40, sec. 8C, it is the local Conservation Commission that is give the power and duty *“to promote and develop natural resources and for the protection of watershed resources of said city or town.”*

Notification requirements should be broad, with site visits for disposition and replacement land required by every board involved in the process and should be open to the public.

Article 97 of the Massachusetts Constitution states: *The people shall have the right to ... the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.* This mandate is broad, and the protected right of the people in natural resources includes protection for wildlife as well.

Therefore, Natural Resource Value evaluations should be done by experts with the same qualifications as required under the Wetlands Protection Act, Wildlife Habitat Evaluations 310 CMR 10.60, that is, by “*one who has at least a master’s degree in wildlife biology or ecological science from an accredited college or university, or other competent professional with at least two years’ experience in wildlife habitat evaluation.*”

As a Commission within greater metropolitan Boston, it is difficult to imagine that any open space would be surplus, and it is concerning that protected open space can be purchased. It would be better if emphasis were placed on mitigation, and that mitigation be underway before disposition of a protected property. Also, any cost burden should not be placed on municipalities. If you expect to buy a public park, you should expect to pay for ALL expenses related to its purchase and replacement.

“Insignificant natural resource value” is not defined. Based on our experience, such a thing does not exist. And should a parcel of land be of less-than-optimal resource value today, it can be made so in the future.

Donations to non-profit conservation organizations should not be considered, nor should their properties be considered for Replacement Land. They already serve the same purpose, and their use would be a net loss.

Alternatives Analysis submitted to the state should include the vote on whether a parcel is surplus to Article 97 interests and needs, and the appropriateness of the Replacement Land. The regulations note that this analysis shall be submitted to the Secretary, but it should also be submitted to, and reviewed by, the Public Entity.

Thank you for this opportunity to share our views on the pending regulations, and we look forward to the protections these regulations will provide.

Sincerely,

Elaine Vreeland

Elaine Vreeland, Administrator
Winchester Conservation Commission.

Robert A. Schulte
Centerville, MA 02632

January 21, 2025

Mr. Michael Gendron
Open Space Act Coordinator & CR Reviewer
Executive Office of Energy and Environmental Affairs (EOEEA)
100 Cambridge Street, Suite 900
Boston, MA 02114

Subject: **301 CMR 52.00: Disposition or Change in Use of Article 97 Interests – Public Comment on Proposed Regulations**

Dear Mr. Gendron,

As a concerned citizen, longtime year-round resident of Centerville, MA (on Cape Cod) and a member of both ad hoc citizens' groups, Barnstable Speaks and Save Greater Dowses Beach (SGDB), I am writing to you with comments and concerns I have about the proposed new regulations regarding the disposition or change in use of Article 97 Interests.

First, I would like to express my support and agreement with the public comments submitted to you on behalf of Save Greater Dowses Beach by Susanne H. Conley, Chair of SGDB, on January 14, 2025. (See attached memorandum.)

After a thorough review of the documents listed below, I respectfully submit additional comments summarized herein for the EOEEA's consideration:

- Chapter 274 of the Acts of 2022, M.G.L., c. 3, §5A (Change in Use or Disposition of Land by Public Entity)
- EOEA Article 97 Land Disposition Policy (dated February 19, 1998)
- 301 CMR 51.00: Land Acquisition
- 301 CMR XX.00: Disposition or Change in Use of Article 97 Interests (the "Proposed New Regulations")

After reviewing the Proposed New Regulations, it became apparent that the ***Applicability of the Policy to Municipalities***, as stated in Item IV of the EOEA Article Disposition Policy (dated February 19, 1998) ("Item IV"), is missing. By excluding the language set forth in Item IV, the requirements and protections when a Municipality is involved with the disposition of an Article 97 property have been essentially weakened and/or eliminated. I feel strongly the omission of the Item IV wording is inappropriate and only serves to weaken the control that Municipalities have over the disposition of the Article 97 properties within their borders.

Depending on its interpretation, it appears that the only protection of control over Article 97 Land provided to Municipalities in the Proposed New Regulations might be found in the confusingly worded **XX.06 Alternatives Analysis, 2. Contents of Alternatives Analysis, f.** which states as follows:

"f. if the Proponent is not the Public Entity with care and control of the Article 97 Interest, summarize the Proponent's discussions with the Public Entity and provide written documentation of the Public Entity's stated position on the proposed Article 97 Action, and an *affirmative* [emphasis added] vote by a Public Entity, if applicable."

Note that the above provision in the Proposed New Regulations only requires an **affirmative and NOT a two-thirds vote** by a Public Entity's Town Meeting or City Council in support of the disposition of an Article 97 property as required in Item IV.

The language identified below in **bold** is from Item IV of the EOEA Article 97 Land Disposition Policy (dated February 19, 1998) and is currently not included in the Proposed New Regulations. In order to ensure that Municipalities retain strong control in the form of a **two-thirds vote requirement** over the disposition of their Article 97 properties, the language identified below in **bold** should be inserted into the Proposed New Regulations and renumbered as paragraph "**3. Applicability of the Policy to Municipalities**" in Item **XX.01 Purpose and Applicability**.

IV. Applicability of the Policy to Municipalities

To comply with this policy, municipalities that seek to dispose of any Article 97 land must:

1. Obtain a unanimous vote of the municipal Conservation Commission that the Article 97 land is surplus to municipal, conservation and open space needs;
2. Obtain a unanimous vote of the municipal Park Commission if the land proposed for disposition is parkland;
3. Obtain a two-thirds Town Meeting or City Council vote in support of the disposition;
4. Obtain a two-thirds vote of the legislature in support of the disposition, as required under the state constitution;
5. Comply with all requirements of the Self-Help, Urban Self-Help, Land and Water Conservation Fund, and any other applicable funding sources; and
6. Comply with EOEEA Article 97 Land Disposition Policy [note: the municipality must also file an Environmental Notification Form with the EOEEA's MEPA office].

Thank you for the opportunity to provide my comments on the Proposed New Regulations for the disposition of Article 97 interests. I sincerely hope you give serious consideration to my comments as well as those made by other members of the public and interested organizations.

Regards,

Robert A. Schulte
Founding member of Barnstable Speaks and member of Save Greater Dowses Beach
Centerville, MA

cc: Secretary Rebecca Tepper

Attachment: Memo from Susanne H. Conley on behalf of Save Greater Dowses Beach (dated 1/14/25)

TO: Mr. Michael Gendron
Executive Office of Energy and Environmental Affairs

CC: Secretary Rebecca Tepper
Undersecretary Michael Judge

RE: Public Comment to Proposed Article 97 Regulations

DATE: January 14, 2025

This public comment is submitted on behalf of the *ad hoc* citizens' group Save Greater Dowses Beach (SGDB) and is in response to the Secretary of Energy and Environmental Affairs proposed Article 97 regulations. Our advocacy in recent years has focused on the preservation of Article 97 protected lands in the Town of Barnstable and specifically the recreational beaches on Nantucket Sound that have been targeted for "alternate use." We are of the opinion that the intent and substance of Article 97 of the Massachusetts Constitution have been and are being compromised by the current administration's program to advance the construction of renewable energy infrastructure while giving little heed to the public's right to open space. We contend that no "public purpose" should supersede an existing public purpose that bears the sanction of constitutional protection. Our objections to the proposed regulations are as follows:

1. We question the legitimacy of the proposed regulations as they violate a key provision of the 2022 "Act Preserving Open Space in the Commonwealth," also commonly referred to as the Public Lands Preservation Act. SECTION 2 of this act clearly states: "The secretary of energy and environmental affairs shall promulgate regulations to implement subsections (a) and (b) of section 5A of chapter 3 of the General Laws **within 18 months after effective date of this act.**" The act was approved on November 17, 2022. We assume the traditional practice of a three month period following enactment of a general law prior to an effective date of a statute. Accordingly, the secretary had until August, 2024 to write regulations for the implementation of the provisions of the act. The deadline to promulgate new Article 97 regulations was not met within the time frame established by the Act. We maintain that the existing policy, therefore, must remain in place.
2. We recognize in the language of the proposed regulations a congruence with recent actions taken by the legislature and with policies implemented by the current Administration to fast-track renewable energy infrastructure and reduce the authority of municipalities, and the general public, in zoning and siting these facilities. The proposed Article 97 regulations, specifically XX.07 sec. 4, further advances this tendency via the invention of a category of "Certain Easements." This language stipulates that "subsurface" use will "be deemed to effect zero acres" and not require "Replacement Land." The four provisions (a. through d. in this section), from our perspective, have no relationship to any prior consideration in legislative or policy terms and would therefore

effectively reduce certain Article 97 dispositions, such as those facing the Town of Barnstable, to a *pro forma* exercise that would undermine the intent of the Commonwealth's constitutional protection of public land. Protected public land has never been seen as only the surface of the land with no consideration for what lies below or above. Furthermore, if no requirement for replacement land is determined to exist, we assume that no "in lieu of" funding would be required either resulting in a total deprivation of the public's interest in protected land. This entire section of the proposed regulations should be omitted.

3. The proposed regulations do not include unequivocal language making clear to the people that the secretary of EE&A "shall not support any Article 97 disposition unless ... exceptional circumstances exist." (existing Article 97 Policy, EE&A website) These circumstances are defined in section II of the current policy, and refer to complete avoidance of Article 97 lands, disapproving of change of use that could "destroy or threaten a unique or significant resource." This prohibitory language is missing from the proposed regulations. There are not only two alternatives -- replacement land or payment in lieu of, when a disposition proposal is made. The third option is **denial** of the proposal in consideration of the clear language of Article XVII: "The people shall have the right to clean air and water, freedom from unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment" This is a constitutional right that the amendment declares to be a "public purpose," one that should not be superseded by exigency created by some future consideration. Should the secretary, despite our objection that the deadline for writing new regulations was not met, persist with this proposal, we insist that "no net loss" of public lands be the guiding principle in any proposal for disposition of Article 97 land, and denial should be the first and most often taken action.
4. In our experience, leaving the "Alternatives Analysis" to a Proponent of an Article 97 disposition results in self-serving excuse-making for why only a certain parcel of public land is suitable for change of use. We have seen this as part of a Draft Environmental Impact Review prepared by a developer for MEPA, wherein a number of reasons given for rejecting alternate sites actually describe the targeted parcel (EEA#16611). Alternatives should be equally assessed by either the public entity with the Article 97 interest and/or a disinterested and impartial third party, especially if the proponent has substantial financial interest.
5. Under XX.05 concerning notification of a Proponent's request for disposition, item 2 indicates that the public would be allowed 21 days to review and comment on the proposed action as well as the submitted Alternatives Analysis. This is a wholly unacceptable, insupportably short period of time allotted to the public, whose interests are protected under the constitution, to mobilize, analyze, and prepare "public comment" relative to an Article 97 disposition. Again, this language is emblematic of recent trends to rush through approvals related to siting and permitting. However, protected land

should be given far more consideration than this section seems to warrant, and the process for public involvement in decision-making about such land should be given much precedence over the wishes and interests of proponents, especially concerning the determination of “value in use.” We feel that public comment opportunities (including this) on land use in recent years has become nothing more than a “check the box” exercise in Massachusetts, and the inordinately short time frame suggested in these proposed regulations reflects that tendency. We would prefer to see a minimum 60 day period of time for study, comment, hearings, and other possible actions.

6. Section XX.09 gives the Secretary sole discretion as to whether or not Article 97 land serves “a significant public interest.” Any land protected under Article 97 is open land with historical and social purpose and benefit. Public interest in this land should be presumed rather than questioned, especially when undertaken as a means to declare a superseding public interest that does not qualify for protection under the Massachusetts Constitution.

Thank you for the opportunity to submit these comments on the proposed new regulations regarding change in use of Article 97 interests.

Susanne H. Conley
Chair, Save Greater Dowses Beach
Osterville, Massachusetts

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Tuesday, January 21, 2025 5:12 PM
To: Secretary Tepper (EEA); Gendron, Michael (EEA)
Cc: Gaertner, Kurt (EEA); Cooper, Stephanie (EEA)
Subject: Re: 301 CMR 52 - comments

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Secretary Rebecca Tepper
100 Cambridge Street, Suite 900
Boston, MA 02114
via email: Secretary.Tepper@mass.gov.
cc: Michael.gendron2@mass.gov

The Open Space Act Regulations 301 CMR 52 – Comments on Proposed Regulations

Dear Secretary Tepper:

Thank you for the opportunity to comment on draft regulations to implement M.G.L. Ch 3, section 5A, known as An Act Preserving Open Space in the Commonwealth (the Act). I commend Kurt Gaertner and Michael Gendron for their best efforts in developing these regulations and conducting the public hearing at which I testified in Westboro on December 18.

The effectiveness of the Act and the regulations when promulgated will depend not only on their terms but also on the extent to which the concerned public recognizes the Healey Administration's dedication to the intent of the regulations, the Act and Article 97 itself. I congratulate you and your staff for the infrastructure already in place, including the Evaluation Tool, the Portal, the Tracker, the Guidance and the Article 97 Policies.

Your revisions to the draft regulations and, moreover, the vigor with which you advocate for the purposes of Article 97 in their implementation, are a standard by which the citizens of the Commonwealth will measure your agency's performance in transparently and steadfastly advocating to preserve conservation lands in Massachusetts.

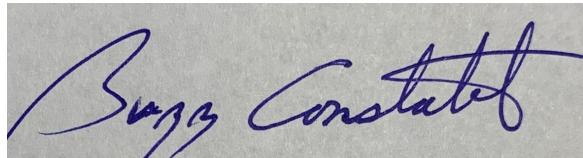
I support the suggestions in the correspondence on the regulations submitted by the Massachusetts Land Trust Coalition, et.al. (MLTC Comments). I will not reiterate them, but rather point out the core message at the public hearing and in the MLTC Comments, which is that:

Proposals under the Act to remove land from Article 97 protection must be subject to complete and accurate applications and opportunity for informed public participation in your review and in the legislative process, including a public report from your office to the General Court in a timely manner before a vote on any proposal.

Efforts of the Healey administration strongly reflect the widespread public support of increased land preservation for climate action, habitat protection, economic vitality, recreation and public health & welfare. Preventing "leakage" from existing stocks of protected land is vital, is the intent of Article 97 and the Act, and is a responsibility of your office

Please consider the regulations as a tool for you to discharge this responsibility firmly, transparently and to the credit of your administration, as well as to the benefit of the citizens and natural resources of Massachusetts.

With Appreciation and Support

A handwritten signature in blue ink, appearing to read "Buzz Constable".

William G. Constable, Esq.
17 Old Lexington Road
Lincoln, MA 01773

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Tuesday, January 21, 2025 5:44 PM
To: Gendron, Michael (EEA)
Cc: info@fhmna.org
Subject: FW: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

Though our very active neighborhood association, Falmouth Heights – Maravista Neighborhood Association, it has been brought to our attention that Governor Healey has relaxed the Massachusetts State Constitution Article 97 “An Act Preserving Open Space in The Commonwealth”.

This change will adversely affect the community of Falmouth MA by allowing permitting and siting by offshore wind developers (and others) to be easier, affecting the taxpaying residents of Falmouth MA and jeopardizing the critical tourism and open space of the town.

We have been landowners in Falmouth MA for 47 years. Falmouth MA takes their beaches, parks, parkways, and open space very seriously. The Worcester Court, Central Park, Falmouth Heights Beach and all beaches along the Falmouth coastline are gems. There is absolutely no way we, as a town, will allow developers to bulldoze, dig up, and install underground transmission lines along any coastline in Falmouth. This project will not benefit the residents of Falmouth because the energy rates generated by South Coast Wind will be exceedingly high in comparison to energy rates generated by oil and gas. If the Governor and EFSB strong arm the town, then I think the Town of Falmouth MA needs to ensure that a bond is created to protect the town. The Town of Falmouth MA has been burned once before by allowing wind turbines to be installed on town property.

Take Falmouth off the list.

Respectfully submitted,

Robert & Maryanne Olsen
42 Raymond St
Falmouth, MA



Officers

Sean Lynn-Jones, President
Ernest Cook, Vice President
Marian Lazar, V.P. Publications
Rob Schoen, Secretary
Ronald Brown, Treasurer

Directors

Harry Bohrs
Susan Helms Daley
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Olivia Fischer Fox
Ann Frechette
Anita Johnson
Mark Lewis
Arlene Mattison
Hugh Mattison
Clint Richmond
Deborah Rivers
John Shreffler
Marilyn Ray Smith

January 22, 2025

Re: Comments on 301 CMR 52

Mr. Michael Gendron
Michael.gendron2@mass.gov

Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114.

Dear Mr. Gendron:

Thank you for the opportunity to comment on the draft regulations implementing the Open Space Act. I am pleased to submit the appended comments on behalf of the Brookline GreenSpace Alliance.

These regulations will govern Article 97 actions in concert with EEA Secretarial policy. We were advised during the December 9 webinar that the Secretarial policy is under revision. It does not seem appropriate for the period of public comment on the draft regulations to close before the revised policy is available. In particular, during the webinar, the presenters advised that the policy will likely be modified to require only a two-thirds majority rather than unanimous vote of a municipal Conservation Commission or Park and Recreation Commission to authorize an Article 97 action. Many advocates of parks and open space believe that the requirement of a unanimous vote provides essential protection to public lands. We would like to know why a matter of such significance is not addressed in the draft regulations themselves. In any case, whether it is included in the regulations or the policy, such a significant change should be subject to public comment. Also see our appended comments, including the comments on XX.04 Requirements.

We would be happy to have a conversation to explore any of these matters further.

Sincerely,

Sean M. Lynn-Jones
President
Brookline GreenSpace Alliance

COMMENTS ON DRAFT REGULATIONS: 301 CMR 52 (Change in Use or Disposition of Article 97
Interests)

SUBMITTED BY: BROOKLINE GREENSPACE ALLIANCE

info@brooklinegreenspace.org

JANUARY 22, 2025

In addition to these specific comments on the proposed regulations, the Brookline GreenSpace Alliance is concerned about whether there will be an opportunity for public comment on any proposal to change the requirement that a Conservation Commission or Park and Recreation Commission make decisions related to Article 97 by a unanimous vote. Views may differ on the merits of that current policy, but it should not be changed without an opportunity for public discussion and comment. Any changes to that policy also should be considered in conjunction with the draft regulations. See also the cover letter submitted with these comments.

XX.02 Definitions

Article 97 Action

Includes 1c) “change in use of land”. That is very broad. Is paving open space for a parking lot a change in use? Installation of a boat ramp? Replacing a picnic area with a ballfield? Some guidance would be helpful.

Excludes 2) “the issuance of a revocable permit or license of limited duration.” The phrase “limited duration” is subject to wide interpretation. Ninety-nine years would technically be a limited duration. Some boundaries should be placed here.

Article 97 Interest includes “another real property interest”. Does that include a lease? If so, a lease should be enumerated along with fee ownership and an easement.

Value in Use is complicated. Please provide examples.

XX.03: Pre-submission consultation

The requirement that a non-public proponent must “consult” with the public entity holding the Article 97 interest is vague. Specifics should be provided.

XX.04 Requirements

Three requirements are specified, but there is no requirement specified for the need to obtain authorization for the filing of an Article 97 bill. An on-line FAQ statement <https://www.mass.gov/doc/public-lands-preservation-act-frequently-asked-questions-august-2024/download> lists four requirements, including “Draft legislation and obtain authorization for the filing of a bill. For municipalities, this requires approval at Town Meeting or City Council. EEA can assist by reviewing draft legislation and local vote language, which can make the bill approval process smoother.” This is missing from the draft regulations.

Subsection 3a) requires not only identification of Replacement Land but also the actual acquisition (if necessary) and dedication of the Replacement Land to Article 97 purposes, or

BROOKLINE GREENSPACE ALLIANCE COMMENTS ON DRAFT REGULATIONS: 301 CMR 52
Page Two

the provision of In-Lieu funding. This ignores the need for an intervening step of obtaining legislative approval. Such approval may not be granted.

Overall, the Requirements section should be expanded and reorganized as follows:

- 1) Notification;
- 2) Alternatives Analysis, which refers to 302 CMR XX.06, thus requiring the identification of mitigation action;
- 3) Draft legislation;
- 4) Approval by EEA;
- 5) Approval by the general court; and
- 6) Implementation of the mitigation action.

XX.05 Notification

Is posting a notice on the local government website sufficient notification? How would anyone know whether or where to look for such a notice? The regulations should require that notice be prominently posted on the public entity's website. Notice should also be delivered to the public body(ies) having care, custody, and control of the property. Posting of a sign(s) in one or more prominent locations on the property proposed for disposition should also be required.

The first paragraph does not specify a period for comment. The second paragraph states 21 days. Both paragraphs need to have a stated duration longer than 21 days. Many organizations, commissions, etc. meet only monthly, and a 21-day period could elapse between meetings. A period of 45 days should be the minimum.

XX.06 Alternatives Analysis

This entire section suggests that the only alternatives to be considered should be moving the action to a different property. This framework is far too narrow from a public policy perspective and does not reflect the language of the Open Space Act, which states: "all other options to avoid or minimize said Article XCVII disposition or change in use [must] have been explored". Those options could include a "no action" alternative, a scaled-back alternative, or changes in public programs that could achieve similar objectives without the use of any property at all.

XX.07 Replacement Land

Parks and public open space may be logical sites for the location of geothermal heating systems, which often can be installed without compromising public open space use. It is the policy of the Commonwealth to support conversion of heating systems to fossil-free sources of energy. If a government or nonprofit organization seeks to install a geothermal heating system under a public open space, we are not sure an in-lieu payment for the easement should be required, or if so, how the value would be calculated.

Gendron, Michael (EEA)

From: Liz O'Rourke <lrorourke@mreinc.org>
Sent: Tuesday, January 21, 2025 6:09 PM
To: Gendron, Michael (EEA)
Cc: [REDACTED]
Subject: Response/ Article 97 & Act Preserving Open Space in the Commonwealth

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear EEA/Michael Gendron,

I realize that the following is not what is usually expected for calling out items of concern for the proposed plans. It's my understanding that the proposed updates to the Open Space Act and Article 97 are supposed to strengthen the guidelines to safeguard our environment. I believe, in order to do that, important pieces have been left out. First is oversight, then accountability, plus creating an even playing field is necessary. I have great respect for the people who volunteer their time for town positions, especially those on the Conservation Commission. But I believe it would be better to hire a permitting expert/certified conservation specialist to oversee the duties of volunteers who may not have the time, energy or credentials to make important decisions. I do think volunteers are necessary and important. All citizens should be encouraged to volunteer and help. How they would help is by bringing the concerns of the community to the Con Com Dept and researching each project with a specific task/focus on each case. They can also take part in fieldwork and getting communications out to the community and town groups who are involved.

I'm very interested in preserving open space in the Commonwealth, especially wetlands and conservation areas. It is not my area of expertise, but I have been involved with protecting Article 97 open space land that some would like to see replaced with an artificial petroleum based plastic carpet. This will restrict the land to paid, private use only. Because of this, I have spent many hours researching Article 97 land as have others in our community who would like to see it preserved as green open space. Currently it is shared by the Parks & Rec Dept as a youth football practice field, and with the abutting neighborhood. Alongside the land's length is a freshwater brook and wetlands, and along its width are more wetlands. It is a thriving ecosystem with many birds, plants and animals. The land in question is owned by the town and is run/maintained by the Parks & Rec Dept who oversee its schedule and maintenance.

The Preserving Open Space Act and Article 97 considerations:

1. Conservation Commission volunteers are unpaid, free agents. **There is no oversight of Con Coms.** A person who lives in the community can be elected to and put on the Con Com even though they may not be interested in preserving conservation land and/or have no qualifications in conservation or permitting regulations. Their interest might be for development or financial gain. They may even be getting paid by an interested party to vote accordingly. There are those on the Con Com who may have conflicts of interest. **Again, there is no one regulating Con Coms, no oversight.** There must be official, authoritative oversight and Con Com members must be hired. You can spend a lot of time trying to preserve open land, land that is marked as conservation land or wetlands, protected under Article 97, and/or the Open Space Act, but until Con Com is made into a functioning town or state department that is fully funded, it is subject to all sorts of motives and interests. The fact that the EEA or the DEP MA do not have a Con Com oversight person/dept/office in place shows a lack of awareness and naivety. There are interested, highly capable educated conservation commissioners who are and should be put in place to protect and preserve Open Space and Conservation Land. Currently, Article 97 allows swapping conservation land. There is a lot of money involved in many of these cases. If the land is no longer open space or protected, it is the public's loss, the community's loss, in ways that may not be apparent and cannot be compensated with money or similar land elsewhere. The people making these cases; developers, lawyers, town department staff, town citizens, etc. People who stand to benefit financially, or personally, find ways to beat the system and do it "lawfully", often with the support of other town board members and dept staff. I believe some depts are asked not to interfere with other department projects, even if it is in the interest of the community's health to do so. It's time to take conservation seriously and make it an important, dedicated part of a town's government. It must have authority, autonomy, and no conflicts of interest. Without oversight and salaried professional employee(s), the Con Com will always be at the mercy of outside and inside interests. Only credentialed conservation professionals should be hired for this important position. They should work for the citizens of the town.
2. There are special interest groups, contractors, manufacturers, developers, and realtors and any number of peripheral actors who do testing, engineering, water drainage, pollution control, etc. Most, if not all of these groups have conflicts of interest. Who does the project serve? Does it take away open, free space that

benefits the entire community? Those who stand up to and question those who seek to use Article 97 land and open space, often is a small group of individuals, neighbors, or abutters, who care and are concerned about the health and well-being of the community. These folks are not experts in conservation, permitting or Article 97. Many have full time jobs and families. We are asking a lot of our communities if they are the ones to defend the town's open space and Article 97 land against other interests. If the town Con Com allows the permitting, many residents do not find out that the open space or conservation land is gone until it's too late. They may also not understand the full meaning of the loss of the land. It is difficult or impossible for them to hire lawyers, get testing done and find experts who can help them stand up to special interest groups. These groups have the financial means to pay for testing, experts, lawyers, etc. These groups have the money and time to make presentations, often presented with "facts" that do not tell the truth about the methods, materials, processes and products that they plan to use.

Conflict of interest and lack of professionalism during Con Com meetings has been evident over the past 3 years. Some meetings go unrecorded so there is nothing to show if a rebuttal or evidence of mishandling is needed. Regular citizens of the town are expected to be aware of what is happening, record meetings, step in, ask questions, organize other citizens to stand against the special interests. There are those volunteers on the Con Com who have their own agenda and ignore the research of town citizens or experts (nonpaid) in the field. There is little to no appreciation of the town citizens who are trying to make their concerns heard. It soon becomes a Con Com v Town Citizens v Town Dept v special interest group v lawyers, etc. Is this the best way to protect open space and conservation land? The Open space and Article 97 land protects many communities from excessive heat, flooding, fires, drought and pollution. Will the permitting cause damage to the land? Some say it is progress, but is it when people in the community are no longer able to access the once available open space in their own neighborhood? There are loopholes in both Article 97 and Act Preserving Open Space Land in the Commonwealth that are exploited and taken advantage of. It's been done time and time again. Our open space and conservation land is precious. But it seems that it's still available for those who have the time, investments, political sway, connections and financial support on their side. Perhaps they even know a Con Com member who is a close friend. Currently Con Com volunteers have no accountability for their votes. I believe a change is needed from the ground up in order to save Open Space and Article 97 land from disappearing into the wrong hands. What is at stake is the health of our communities, environment and the quality of our lives.

I don't expect anything to change, but it seems to me a flagrant omission not to closely follow Con Coms and check to make sure the decisions made are correct, even when there is no conflict and everyone agrees. It could be there were no community members aware of the project, or those who were did not have the capacity or time to take it on. The average citizen may not understand how development of wetlands may affect their homes and communities. Who is on the Con Com is important. What decisions they make are too.

At the last Q & A of this topic in Dec. 2024, I asked if there was any oversight of Con Coms and was told "no". End of story.

Thank you for taking the time to read my concerns.

Sincerely yours,

Liz O'Rourke
79 Meagher Ave, Milton

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TOWN OF EASTON
Conservation Commission
Department of Planning & Economic Development
136 Elm Street, Easton, Massachusetts 02356
Tel: (508) 230-0630 Website: www.conservationcommission.org



DATE

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Proposed Regulations *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests (Open Space Act)*

Dear Mr. Gendron,

On behalf of the Easton Conservation Commission (ECC), I want to express my appreciation for this opportunity to provide comments to the Executive Office of Energy & Environmental Affairs (EEA) on the proposed regulation updates, *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests*.

Municipal staff and conservation organizations play a critical role in making sure Art 97 land isn't converted or if necessary, making sure a conversion is done within the required guidelines to protect natural resource values. Municipal staff are the boots on the ground partners reminding or informing our professional counterparts about Art 97 and the steps that are required to comply. Municipal staff and conservation organizations ensure Art 97 requirements aren't ignored.

As municipal leaders and long-time partners in land preservation, ECC applauds EEA and the Legislature for passing this important Legislation. **We believe that it is critical that the implementing regulations be clear and respect the key role that municipalities play in the disposition process.**

Key Summary Points to consider

- The Public Entity should be a partner and collaborating on the disposition throughout the entire process
- The requirement by the Public Entity to declare the proposed land for disposition as surplus to Article 97 Interests and needs and a unanimous vote should be included in the Regulations.
- Notification should be made at both the local and statewide level on platforms that provide a regular email notification, include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land.

- The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- In Lieu Funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed, funding increased to 150% of the fair market value or Value in Use, and improved coordination with the Public Entity to determine available staffing and resources to complete the Action.
- Clarification of definitions, difference between Waivers and Certain Easements sections, and logistical improvements to the process.

We offer these following more detailed comments and a track changes version of the proposed regulations with suggested edits:

1. Please add language from the No Net Loss Policy's need to declare land as surplus to Art 97 needs. With Climate Action Plan and EEA's noted discussions on increasing pace of conservation to 30% by 2030 and 50% by 2050, EEA should include regulatory language that emphasizes to proponents of a disposition that these actions should be a last resort. It would be beneficial if the regulations include a written sequencing of avoiding, minimizing, mitigating with replacement, then mitigating the with in lieu funding option.
2. Countless municipalities and other conservation organizations worked for many years to get the No Net Loss Policy codified in this law. But the omission of the declaration of surplus need and the lack of Public Entity vote is disappointing. These two important items (surplus declaration and involvement of the Public Entity) must be added to the Regulations. That said, I do acknowledge EEA's significant efforts and improvements to transparency through the website and all the resources and tools that have been added including the new tracker tool.

XX.0

3. Please add a Preamble section that includes more information on the No Net Loss purpose, clarification of types of lands that qualify as Art 97, and examples of Art 97 interests and actions that qualify as "conversion" or "disposition".

XX.02 Definitions

4. Please add definitions for Change in Control, Feasible or substantially equivalent alternatives, Public Interest, Recreation Value, License of Limited Duration, Market Area and Surplus to Article 97 Interests.

XX.03 Pre-submission Consultation

5. Please add language to include collaboration with the Public Entity holding the Art 97 Interest, throughout the entire process. The 1998 No Net Loss Policy required a unanimous favorable vote of the Public Entity holding the Art 97 Interest. The requirement should include a significant vote (unanimous) of the Public Entity holding the Art 97 Interest to declare the surplus needs and support the proposed replacement land, or in lieu fee if applicable.

XX.05 Notification

6. Please add a requirement for the public notifications to be posted in a centralized location on EEA Website but also post it in the Environmental Monitor. The Environmental Monitor already has a robust email notification component. EEA should add a regular email notification to those subscribing to it. Limiting notice to a municipal website would reduce equitable notice for out-of-town residents who might be using the land proposed for disposition or conversion. Notification should be in both a local and a statewide, centralized platform.
7. Please add posting of the notice at the proposed disposition property and a site inspection with the Proponent, Secretary and Public Entity.
8. Public comment should be available for the disposition proposal not just the In Lieu Funding option. Please provide 30-day comment period.

XX.06 Alternatives Analysis

9. Contents of the Alternatives Analysis should include more detail like whether state or federal funding was received in the initial acquisition of the property proposed for disposal; description of existing Article 97 Interests and Natural Resource Values, description of how the disposition is not contrary to an Open Space and Recreation Plan, and declaration by the Public Entity that the land is surplus or not.
10. Alternatives Analysis should include descriptions of how the disposition does not detract from EEA missions, plans, policies and mandates and those of its departments or divisions, description of how the disposition is not contrary to an approved municipal Open Space and Recreation Plan (OSRP) and how the disposition is not contrary to the wishes of the person who donated or sold the land to the Public Entity. Alternatives Analysis should also include the vote of the Public Entity on whether the land to be disposed is surplus to Article 97 Interests and needs, the appropriateness of the Replacement Land and the unanimous Public Entity vote for the project.

XX.07 Replacement Land

11. The proposed Regulations appear to focus more on the Replacement Land XX.08 and In Lieu Funding options more than adequately describing the Natural Resource Values, the actual Article 97 purpose. I suggest that the Natural Resource Values section come before Replacement Land and In Lieu Funding sections to emphasize the Natural Resource Value importance.
12. Land owned and managed or otherwise restricted by non-profit conservation organizations should be specifically removed from consideration of Replacement Land. Non-profit land is already public open space and typically protected from conversions through the non-profits' charters.
13. Monetary Value listed in the appraisal should be valid for one year, requiring updates if Replacement Land or In Lieu Funding takes longer than one year, similar to LAND and

LWCF grant requirements. Appraisals should be provided to all parties and a mechanism for disputing an appraisal. It should be made clear that easements also require appraisals.

14. The Certain Easements section might be better as a standalone section since it implies activities may be exempt and not require requesting an opinion of the Secretary or Public Entity. What is the difference in getting a Waiver and the Certain Easements sections? Please clarify.
15. ECC disagrees with sections of the proposed Regulations that refer to the Secretary's "sole discretion". The disposition of the Public Entity's land should be a collaborative effort to ensure the no net loss of Article 97 lands as well as efficient use of time, resources and finances.

XX.08 Natural Resource Values

16. Please add significantly more details to the Natural Resource Values section. Natural Resource Values can't be described by aerial photography and mapping alone. While they are great tools, it misses the local knowledge component. An inspection of the land to be disposed and the replacement land should also be required.
17. In determining Natural Resource Values, the role the proposed Article 97 disposition land plays in meeting the Interests in Article 97, whether the proposed Article 97 disposition land provides a unique or significant resource, and whether the land is described within the Open Space and Recreation Plan (OSRP) should be added to the evaluation criteria. A site inspection should also be required of the land to be disposed and the Replacement Land by all parties.

XX.09 Funding in Lieu of Replacement Land

18. The In Lieu Funding section needs clarification. Firstly, the Public Entity should state whether they agree with this action or not. This section shifts the responsibility of finding Replacement Land to the Public Entity who may not be asking for the disposition. This will take considerable time, resources, funding and staff time, if there is staff, to accomplish all of these tasks. This is overly burdensome. The Regulations do not provide any relief for a Public Entity to say if they have the resources to undertake this. Secondly, it appears that the Proponent requests the Secretary make a finding about appropriateness of In Lieu Funding but then it is the Public Entity that requests the Secretary move the matter to the Legislature, whether they agree the action is appropriate or not. Thirdly, the Proponent is providing the Public Entity plan on how to use the funding as a submittal requirement, without any requirement for consultation with the Public Entity. The requirements of this plan are not listed but the plan would presumably be 1. Find suitable land and 2. Acquire the land. Requiring the Public Entity write a plan for this action is unnecessary.
19. Please include more specificity for the In Lieu Funding to be dispersed to the Public Entity of the Art 97 Interest, rather than a Community Preservation Committee (CPC), who may not have the same understanding of Natural Resource Values that would be

taken by a disposition or conversion. Also, CPC funding would need to be approved at Town Meeting. To avoid confusion, competing interests within the committee or accidental misappropriation of funds, the in lieu funding would be better held and used by the Public Entity holding the Art 97 Interest. Please remove the option to disperse the funding to the CPC.

20. In Lieu Funding of not less than 110% of the fair market value or value in use, is not adequate. This burden includes more than just the land purchase. It includes funding appraisals, title searches, new survey plans, time to negotiate with a landowner and significant staff time to complete the negotiations, title insurance and recording fees purchase, and the follow up reporting. In addition, land value in eastern MA will change significantly in 3 years. If it takes 3 years to find suitable Replacement Land, the land value will have increased and 110% In Lieu Fee would not yield comparable acreage or Natural Resource Values. 110% is not enough funding. Please increase this to 150%.
21. Reporting requirements are overly burdensome. How is a Public Entity ensured that there won't be more scrutiny on the Public Entity left with finding Replacement Land for the Proponent, compared to the review of the Proponent's Alternatives Analysis in finding the Replacement Land?
22. Reporting requirements would better fit with Public Entity schedules with a due date of December 31st.
23. After the reporting is submitted, what happens to the Public Entity if the Secretary determines the Replacement Land is not comparable? Consultation with the Public Entity and Secretary should be included prior to making the Replacement Land offer to a landowner.

XX.10 Waiver or Modification

24. Under Waivers, the Public Entity should agree that a waiver is appropriate and that the transfer from one Public Entity to another is done “*with no other change in use*”. For example, a local park under Conservation control transferred to the Recreation Department could continue to be managed as a park but if years later changed the park is changed to a ballfield then there would be a change in use and Natural Resource Values may not have been protected. Also, if Conservation land is transferred to a Water Department but then the Water Dept puts a new well or treatment facility on it, there would be a change in use and Natural Resource Values would not have been protected. The Secretary and Public Entity should collaborate on this determination.
25. Please identify the standards used to determine that Natural Resource or Recreation Values are “*insignificant*” in order to grant a Waiver.

Additional concerns

26. What is the enforcement mechanism or consequences of not meeting these Regulations? The consequences of noncompliance should be determined and known to all entities.

27. EEA is requested to provide robust training on the Regulations once they are final, including how to use the EEA's Natural Resource Tool and creating the screening reports.
28. EEA is requested to provide written responses to those who comment on the draft regulations, and meet with a stakeholder group, such as Massachusetts Society of Municipal Conservation Professionals (MSMCP), to discuss received comments and then provide a written response to all commenters. A draft final version should be available for public comment prior to adopting final regulations and include a public meeting session to discuss and answer questions rather than a public hearing where EEA just receives testimony.

I am submitting these comments with an annotated version of the proposed regulations in track changes to more easily see the requested changes. EEA has made great strides in improving transparency of the Article 97 disposition process and I applaud your efforts for tackling this complicated and important issue. Your commitment to land protection is clear and we look forward to working collaboratively on our shared goals.

Thank you!

Sincerely,

Chair, Easton Conservation Commission

Enclosure

CC: via email

Governor Maura Healey, Maura.Healey@mass.gov
Representative Ruth B. Balser, Ruth.Balser@mahouse.gov
Senator James Eldridge, James.Eldridge@masenate.gov
Under Secretary Stephanie Cooper, Stephanie.Cooper3@mass.gov
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Robb Johnson, Mass Land Trust Coalition, robb@massland.org
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dorothy.mcglincy@maccweb.org

January 21, 2025

Secretary Rebecca Tepper
100 Cambridge Street, Suite 900
Boston, MA 02114
via email: Secretary.Tepper@mass.gov. cc: Michael.gendron2@mass.gov

Re: 301 CMR 52 - comments

Dear Secretary Tepper:

Thank you for the opportunity to comment on draft regulations to implement M.G.L. Ch 3, section 5A, known as 'An Act Preserving Open Space in the Commonwealth' or 'the Open Space Act'. The undersigned individuals and representatives of local, regional, statewide and national conservation and environmental organizations – who all share a commitment to the protection of public lands acquired for Article 97 purposes – respectfully submit the following comments. We are united in advocating for the strongest possible regulations to protect the rights of all Massachusetts residents, as articulated in Article 97 of the Massachusetts Constitution.

- The regulations should open with a statement of the overarching purpose of this law – to protect, preserve and enhance open spaces protected under Article 97 by establishing strict standards for approving any conversion of such land to other uses, and ensuring no net loss of Article 97 lands when conversions cannot be avoided. The regulations should clearly state the Commonwealth's intent that proponents will avoid conversion if at all possible, minimize conversions that are deemed unavoidable, mitigate conversions with comparable replacement land, and as a last resort, mitigate with in-lieu funding that will be directed to non-contemporaneous protection of comparable replacement land.
- Section 4 (Requirements): Instead of saying that requirements must be met "prior to taking an Article 97 Action" the regulations should require that the proponent must comply with all requirements before the landowning entity takes any vote to authorize the disposition. This will ensure that those responsible for taking such votes have the benefit of all relevant materials before they are asked to make a decision.
- Section 5 (Notification): Since every proposed change of use for Article 97 requires filing an Environmental Notification Form (ENF), the regulations should remind proponents of this requirement, and that proponents must follow the notice requirements for all ENFs. At a minimum, posting in the Environmental Monitor, and notice to community-based organizations and tribal organizations in accordance with the MEPA Public Involvement Protocol, should be required. In addition, EEA should require posting the public notice to the Open Space Act Tracker on EEA's website, to be supplemented by additional material as they become available. Finally, the proponent should be required to post a physical notice in a highly visible location on the subject parcel or parcels. For something as important as changing the use of protected open space, simply posting on the public entity's website is insufficient.

- Section 5.1 and 5.2: The minimum public comment period should be extended from 21 days to 30 days, and should be required for all Article 97 conversions, not just for those proposing In-Lieu Funding.
- Section 6.2. (Contents of Alternatives Analysis): Appraisals of the subject parcel(s) and any proposed replacement parcels should be included in the materials that proponents are required to post for the public and provide to EEA.
- Section 6.2.b. (Alternatives considered): Rather than saying that “Cost differences between land owned by the Public Entity and equivalent private land shall not be the sole basis for infeasibility”, this section should say that such differences “shall not be the primary basis for infeasibility.” For Article 97 and the Open Space Act to have real meaning, public entities cannot be allowed to convert land simply because it is most economically expedient to do so.
- Section 6.2.f. (Documentation of affirmative vote by Public Entity) and wherever votes are mentioned: A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- Section 7.2 (Replacement Land requirements). In addition to issuing the determination of Natural Resource Value specified in Section 7.2.b., EEA needs to communicate to the proponent and the legislature its determination of whether the replacement parcels meet requirements a. and c. – h. This responsibility could be reflected through revision of Section 8, or insertion of a new section in the regulations.
- Section 7.3 (Appraisal Standards). ALL appraisals submitted in support of a proposed change in use of Article 97 land should meet EEA, DCAM or Yellow Book appraisal standards. Self-serving appraisals that are not done to recognized standards will not advance the purposes of the Open Space Act. Monetary Value listed in the appraisal should be valid for one year, requiring updates if more than one year passes between the appraisal date and the date of anticipated vote on the petition by the Legislature.
- Section 7.4. (Certain Easements). As written, the proposed language indicates that no replacement land is required for easements that meet the enumerated conditions –implying all such cases are automatically deemed cash-in-lieu transactions. If that is the case, it must be stated plainly. An additional proviso should be added to 7.4.c. to require that the appraisal take into account the value of loss-of-use resulting from temporary disturbance to the property, as well as the value of any Article 97 uses of the property that are foreclosed by the easement. Further, if the intention is that all such transactions be deemed cash-in-lieu transactions, it does not make sense to include the language in 7.4.d, which references requirements for replacement land. Instead, 7.4.d should require such transactions to meet the terms of Section 9.4., 9.5., and 9.6. which pertain to requirements of cash-in-lieu transactions.

- Section 8.2 (Considerations for a Determination of Nature Resource Value). The determination should reference field observations by EEA staff made during a site inspection of the subject parcel(s) and any proposed replacement parcels.
- Section 9.3.c. (Report of Finding by Secretary) This section should reference the required minimum comment period defined in Section 5.2 – which we request should be changed from 21 to 30 days. In addition, proponents should be required to submit all public comments received to the Secretary, the Finding should state that the Secretary has reviewed those comments, and the comments should be made available to the public as part of the Tracker on EEA's website.
- Section 9.6.c.iii (Secretary's Determination of Nature Resource Value on land acquired with In-Lieu Funding). For the Secretary to make a meaningful determination of Natural Resource Value of any non-contemporaneous replacement parcel, the regulations need to state when and how Proponents must notify EEA of their intentions *before* they acquire it.
- The regulations need to state consequences for non-compliance with the law and regulations. At a minimum, this should include invoking EEA's civil enforcement, suspending any permits issued by EEA, and ineligibility for state assistance programs until the failures are cured to the Secretary's satisfaction.
- Finally, EEA has stated its intention to release an updated Land Disposition Policy, which raises questions about whether confusion will ensue. The regulations should be edited to include any key guidance that is under consideration for inclusion in a new contemplated Land Disposition Policy.

Thank you for your consideration of these comments, and for working to ensure the protection of Article 97 lands across the Commonwealth.

Sincerely,

Robb Johnson, Executive Director
Massachusetts Land Trust Coalition

Dorothy A. McGlincy, Executive Director
Massachusetts Association of Conservation Commissions

Elizabeth Saunders, on behalf of the late Phil Saunders, lead PLPA advocate
Massachusetts Co-Director, Clean Water Action

Steve Long, Director of Policy and Partnerships
The Nature Conservancy in Massachusetts

Katie Theoharides, President & CEO
The Trustees

Regen Jamieson, President
Massachusetts Society of Municipal Conservation Professionals

Rae Ettenger, New England Conservation Policy Coordinator
Appalachian Mountain Club

Doug Pizzi, Executive Director
Mass Parks for All

Vickash Mohanka, Chapter Director
Sierra Club Massachusetts

Julia Blatt, Executive Director
Massachusetts Rivers Alliance

Mark H. Robinson, Executive Director
The Compact of Cape Cod Conservation Trusts

Brendan Annett, Vice President, Watershed Protection
Buzzards Bay Coalition

Karen Grey, President
Wildlands Trust

Christopher LaPointe, President
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Laura Mattei, Director of Conservation
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Charles River Watershed Association

Buzz Constable, President
Lincoln Land Conservation Trust

Kathy Orlando, Executive Director, Land Protection
Sheffield Land Trust

Sally Loomis, Executive Director
Hilltown Land Trust

Kathi Anderson, Executive Director
Walden Woods Project

Emily Molden, Executive Director
Nantucket Land & Water Council

Keith Kirkland, President
Dudley Conservation Land Trust

William Mullin, President
Provincetown Conservation Trust

William Cordin
Brookline Conservation Land Trust

Gary Howland
Ashburnham Conservation Trust

George A. Bauman, Chair
Ashby Conservation Commission

Sherry Anders, Chair,
Shirley Greenway Committee

Kevin F. Galligan, President
Orleans Conservation Trust

Bill Greenwood, President
Dracut Land Trust

Lorena Altamirano, President
Westborough Community Land Trust

Matt Plum, President
Manchester Essex Conservation Trust

Pine duBois, Exec. Dir.
Jones River Watershed Association

Chris Redfern
Friends of the Middlesex Fells

Heather Priuksma, Executive Director
Grow Native Massachusetts

Renée Scott, Coordinator
Massachusetts Pollinator Network

Rand Wentworth, Adjunct Lecturer in Public Policy, Harvard University
President Emeritus, Land Trust Alliance

Maiyim Baron
Natural Solutions Working Group, Elders Climate Action-Massachusetts Chapter

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DCR, Retired

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Charles Devens, Jr.
Essex, Massachusetts

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Manchester by the Sea, Massachusetts

Anita Brewer-Siljeholm
Manchester by the Sea, Massachusetts

Scott Doneghy
Manchester by the Sea, Massachusetts

cc: Senator Jamie Eldridge
Former Representative Ruth Balser
Undersecretary Stephanie Cooper
Assistant Secretary Kurt Gaertner

Gendron, Michael (EEA)

From: Lucy Lee [REDACTED]
Sent: Tuesday, January 21, 2025 7:17 PM
To: Gendron, Michael (EEA)
Subject: Comment on 301 CMR 52.00: Disposition or Change in Use of Article 97 Interests

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I am writing to add my public comment to proposed legislation 301 CMR 52.00: Disposition or Change in Use of Article 97 Interests.

I am concerned about two provisions in the current text. First, the provision that temporary easements affect "zero acres" and will not be subject to replacement requirements leaves open the possibility of temporary uses (e.g., mineral extraction or energy development) that significantly alter the land and degrade its Article 97 purpose. I oppose this portion of the legislation, and if it stays in it should be more specific and state that only temporary uses that do not induce changes in land cover or quality will get this exception.

Secondly, in the waiver section, "insignificant" tracts are anything less than 2,500 sq ft. In some communities, this amount of land is not insignificant. Small patches of land matter in creating a landscape of conservation areas. I think this should be reduced to something much smaller area or removed from the text.

Finally, something that is not in the text that I believe should be is a requirement for any changes in use of Article 97 land that are generating private profits (e.g., solar development, forestry), a percent of those profits each year must be put in a fund for the stewardship or acquisition of Article 97 lands. I believe there should be a serious disincentive for changing use of Article 97 land -- protected for the public benefit -- into lands that benefit private companies. Some kind of long term "tax" on such changes in use could be an effective disincentive.

Thank you.

Lucy Lee
Shirley, MA

Gendron, Michael (EEA)

From: Casey-Lee Bastien <cbastien@bscgroup.com>
Sent: Tuesday, January 21, 2025 8:40 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **[add your TOWN/CITY]** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
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- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

CaseyLee Bastien, RLA, CPSI (he, him)
Landscape Architect/ Ecologist, Senior Associate

1 Mercantile Street, Suite 610 / Worcester, MA 01606
O: 508-792-4500 / D: 617-896-4523 / C: 508-395-8731
cbastien@bscgroup.com
www.bscgroup.com



Gendron, Michael (EEA)

From: Jeffrey Adams <[REDACTED]>
Sent: Tuesday, January 21, 2025 9:03 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Stoneham, MA** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

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Thank you for your time and consideration of my comments.

Sincerely,

Jeff Adams
93 Pond Street
Stoneham, MA 02180

Gendron, Michael (EEA)

From: Brian McBride <[REDACTED]>
Sent: Tuesday, January 21, 2025 8:58 PM
To: Gendron, Michael (EEA)
Subject: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Arlington and I offer the following comments to the draft regulations.

I am a member of MACC and support their requests which are:

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Brian McBride

m [REDACTED]

Gendron, Michael (EEA)

From: Allison Burger [REDACTED]
Sent: Tuesday, January 21, 2025 9:11 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Chilmark and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Allison Burger

Allison Burger

19 State Rd.

P.O. Box 677

Chilmark, MA 02535

Gendron, Michael (EEA)

From: Karen O'Donnell <[REDACTED]>
Sent: Tuesday, January 21, 2025 9:00 PM
To: Gendron, Michael (EEA)
Cc: Karen O'Donnell
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Richmond, MA and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
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Thank you for your time and consideration of my comments. This is very important to our protection and stewardship of open space in the Commonwealth.

Best regards,

Karen O'Donnell

Karen O'Donnell
Professional Leadership & Career Coach
Member Richmond Conservation Commission
[REDACTED]
[REDACTED]
[REDACTED]

"Appreciation is a wonderful thing: It makes what is excellent in others belong to us as well."
Voltaire

"It is not necessary to change. Survival is not mandatory."
W. Edward Deming

Gendron, Michael (EEA)

From: Cloutier <[REDACTED]>
Sent: Tuesday, January 21, 2025 9:27 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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January 21, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests. I am a resident of New Salem, and I offer the following comments to the draft regulations.

* Purpose.

Section 1 of the regulations, should clearly state that the purpose of this law is to **protect, preserve, and enhance open spaces** protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure **no net loss of valuable open space** when such conversions are unavoidable.

* Notifications.

Notification should; 1. be made at both the local and statewide level on platforms that provide a regular email notification, 2. include posting the notification at the land proposed for disposition, 3. include a site inspection of the land proposed for disposition and any Replacement Land, 4. **fulfill the requirement for a notice on the municipal website.**

* Documentation of Surplus Vote by Public Entity.

There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated.

A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

* Public Comment Period.

A minimum public comment period of 21 days should be required for all Article 97 actions.

* Natural Resource Values.

The Natural Resource Values section **should be more detailed and expanded** to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan.

* In Lieu Funding.

In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. **Funding should be increased to 150% of the fair market value or Value in Use.**

* Enforcement.

The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. **A new section should be added to include consequences for non-compliance with the law/regulations**, including invoking the Executive Office of Energy & Environmental Affairs' civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Susan T. Cloutier

148 South Main Street, New Salem

PO Box 83

Gendron, Michael (EEA)

From: John Woodhull [REDACTED]
Sent: Tuesday, January 21, 2025 9:37 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulation 301 CMR 52.00 (Article 97 Interests)

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Secretary Tepper:

Thank you for providing an opportunity to comment on the draft regulation. I am a Massachusetts resident, living in Medfield, and have the following comments on the draft regulations.

1. It is essential that conversion of these lands to other uses is only possible under extreme circumstances where there are no other viable options. It is critical to ensure there is no net loss of open space.
2. Virtually all of the Article 97 land in Medfield is under the care, custody and control of the Conservation Commission. Any decision to declare the proposed land as surplus to Article 97 interests should require a 2/3 majority vote of the Conservation Commission, as well as a 2/3 vote of the Select Board, not a simple majority. This would be more consistent with the 2/3 legislative vote required by Article 97 itself.
3. In Lieu funding should explicitly be held by the public entity whose land has been disposed of (in this case the Conservation Commission).
4. There needs to be a strong enforcement clause to prevent towns from using Article 97 lands as a pre-paid resource where new town infrastructure can be placed without any cost to the town. Ineligibility for state assistance programs seems like the best deterrent to use.

John Woodhull
Medfield

Gendron, Michael (EEA)

From: Naomi Bailis [REDACTED]
Sent: Tuesday, January 21, 2025 9:46 PM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Arlington and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Naomi Bailis

Gendron, Michael (EEA)

From: Don Coelho [REDACTED]
Sent: Tuesday, January 21, 2025 9:52 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 21, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Bellingham MA.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely

Donald Coelho

511 Lake street

Bellingham MA 02019

To: EOEEA
From: Joslin Murphy, Brookline, MA
Re: Public Comment
Date: January 21, 2025

The following comments are offered in response to the Draft PLPA Regulations at 301 CMR 52.00:

301 CMR XX.00: Disposition or Change in Use of Article 97 Interests

XX.01: Purpose and Applicability: This section should include a reference to the purposes of Article 97 (protecting wildlife habitat, open recreational space, etc.), not just the vote that is required.

XX.02: Definitions: The definitions describing an Article 97 Action are not clear. For example, what is a “Change in use of land” and what length of time is contemplated under a “license of limited duration”? Such duration should be no longer than 12 months. In addition, the definition of Value in Use is not clear to an average member of the public. Provide a reader-friendly definition and example(s).

XX.03: Pre-submission consultation: It is not clear when or with whom such consultation should take place, or the purpose of the consultation. A timeframe should be included. “At least XX days prior to taking any Article 97 Action …” Moreover, who is “the public entity” for purposes of consultation? This should also be defined.

XX.04: Requirements: Again, it is not clear when public notice, the alternatives analysis, or identification of replacement land should take place “prior to taking any Article 97 Action”. For public notice to be meaningful, the alternatives analysis should be made available to the public well in advance of submission to allow for comment.

XX.05: Notification: Same comment as above. The public should have at least the same notice period to review and comment on the alternatives analysis as provided for commenting on proposed payments in lieu. Notice should be posted prominently; on the municipality’s website and on the property itself.

General Comments:

A minimum $\frac{2}{3}$ vote of the public body having care, custody and control of the subject property and of the municipality’s legislative body to approve the Article 97 Action should be required, as it is under the current EOEEA policy. This should be made explicit in the implementing

regulations. In order to permit meaningful review, the Alternatives Analysis should be made available to the public and the public body having care, custody and control of the subject property prior to the body's vote.

As currently provided in the case of a subsurface easement, replacement land or a payment in lieu should be required regardless of the proposed use of the subsurface land. Where the use of subsurface Art. 97 land is converted to another use for the benefit of a non-Art. 97 municipal purpose, the Art. 97 land should benefit from improvements equal to or exceeding the value of the converted land.

Gendron, Michael (EEA)

From: Sandra Grund [REDACTED]
Sent: Tuesday, January 21, 2025 10:10 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

(Sent via email to Michael.gendron2@mass.gov)

RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests. I am a resident of Stow, MA and I offer the following comments to the draft regulations.

Purpose. Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.

Notifications. Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (e.g., on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

Documentation of Surplus Vote by Public Entity. There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

Public Comment Period. A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

Natural Resource Values. The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).

In Lieu Funding. In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

Enforcement. The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Sandra Grund
17 Timberedge Road
Stow, MA 01775

Gendron, Michael (EEA)

From: Barbara Fullerton [REDACTED]
Sent: Tuesday, January 21, 2025 10:18 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of WESTON and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
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- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Barbara Fullerton

3 Winter St., Weston, MA 02493



Town of Ashby
Conservation Commission
895 Main Street
Ashby, MA 01431

January 21, 2025

Submitted via email: Michael.Gendron2@mass.gov

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Proposed Regulations *301 CMR 52.00: Disposition or Change in Use of Article 97 Interests*

Dear Secretary Tepper,

Thank you for the opportunity to comment on the proposed new regulations, *301 CMR 52.00: Disposition or Change in Use of Article 97 Interests*, authorized by chapter 274 of the Acts of 2022, An Act to Preserve Open Space in the Commonwealth. The Ashby Conservation Commission, responsible for the stewardship of Article 97 protected lands in the Town of Ashby, appreciates this opportunity. We listened to the public hearings of December 17th and January 16th, so in addition to our own comments we would like to echo and amplify the many thoughtful and excellent comments provided at those hearings.

Disposition of constitutionally protected open space should be an action of last resort. If disposition cannot be avoided, it should not become a situation easily resolved by throwing money at the problem. In all situations, the goal should be avoidance with any final outcome guaranteeing no net loss of land or the conservation values protected under Article 97.

In all situations, the Natural Resource Values of the land in question must be front and center. Any replacement land must be of equal or greater Natural Resource Value. In many instances, the original donor and their intentions may be lost to the current participants of the proposed change of use action. Consideration of whether the proposed action would violate that initial intent for the land should be researched and brought forward into the current proceeding.

Comparable Location must mean land with comparable Natural Resource Value, as it must mean within the same geographical location.

Replacement land to qualify as Feasible or substantially equivalent alternative must meet a very high bar.

In Lieu Funding must be a rarity, not the go-to solution. If the project proponent who requires the disposition of public land for change of use and development cannot replace for the impacted community all of the value that the open space provided, no sum of money (a Proponent would actually offer), or land for some other community, will mitigate anything for the community experiencing the loss.

Proponents must meet with the Public Entity, and the impacted community if it is not the Public Entity, prior to proposing an Article 97 action, not after most decisions have been made or at least formed to the extent they can't and won't be modified. The impacted community must be included in all stages of the proposed action.

All timeframes within the regulations should take the requirements of the Open Meeting Law, and the fact that many municipal departments, many of whom are all volunteer, may only meet once or twice a month, into account.

Shifting the responsibility of procuring replacement land with the in lieu funding within the proposed three (3) year timeframe onto a small, rural or otherwise mainly volunteer run departments within a municipality is likely a hardship for many, if not all. It would be for Ashby with no paid conservation staff. Consideration of such a hardship should also be a factor in the decisions made for the proposed action.

Subsurface easements whether for pipelines, cables or the like that require tree removal, ground disturbance, wetland impact, etc. should not be included, considered temporary, or be allowed within the Article 97 Land Disposition regulations. “Temporary” must be in the eye of the Public Entity whose land is proposed for impact, not the view of the project Proponent.

Waivers and modifications of the Replacement Land requirements must be given sparingly.

We don't see any mention of a municipality's Open Space and Recreation Plan (“OSRP”) being considered. Our OSRP states “for the purpose of this plan, land subject to Article 97 will be considered ‘permanently protected’.¹” Disposing of land believed to be “permanently protected” is an impact to our, and every other municipality’s, OSRP that must be taken into consideration.

¹ Town of Ashby, Massachusetts Open Space And Recreation Plan Update, at 55, available at <https://www.ashbyma.gov/document/plans&reports/osrp-2018/FINAL-DRAFT12-04-18.pdf>

The Ashby Conservation Commission reviewed, approved and voted to submit this comment at our meeting of January 21, 2025. Thank you again for this opportunity to comment.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "George A. Bauman".

George A. Bauman, Chair
Ashby Conservation Commission

CC: Secretary Rebecca Tepper, Rebecca.L.Tepper@mass.gov
Massachusetts Society of Municipal Conservation Professionals,
massconpros@gmail.com
Dorothy McGlincy, Massachusetts Association of Conservation Commissions
dorothy.mcglincy@maccweb.org

Gendron, Michael (EEA)

From: Marilyn [REDACTED]
Sent: Tuesday, January 21, 2025 10:27 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52.00

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Kingston and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
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- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Marilyn Kozodoy

160 Pembroke Street

KingstonMA 02364

Gendron, Michael (EEA)

From: Mark Noonan <mnoonan@townofwestspringfield.org>
Sent: Tuesday, January 21, 2025 10:45 PM
To: Gendron, Michael (EEA)
Cc: Dorothy McGlincy; Michelle Grzenda; Tom Smith
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 21, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Westfield and the Natural Resources Planner for the Town of West Springfield I offer the following comments to the draft regulations.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs. In my present position with the Town of West Springfield and former positions with the City of Westfield I can name a half dozen incidents where no legislative approval was sought for land disposition due to a number of factors including advice of municipal council, failure to track land within their ownership inventory as being article 97 protected land and ignorance of the article 97 requirements. These sales or leases were not necessarily nefarious; many were led by the other laudable goals the municipality was trying to achieve like building schools or utility

uses. A mechanism needs to be provided that monitors Central Register Publications or Registry recordings, these regulations only address those municipalities that seek to comply allowing noncompliant municipalities a free ride.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Establishment of watchdog committees,** The Secretary should establish a board of representatives from municipalities, non-profit environmental advocacy organizations and state agencies to monitor both proposed Article 97 request for legislation to convert Article 97 protected lands and publications in the Central Register and the Environmental Monitor.
- **Education** - EOEEA should develop an education campaign to work with Town Open Space Committees, Conservation Commission and Planning Boards.
- **Anonymous Tip Mechanism** - The Secretary needs to establish an anonymous tip mechanism so citizens can report potential conversions without fear of retribution.
- **Appeal Procedure** - The Secretary needs to establish an appeal procedure for section on Waiver or Modification section xx.10 that is clear and provides for enough time for appeal submission. Perhaps similar to Wetlands Appeal Where a Conservation Commission or 10 Citizens could appeal the Secretary's Decision to the Governor or Governor's Council or similar entity as is appropriate.
- Thank you for your time and consideration of my comments.

Sincerely,

Mark A. Noonan

Mark A. Noonan
Natural Resources Planner
26 Central Street, Suite 12
West Springfield, MA 01089
(413) 263-3072, office
(413) 348-9462, mobile

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Gendron, Michael (EEA)

From: Michael McCarthy [REDACTED]
Sent: Tuesday, January 21, 2025 10:59 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of West Roxbury and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

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Thank you for your time and consideration of my comments.

Sincerely,

Michael McCarthy

76 Lyall Street

West Roxbury, MA 02132

Gendron, Michael (EEA)

From: Christopher Morris [REDACTED]
Sent: Wednesday, January 22, 2025 9:52 AM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Belmont and the Chair of the Conservation Commission. The Belmont Conservation Commission is the stewards of Rock Meadow a nearly 80-acre parcel of conservation land neighbored by Beaver Brook State Park, and Lone Tree Hill Conservation Land and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 200% of the fair market value or Value in Use as the loss of contiguous conservation lands provide far more value to the natural environment.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Christopher Morris, PE
43 Barnard Rd,
Belmont, MA 02478

Gendron, Michael (EEA)

From: Robin Bergman [REDACTED]
Sent: Tuesday, January 21, 2025 11:31 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

To:

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Arlington MA and I offer the following comments to the draft regulations. I

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Robin Bergman

320 Park Ave

Arlington MA 02476

Gendron, Michael (EEA)

From: Jean Matiyosus [REDACTED]
Sent: Tuesday, January 21, 2025 11:32 PM
To: Gendron, Michael (EEA)
Subject: : Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Abington and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Jean Matiyosus

32 Niles Street

Abington MA

Sent from my iPad

Gendron, Michael (EEA)

From: Elaine Crowder [REDACTED]
Sent: Tuesday, January 21, 2025 11:39 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Changes to Article 97

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January 21, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

[RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**]

Dear Secretary Tepper:

I appreciate the opportunity to comment on draft Article 97 regulations in light of this article's intended purpose of protecting Open Space Land from being repurposed (301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*).

I am a Town Meeting Member, Precinct 19, Arlington, MA.

Please accept the following comments:

A high bar for open space conversions is critical in light of Gov. Healey's Executive Order for Biodiversity Conservation (<https://www.mass.gov/executive-orders/no-618-biodiversity-conservation-in-massachusetts>). As stated therein, "loss of biodiversity undermines valuable ecosystem services on which residents of Massachusetts rely." Article 97 protects open space from being lost, from being developed in ways inconsistent with the state's critical biodiversity goals. In Arlington we rely on a shaded bike path for exercising in the summer heat, a healthy ecosystem to sustain state-listed species such as our nesting bald eagles, and article 97 to keep the precious little open space we have from commercial and residential development.

For these reasons, I think it essential to clearly state that the purpose of this law is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.

To maximize public involvement over threats to Article 97 protections, it's important to notify us, the public, of upcoming changes by pushing notifications to the interested public, via emails etc. All interested parties should have the opportunity to fully participate. And all public comment periods should be long enough to actually attract public comment - at least 3 weeks to a month.

Please too require careful consideration and strict standards for declaring open space as "surplus to Article 97 interests," thus making it freely available for conversion to other uses. The higher standard of a 2/3 vote of the relevant governing body seems appropriate.

Developing land to increase a tax base is an ongoing temptation to money-strapped municipalities. This puts Article 97 lands at risk if those same municipal decision makers don't take the long view - valuing these open space lands for the ways in which they increase resilience to climate change and reverse biodiversity loss that could lead to collapse of food chains.

Therefore, adopting strong regulations and enforcing them is essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a "development-site bank" for building future facilities and infrastructure, to include the built recreation structures, such as playgrounds, skate parks, mountain bike parks, and courts, to name a few such open space structures that threaten the biodiversity of naturalized open space.

Finally, please consider adding a list of consequences for non-compliance with the law/regulations, such as ineligibility for state assistance programs and suspension of EEA permits.

Thank you for considering my comments.

Respectfully,
Elaine Crowder
TMM Pct 19
2 Glenbrook Lane
Arlington, MA 02474

--
====
Elaine Crowder, Ph. D.
Communication Exchange
781-648-1927

Gendron, Michael (EEA)

From: Debbie Ballem [REDACTED]
Sent: Wednesday, January 22, 2025 12:12 AM
To: Gendron, Michael (EEA)
Subject: Open Space Act

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Carver, Massachusetts and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality)

should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Deborah Ballem

Gendron, Michael (EEA)

From: Sarah Freeman [REDACTED]
Sent: Wednesday, January 22, 2025 12:22 AM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Boston (Jamaica Plain neighborhood), and I offer the following comments to the draft regulations.

I write this from the perspective of someone who has experienced a "close call" years ago involving Article 97 land that was transferred through an outside section of a transportation bond bill; thankfully, someone noticed, we sprang into action, and the Governor vetoed it. I hope that nobody else in Massachusetts will ever experience a similar traumatic situation. There may be other ways to get around the intent of the original legislation; it is the State's responsibility to protect our precious public open space. Our physical & mental health & environmental health depend on it, especially during a time of climate crisis.

• **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable. To support this purpose:

* Define "No net loss", "comparable location" & determination of value.

* Make sure that lands with permanent protection should only be replaced by other lands that also have permanent protection or receive an upgrade in the level of protection.

• **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

• **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

• **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

• **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).

• **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held

by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.
- **Appeal process.** If land is taken out of Article 97 protection for any reason, e.g. for solar build out, transmission line build out, eminent domain or more, an effective appeal process is needed.
- **Expiration Date:** Authorization for change of use should have an expiration date, e.g. 10 years. If land is not used as promised, then it should revert to the state. Is there a monitoring system?

Thank you for the opportunity to comment.

Best regards,

Sarah Freeman, 22 Arborway, Jamaica Plain, MA 02130

Gendron, Michael (EEA)

From: Dave Sutherland [REDACTED]
Sent: Wednesday, January 22, 2025 6:52 AM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Dracut and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in

circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Dave

Dave Sutherland
114 Stonebridge Dr.
Dracut, MA 01826
[REDACTED]
[REDACTED]

Gendron, Michael (EEA)

From: Tribal Scribal [REDACTED]
Sent: Wednesday, January 22, 2025 6:58 AM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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We would like to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. We offer the following comments to the draft regulations

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification, include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your service,

Don Ogden
The Enviro Show
140 Pine Street
Florence, MA 01062

--

"Our planet's future climate is inextricably tied to the future of its forests." - *Oct. 5, 2018 letter from 40 scientists to the Intergovernmental Panel on Climate Change*

"Change is the law of life. And those who look only to the past or present are certain to miss the future." – John F. Kennedy

More writing here:

<http://concertobi.blogspot.com/>

<https://devolutiondays.blogspot.com/>

Checkout The Enviro Show podcasting anytime at:

<https://rss.com/podcasts/enviroshow/>

Broadcasting on WKOJ-LP, 103.3fm. Northampton, MA, Tuesdays, 6pm

Webstreaming at: <http://valleyfreeradio.org/listen/>

Also on WMCB, Greenfield; 107.9, Mondays & Tuesdays at 6pm. Streaming at <http://wmcb.net/Listen.html>

[Blog w/links and YOUR comments at: <http://envirosho.blogspot.com/>]

Email: enviroshow@valleyfreeradio.org

Gendron, Michael (EEA)

From: Melissa Mayer [REDACTED]
Sent: Wednesday, January 22, 2025 7:29 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Canton** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Melissa Mayer

9 Fairway Drive Canton, MA

--

Melissa Mayer

Senior Vice President, REALTOR®

Mayer Realty Group | Compass

<https://mayerrealtygroup.com/>

785 Washington St
Canton MA, 02021

m: [REDACTED]



Gendron, Michael (EEA)

From: Margaret Sheehan [REDACTED]
Sent: Wednesday, January 22, 2025 7:53 AM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

As a lifelong conservationist and someone who has devoted time and resources to the public interest in the protection of Massachusetts' land and resources I request that you take all actions necessary to strengthen land protections.

I submit these on behalf of myself and Community Land & Water Coalition, a non profit group based in Plymouth whose mission is to protect, preserve and steward the land and water resources of our region. www.communitylandandwater.org

Please consider these comments on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a property owner and resident in Plymouth MA and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement

Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

--
Margaret E. Sheehan
Coordinator
Community Land & Water Coalition

PO Box 1699
Plymouth MA 02362
C. [REDACTED]

Gendron, Michael (EEA)

From: Jennifer Steel <jsteel@newtonma.gov>
Sent: Wednesday, January 22, 2025 8:00 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52 comments

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Dear Michael and Secretary Tepper:

I am the Chief Environmental Planner for the City of Newton and a board member of MSMCP (the Mass. Assoc. of Municipal Conservation Professionals).

Please accept these comments on the draft regulations, 301 CMR 52.00. **It is crucial that they be strengthened and clarified.**

- **The purpose must be more clearly stated.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications must focus on local stakeholders.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **The Public Entity must document the parcel as surplus.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **A 21-day public comment period must be provided for ALL Article 97 actions.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **A more detailed Natural Resource Values section is critical.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In-Lieu Funding must be ONLY a last resort.** In-lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Meaningful enforcement regulations are critical.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for

non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Jennifer Steel

Chief Environmental Planner
1000 Comm. Ave. Newton, MA 02459
617-796-1134 or 617-631-6982

When responding, please be aware that the Massachusetts Secretary of State has determined that most email is public record and therefore cannot be kept confidential.

Gendron, Michael (EEA)

From: Elenore Alves [REDACTED]
Sent: Wednesday, January 22, 2025 8:05 AM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Hopedale, and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Best,

Elenore Ariel Alves

164 Hopedale St. Hopedale MA

Gendron, Michael (EEA)

From: Stacy Barron [REDACTED]
Sent: Wednesday, January 22, 2025 8:06 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52 Comments

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Norwell and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should: be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor). Notification should also be posted at the land proposed for disposition, and noticed on the municipal website.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should only be available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

Thank you for your consideration of my comments.

Sincerely,

Stacy Minihane
317 Prospect Street
Norwell, MA 02061

Gendron, Michael (EEA)

From: Kelsey Andrews <kandrews@bscgroup.com>
Sent: Wednesday, January 22, 2025 8:08 AM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Attleboro and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Kelsey Andrews (she, her)

Senior GIS Coordinator, Associate

78 Nash Lane Attleboro, MA 02703

kandrews@bscgroup.com

www.bscgroup.com



Gendron, Michael (EEA)

From: Holly Morris [REDACTED]
Sent: Wednesday, January 22, 2025 8:17 AM
To: Gendron, Michael (EEA)
Subject: Letter to Secretary Tepper RE: Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Duxbury, MA and I serve on the Duxbury Conservation Commission and represent the Commission on the Duxbury Community Preservation Committee. I attended the online meetings in December and share the many concerns that a number of Commissioners and members of MACC have with the draft regulations, 301 CMR 52.00. Protecting Article 97 Land has been a priority for decades, even generations, in our community and there are constant threats to this resource which are not to be taken lightly. The lists of concerns and suggestions that were raised in these meetings, and I must add, by very experienced and respected individuals, must be taken seriously. In turn, the legislative bodies must know that the conversion of Article 97 lands is a very serious action that deserves public attention, education and at least a 2/3 vote. I share the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
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- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Holly Morris

Duxbury Conservation Commissioner and Chair, Duxbury Community Preservation Committee

145 Abrams Hill Road

Duxbury, MA 02332



Town of Natick, Massachusetts
Department of Community and Economic Development
13 East Central Street Natick, Massachusetts 01760

Telephone
(508) 647-6450
www.natickma.org

Amanda Loomis, AICP
Director

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

January 16, 2025

Via Email: Michael.gendron2@mass.gov

RE: An Act Preserving Open Space in the Commonwealth
Natick Conservation Commission's Comments on EEA's 301 CMR 52:00:
Disposition or Change in use of Article 97 Interests

Dear Secretary Tepper:

The Natick Conservation Commission (ConCom) greatly appreciates the opportunity to provide comment.

We sincerely appreciate the effort that EEA and the state legislature put into creating these draft regulations and commend the state in seeing the value in providing more clarity when it comes to changes in use of Article 97 land. We are excited to see existing policy be codified into regulation and have some comments on the draft regulations to ensure that the regulations are clear in their requirements of Public Entities and the state.

The Natick Conservation Commission has the following comments on the draft regulations.

- State the goal of “no net loss” right up front in Section 1 - Purpose and Applicability.
- Make explicit in the regulations the requirement for the Public Entity to declare the land as surplus to Article 97 needs.
- The quantum of the vote by the Public Entity to dispose of Article 97 land should be clarified and clearly written into the regulations. The current policy is for a unanimous vote and this should be maintained.
- Ensure that the regulations include a framework for a meaningful evaluation of natural resource values for the compensatory land and require the opinion of the Public Entity on the compensatory land. Recommend using the Riverfront Alternatives Analysis assessment framework as a model to provide decision-makers with a tool to determine compliance.



Town of Natick, Massachusetts

Department of Community and Economic Development
13 East Central Street Natick, Massachusetts 01760

Telephone
(508) 647-6450
www.natickma.org

Amanda Loomis, AICP
Director

- Provision of In Lieu Fees should be the exception with every effort made to find replacement land during the process. The regulations should be more explicit about what efforts are needed to document that In Lieu Fees are the only feasible option.
- The regulations must clarify the enforcement options available to EEA. It is clear from the recent SJC decision in the MBTA Communities case that the AG's office plays a key role in the enforcement of state laws, even when their role is not explicit in any given statute.

Thank you again for the opportunity to provide comment and for all of the work done today on these updates.

Sincerely,

Matthew Gardner
Chair, Natick Conservation Commission

Gendron, Michael (EEA)

From: Pamela F. [REDACTED]
Sent: Wednesday, January 22, 2025 8:30 AM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Bellingham**, where I also serve on my town's conservation commission, and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
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- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Pamela Francis

Gendron, Michael (EEA)

From: Susan Olson Drisko [REDACTED]
Sent: Wednesday, January 22, 2025 8:33 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Sharon, MA and a Commissioner of the Sharon Conservation Commission. My comments on the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Susan Drisko, MSPH

105 Beach St

Sharon, MA 02067

Gendron, Michael (EEA)

From: Bolduc, Alexandria [REDACTED]
Sent: Wednesday, January 22, 2025 8:46 AM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of West Dennis, MA and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Alexandria Bolduc
201 Swan River Rd
W. Dennis, MA 02670

Gendron, Michael (EEA)

From: Brian Morrison [REDACTED]
Sent: Wednesday, January 22, 2025 8:49 AM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

re: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Hopkinton Mass and I'd like to provide the following comments to the draft regulations.

As background, I served for 10 years as Chairman of the Hopkinton Conservation Commission, and served on the Master Plan Committee, Open Space Preservation Committee, Capital Improvements Committee, Bylaw Study Committee, Land Use Study Committee, and Zoning Advisory Committee here in Hopkinton.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Brian D. Morrison

22 Piazza Lane

Hopkinton, MA 01748

Gendron, Michael (EEA)

From: Bob Moores [REDACTED]
Sent: Wednesday, January 22, 2025 8:48 AM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Plainville as well as being a member of the Massachusetts Association of Conservation Commissioners, and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Thank you for your time and consideration of my comments.

Sincerely,

Bob Moores
Plainville, MA 02762
tel: [REDACTED]
email: [REDACTED]

OFFICE OF THE
CONSERVATION COMMISSION

15 ELM STREET HARVARD, MA 01451

978-456-4100 EXT.421

www.harvard-ma.gov



January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Proposed Regulations 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Mr. Gendron,

As long-time partner in land preservation, the Harvard Conservation Commission applauds EEA and the Legislature for passing this important Legislation and all of the work that has been put into drafting these Regulations and associated documents. In particular, we appreciate the increased transparency of the review process through the EEA Portal, including the posting of documents relative to dispositions.

We believe that it is critical that the implementing regulations be clear and respect the key role that municipalities and state agencies as conservation land holders play in the disposition process.

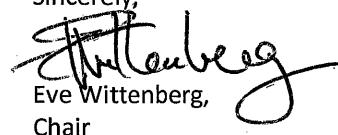
We offer the following suggestions for improvements:

- State the goal of "no net loss" in Section 52.01 Purpose and Applicability
- Include a requirement for the Public Entity to declare the land as surplus to Article 97 needs within the Regulations
- In Section 52.06(2)(f) The affirmative vote by the Public Entity to dispose or change the use of Article 97 land should be clarified and clearly written into the regulations. We urge the unanimous vote under the current policy be maintained.
- In Section 52.08 provide a framework for a meaningful evaluation of Natural Resource Values for the Replacement Land. The Riverfront Alternatives Analysis assessment framework has been recommended as a model to provide decision-makers with the tools necessary to determine Natural Resource Values.
- Section 52.09 Fundings in Lieu of Replacement Land Fees should be the exception with every effort made to find Replacement Land during the process.
- The Regulations must clarify the enforcement options under 301 CMR 52.00 available to EEA.

Thank you for the opportunity to provide comments on these important Regulations. As partners in land preservation, we deeply appreciate EEA's effort to engage local Conservation Commissions with the ongoing goal of ensuring no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions.

We look forward to further discussions as needed to provide clarification of any of these comments, or to review potential revisions.

Sincerely,


Eve Wittenberg,
Chair

Gendron, Michael (EEA)

From: Melissa Curtin [REDACTED]
Sent: Wednesday, January 22, 2025 9:01 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Northampton, Massachusetts and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the

required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Melissa L. Curtin, Ph.D.

20 Bridge Rd, Unit 10

Northampton, MA 01062

January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident Dunstable MA, as well as on the Dunstable Select Board and Conservation Commission. I offer the following comments to the draft regulations.

Purpose. Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.

Notifications. Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

Documentation of Surplus Vote by Public Entity. There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

Public Comment Period. A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

Natural Resource Values. The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).

In Lieu Funding. In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

Enforcement. The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Leah Basbanes
39 Hardy St
Dunstable, MA 01827

Gendron, Michael (EEA)

From: ecboss franklinlandtrust.org <ecboss@franklinlandtrust.org>
Sent: Wednesday, January 22, 2025 9:11 AM
To: Gendron, Michael (EEA)
Cc: emily@masswoodlands.org; mlsabourin franklinlandtrust.org; apeteroy franklinlandtrust.org
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Greenfield, MA and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to

other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Emily Boss
Lincoln Street
Greenfield, MA

Emily Boss
Executive Director, MA Woodlands Institute
Community Conservation Program Manager, Franklin Land Trust
she, her, hers ([what's this?](#))
PO Box 450, 5 Mechanic Street
Shelburne Falls, MA 01370
P: (413) 625-9151 ext. 104
F: (413) 625-9153
Franklinlandtrust.org
Masswoodlandsinstitute.org

January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a 30 year resident of Ipswich and I have served on the Ipswich Conservation Commission for 20 years and counting. I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. (So called “Surplus land” was put into Chapter 97 protection for a reason). A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs’ (EEA’s) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary’s satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Mary B ffollott
(Ipswich Conservation Commission)
91 Old Right Rd
Ipswich, MA 01938

Gendron, Michael (EEA)

From: Marian Lazar [REDACTED]
Sent: Wednesday, January 22, 2025 9:15 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Brookline and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition, the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (of the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation areas to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulation

should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated that the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Marian Lazar

32 Craftsland Road

Brookline, MA 02467

Gendron, Michael (EEA)

From: Mary McCarthy [REDACTED]
Sent: Wednesday, January 22, 2025 9:18 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **[add your TOWN/CITY]** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Mary T McCarthy

12 Old Mattapoisett Neck Rd.

Mattapoisett, MA 02739

Comments on Proposed Regulations

by Olin Lathrop, 23 December 2024

This document is a formal response to the proposed regulations "301 CMR XX.00: Change in Use or Disposition of Article 97 Interests". The comments are referenced to the sections as listed in the above document.

My name is Olin Lathrop, of 55 Sunset Road in Groton MA. I am on the Conservation Commission in Groton, and have been so for over eight years. I have been the point person for several recent land acquisitions. During my time on the commission, we were involved in one Article 97 land swap. These comments are my own, and do not necessarily represent official positions of any public or private entities I may be associated with.

XX.09 Funding in Lieu of Replacement Land, 4 Conditions (a)

110% is grossly inadequate for covering the cost of replacing the taken land. Not only is this insufficient to cover the purchase price itself, but it ignores the various other costs of acquiring conservation land. Specifically, 110% of the purchase price falls short for the following reasons:

- 1. The rising cost of real estate.** The proposed regulations expect the funding in lieu of land to be used within three years. The extra 10% is lost if prices rise only 3.23% per year. Real estate prices have risen at a faster rate in many recent years. 110% after three years would actually be less than a fair purchase price in many cases.
- 2. The size of available land may be inconvenient.** It is usually impossible to buy exactly the desired amount of land.

If a large lot is taken out of Article 97 use, a single comparable lot may simply not be available. Buying multiple smaller lots takes more work, and therefore expense. Multiple smaller lots likely won't have the same ecological value due to fragmentation, so more land would have to be acquired to compensate, again increasing the cost.

If a small lot is taken out of Article 97 use, it may be impossible to acquire just that amount of replacement land. Land can sometimes be subdivided depending on local zoning rules, but that increases the work and expense. The most likely resolution would be to acquire somewhat more than the minimum necessary land, which of course increases the cost.

- 3. Appraisal cost.** The cost of appraisal is somewhat dependent on the size of the property, but also on other factors like varied topography, whether a lot is buildable, etc.
- 4. Survey cost.** While a survey is technically optional, our commission has found well-defined boundaries, not just on paper but on the land, to be very useful and ultimately in the public interest. Any Conservation Commission will be able to tell you that encroachment is an on-going problem with conservation lands. Well marked boundaries head off much encroachment before it occurs, makes it easier to detect, and results in more cooperation from abutting encroachers when it does occur. A good survey also lowers legal costs in the long run when disputes arise.

Our commission now has a formal survey done, with granite bounds installed at all corner points not under water, on all newly acquired conservation lands. We have also had such surveys done on old properties with vague boundary descriptions and when there was encroachment or dispute.

The cost of a survey is mostly dependent on the quality of the documentation and the complexity of the lot shape. Neither of these correlate much with the purchase price.

5. **Baseline report.** While not a strict legal requirement, it is effectively one, not to mention a good idea and in the public's interest.

To provide additional safeguards against conservation land being "taken" for other uses in the future, it is a best practice to have a third party hold a conservation restriction (CR) on the land. Note that this best practise is a legal requirement when land is acquired using CPA funds. It's not just me making it up or being overly conservative.

Any competent CR holder, like any accredited land trust, will require a baseline report be completed at the time the CR is granted. This allows the CR holder to compare future conditions to what was agreed upon at the time of the CR. It is also often useful as the first step in developing a management plan for the property.

Baseline reports include noting the various ecological niches, the state of succession, existing trails and structures, and walking the boundary to check the markings and note any encroachments, dumping, etc. The cost of these reports are mostly a function of how varied the interior conditions are and the length of the boundary. Neither of those correlate well with the purchase price.

6. **Reporting requirements.** The proposed regulations impose new reporting requirements in section 9.6. Someone has to gather the information and submit it according to the guidelines.

7. **Legal fees.** Every acquisition requires some legal work. At a minimum this is a title search and closing logistics, but additional issues usually arise. The cost of legal work is mostly a function of how clear the title is, whether there are any existing restrictions, and whether new restrictions are negotiated as part of the acquisition. None of these expenses have much relation to the purchase price.

8. **Filing fees.**

9. **Staff and volunteer time.** It takes considerable time to identify possible land to acquire, contact the owners, get an agreement to sell, have various ongoing conversations with the owners even in a cooperative deal, manage getting an appraisal, survey, and baseline report, and dealing with various logistics.

In our town, much of the contact with the seller and some of the logistics is handled by volunteers, but there is always paid staff time required. Also, it is unfair for a proponent to provide payment in lieu of land to expect volunteers to perform any of these functions. As a volunteer having been involved with several conservation land acquisitions, I'm happy to pitch in to preserve the character of our town. However, I'd have a different view if a proponent just plunked down cash and expected others to do the substantial behind the scenes work for them.

All volunteer time should be accounted for at reasonable paid-staff rates to determine the cost added to a land acquisition.

Examples

Here are three examples of recent conservation land acquisitions by the Groton Conservation Commission. These are provided to put some hard numbers on the issues above, and to illustrate how much the details can vary from case to case:

Casella, 119 acres

Item	\$	\$	Fraction of purchase
Purchase		588,000	
Appraisal	4,500		
Legal	1,012		
Fees	355		

Item	\$	\$	Fraction of purchase
Survey	16,500		
Baseline report	2,000		
Total beyond purchase price		24,367	4.1%

The survey was expensive because the boundary was a complicated shape.

Palmer, 28 acres

Item	\$	\$	Fraction of purchase
Purchase		400,000	
Appraisal	2,768		
Legal	5,209		
Fees	164		
Survey	8,670		
Baseline report			
Total beyond purchase price		16,811	4.2%

The legal fees were higher than usual due to the title being a bit unclear and the boundary description very old (*East to Ebenezer Waterman's chicken coop, northwest to the stately oak, ...*).

The survey cost is also high due to the old boundary descriptions. The price shown is the lowest bid received. One company declined to bid due to the state of the descriptions.

A baseline report has not yet been sent out for bid on this property, but that will almost certainly need to be done. We are in discussions with our local land trust to hold the CR, and they will require (for good reasons) a baseline report.

Marsh, 15 acres

Item	\$	\$	Fraction of purchase
Purchase		30,000	
Appraisal	2,500		
Legal	4,127		
Fees	1,736		
Survey	10,900		
Baseline report	2,100		
Total beyond purchase price		21,363	71%

This lot had a complex shape with several key points in wetlands. The title also needed some work to clear up.

Staff and volunteer time was not included in the costs shown above because it was not tracked separately. However, each acquisition probably took at least one work day of staff time, and at least as much volunteer time.

The volunteer time for the Casella land was particularly high due to it resulting from identifying about 40 potential properties, attempting to contact the owners of each, following up on the many unreturned messages, etc. Of the 40 properties originally on the list, only this one has been purchased, with one more in discussions.

Land acquisition takes a lot of work and usually years of lead time to get to any results. The Palmer land is an example where the volunteer had been talking to the owners over many years, until they were ready to sell and a mutually acceptable price could be agreed upon.

The cost of any actual purchase must also take into the account the cost of dead ends to get there. We have had several cases during my time on the commission where negotiations got as far as us paying for an appraisal, but the owners were ultimately unwilling to sell for a price acceptable to the commission.

All this is to point out that "go buy some land" takes years and is significantly more complicated and costly than just plunking down the appraised price.

Main points

In summary, the arguments against the simple 110% rule are:

1. You usually can't buy exactly the required amount of replacement land.
2. Land acquisition costs are much more than just the purchase price.
3. Many of the additional costs are not proportional to the purchase price.
4. 10% over 3 years is only 3.2% annually, which is often less than the increase in real estate prices.
5. Finding suitable land and a willing seller is hard. If the proponent can't find the land, the Conservation Commission (or other entity) will have the same problem.
6. Land acquisition costs are unpredictable until land and a willing seller is actually found and the price negotiated.

Recommendations

My first preference would be to eliminate the funding in lieu of replacement land loophole entirely. However, I realize that this can't be done at the regulations level due to how the law is written.

The actual text of the law in Section 1(b)(2)(i) is "*funding provided shall be not less than 110 per cent*". This leaves room for it to be higher. Given the arguments above, it needs to be substantially higher.

One possible mechanism is for a much more significant amount, like twice the estimated purchase price or the purchase price plus \$100,000, whichever is greater, to be held in escrow until replacement land is acquired. That provides a much larger cushion against unforeseen costs and the unusual circumstances that arise with every land acquisition. Once the acquisition is complete, the proponent is returned the remainder in the escrow account.

This mechanism has the following advantages:

1. It's a bit painful to the proponent, so they will put some effort into avoiding it. The proposed 110% is a very easy way out, and cheaper than doing the work in most cases. For many proponents it will be a bargain to pay 10% more and simply walk away. It shouldn't be easy nor cheap to avoid the burden of guaranteeing no net loss of conservation land.
2. Since the proponent is likely to get some money back after an acquisition is finalized, they have an incentive to see the process move forward. They may be able to facilitate the process utilizing their own connections, access to sellers, and ability to acquire land.

XX.10 Waiver or Modification, 1(b)

This section enables incremental creep as currently written. 2,500 square feet may not seem like much, but there is no limit in the proposed regulations how often this provision may be applied. If this provision or something similar is kept, there must be a total cumulative cap without replacement land being provided.

XX.10 Waiver or Modification, 3 Determinations by Secretary

As proposed, this section lacks any checks and balances. There should be some appeals process, or the ability of the legislature to override an egregious decision.



What Price a Mountain?

Comments on Proposed Regulations
“Disposition or Change in Use of Article 97 Interests”

Submitted by:
Patrick White, Stockbridge Select Board
50 Main Street, Stockbridge, MA 01262
pwhite@stockbridge-ma.gov / 413-441-5231

Article 97 of the Massachusetts Constitution protects conservation land. This land is explicitly protected to ensure that it is used for conservation purposes and not converted to other uses.

The state has proposed new regulations to govern these lands, available at:

<https://www.mass.gov/doc/draft-open-space-act-regulations-301-cmr-5200-112224/download>

The link above does not mention solar, but many have suggested the purpose of these changes in regulations is to pave the way for commercial solar installations on publicly owned conservation land.

I will limit my comments to one section of the proposed regulations, “XX.09 Funding in Lieu of Replacement Land”. This section begins on page 7 of the proposed regulations.

Basically, this section lays out a way to pay into a fund to compensate for an alternative use of these conservation lands of not less than 110% of fair market value.

It lays out the path to alternative uses with a number of criteria, but the first is the most consequential: “it serves a significant public interest.” Like, to many of us, solar/renewable energy.

For those who support renewable energy, this perhaps is easy to justify. We have climate net zero goals to reach in just 25 years. I would caution against this thinking. As events of

the last 48 hours have amply demonstrated, there is unfortunately no consensus in this country as to what, if any, actions we should take with regard to climate.

Who decides what serves a significant public interest? Well, of course, those in power. While the current administration may feel its climate agenda is laudable, a sentiment I share, what happens when a future administration has a different position? For example, clear cutting justified by the “young forests” argument? Or strip mining justified by the acquisition of rare earth metals needed for electric cars? Or a new resort or casino justified by a local municipality’s economic development plan? Anyone in power can use the levers of power, either locally or via statewide office, to justify just about anything.

I would like to point to the portions of Beartown Mountain in Lee and Stockbridge that are owned by the Commonwealth. Four Article 97 parcels with a total of 639 acres and an assessed value of \$2.2 million. With the 110% rule, this or a future administration, regardless of their political leanings, could convert this to an alternative use. It would need only find that the conversion serves a significant public interest and pony up a mere \$2.5 million to pay itself. I haven’t checked the Cherry Sheet, but the state’s view of the parcel’s fair market value might be even less.

The risk that these parcels could be converted to another use under these regulations is immense.

I recognize how hard it is to meet your solar goals through rooftop and canopy solar. However, many academics are predicting that artificial intelligence and quantum mechanics together will increase solar efficiency by two to three times current technology in just 15-20 years. I would argue for a strategy to focus solar on the already-built environment and median strip land, while doubling down on demand-reduction initiatives, like the immensely successful MassSave program. I recognize that this may make the 2050 net zero goal impossible to meet. Personally, I would gladly delay the date by a few years to save forests that take well over a century to mature.

This administration should be doing everything it can to protect the state’s forests, both now and in the future, rather than putting them at risk for the profits that “alternative uses” can deliver to energy, logging, mining, or development interests.

Many indigenous leaders have indicated their plan for the conservation land they steward is to leave their tribes’ forests alone for the next 200 years. Now that sounds like the best climate strategy I’ve heard in recent memory.

I urge the Commonwealth not to open the door that would allow our forests to be converted to alternative uses to advance a political agenda, be it yours or that of a future administration whose world view may be significantly at odds with your own.

Gendron, Michael (EEA)

From: Elizabeth Fernandez O'Brien [REDACTED]
Sent: Wednesday, January 22, 2025 9:33 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Shutesbury and offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission

or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Elizabeth Fernández O'Brien

She/her/hers

cell: [REDACTED]

home [REDACTED]

6 Old Egypt Rd

Shutesbury 01072

Gendron, Michael (EEA)

From: Hannah Fletcher [REDACTED]
Sent: Wednesday, January 22, 2025 9:33 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Medford and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3

legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Hannah Fletcher

12 Franklin Ave

Medford, MA 02155

Gendron, Michael (EEA)

From: Lynne Pledger [REDACTED]
Sent: Wednesday, January 22, 2025 9:40 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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I live in Shelburne Falls. I'm writing to comment on the proposed changes regarding Article 97 interests. We must have strong regulations to ensure that land resources are not squandered because of inadequate protections. Please do everything possible to protect open spaces that are under Article 97 from plans that have not been adequately scrutinized or conversions that should be avoided.

Thank you for the opportunity to comment.

Sincerely,
Lynne Pledger

Gendron, Michael (EEA)

From: sherrill rosoff [REDACTED]
Sent: Wednesday, January 22, 2025 9:41 AM
To: Gendron, Michael (EEA)
Subject: Comments on proposed regulation

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Pepperell** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3

legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
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- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Sherrill Rosoff

Co-Chair, Pepperell Agricultural Commission

4 Lawrence Street, Pepperell, MA

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Wednesday, January 22, 2025 9:42 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Amesbury and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

Michael Ebert

2 Locke Hill Lane

Amesbury, Ma 01913

Gendron, Michael (EEA)

From: John Hess [REDACTED]
Sent: Wednesday, January 22, 2025 9:42 AM
To: Gendron, Michael (EEA)
Subject: Proposed Regulations 301CMR52.00

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Andover and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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Thank you for your time and consideration of my comments.

Sincerely,

John P. Hess
145 Chestnut Street
Andover, MA 01810

Gendron, Michael (EEA)

From: Ed Harrow <ospccchair@hopkintonma.gov>
Sent: Wednesday, January 22, 2025 9:44 AM
To: Gendron, Michael (EEA)
Cc: James Arena-DeRosa; Meyers, Jeffrey (HOU); Judy Day; Shannon Isaacs
Subject: 301 CMR 52.00

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Hopkinton, and Chair of the Open Space Preservation Commission and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental

Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
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Thank you for your time and consideration of my comments.

Sincerely,

Edwin E Harrow, Chair, Hopkinton Open Space Preservation Commission

Visit us online at www.hopkintonma.gov.

Gendron, Michael (EEA)

From: Peter Sampou [REDACTED]
Sent: Wednesday, January 22, 2025 9:53 AM
To: Gendron, Michael (EEA)
Subject: Open Space Act regulations 301 CMR 52

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Barnstable and I offer the following comments to the draft regulations.

Please take note of the following:

- The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you in advance,

Peter Sampou



MASSACHUSETTS WATER RESOURCES AUTHORITY

Chelsea Facility
2 Griffin Way
Chelsea, Massachusetts 02150

Telephone: (617) 242-6000
Facsimile: (617) 305-5990

Frederick A. Laskey
Executive Director

January 22, 2025

Executive Office of Energy and Environmental Affairs
ATTN: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114
Via email: Michael.gendron2@mass.gov

RE: MWRA Comments on Draft Regulations at 301 C.M.R. 52.00: Disposition or Change in Use of Article 97 Interests

Dear Mr. Gendron,

The enactment of *An Act Preserving Open Space in the Commonwealth* (Chapter 274 of the Acts of 2022, codified at M.G.L. c. 3, § 5A and sometimes known as the Public Lands Preservation Act or “PLPA”), established new requirements and a process for submission to the Legislature of petitions to authorize a change in use or disposition of land or an interest in land subject to Article 97 of the Amendments to the Constitution of the Commonwealth (“Article 97”). Under the PLPA, the Executive Office of Energy and Environmental Affairs (“EEA”) must review alternatives analyses, make determinations of natural resource equivalency, and consider requests for waivers or modifications of the Replacement Land requirement or the payment of money in lieu of providing Replacement Land. In December 2024, EEA issued notice for draft regulations at 301 C.M.R. 52.00: Disposition or Change in Use of Article 97 Interests (“Draft Regulations”), and invited public comment. The Massachusetts Water Resources Authority (“MWRA”) appreciates the opportunity to comment on these important Draft Regulations.

MWRA was established by the Massachusetts Water Resources Authority Act, Chapter 372 of the Acts of 1984, as amended (“Act”), wherein it is recognized as an independent public authority. Among other provisions, the Act resulted in the MWRA assuming control of the water and wastewater systems owned by the Commonwealth and operated, at that time, by the Metropolitan District Commission (“MDC”), now the Department of Conservation and Recreation (“DCR”). Today, MWRA provides wholesale water and wastewater services to 3.1 million people and more than 5,500 businesses in 61 communities in eastern and central Massachusetts. MWRA maintains hundreds of miles of water and sewer pipes, many of which are over 100 years old, as well as dozens of facilities that regularly require maintenance, upgrades, and/or replacement, as circumstances warrant.

Prior to creation of the MWRA, MDC was responsible for the metropolitan Boston water and sewer systems. The Act allocated statutory responsibilities for the water and sewer systems to MWRA and the watershed system to MDC. In doing so, the Act specified that the ownership of the “System Real Property” was not transferred to MWRA, but rather MWRA has the rights to enter, use, improve, operate, maintain and manage that portion of the System Real Property. Therefore, a majority of physical infrastructure once owned by the Commonwealth acting by and through MDC is now owned by MWRA, but located on real property largely still owned by the Commonwealth and under the care, custody, and control of DCR. While the rights granted to the MWRA in the Act are important, they are at times imperfect from an Article 97 perspective, as MWRA implements its robust maintenance and redundancy programs within its water and wastewater systems.

MWRA supports EEA’s objectives of ensuring no net loss of protected open space, and demonstrates a firm commitment to acquiring and protecting land in our watersheds. MWRA provides drinking water from the Quabbin and Wachusett Reservoirs in central Massachusetts, with source waters located in the Quabbin, Wachusett and Ware River watersheds. For many decades, MWRA has financially supported the DCR and its predecessor agencies in active land acquisition and its forestry management program within the lands owned for watershed protection around MWRA’s source waters. MWRA views these programs as essential parts of MWRA’s watershed and source water quality protection, and have resulted in an increase in the acreage of protected (undeveloped) land in the Commonwealth. As an Authority committed to the preservation and protection of land, MWRA commends the stated goals of the Draft Regulations and offers the following comments.

Applicability of Regulations:

Easements for Existing MWRA Infrastructure:

As explained above, given the history of MWRA and its predecessor agency MDC, now DCR, there is a significant amount of MWRA infrastructure that intersects with DCR-controlled land, which is largely classified as protected open space. While the physical assets of MDC transferred to MWRA, the real property ownership interests did not. MDC and the Commonwealth did not establish dedicated property rights, like an easement to correspond with this infrastructure. Rather, it was simply located within a larger property interest (e.g., a Commonwealth Parkway, Reservation, etc.). MWRA’s practice is to have recorded real property rights (e.g., easements) to correspond with all infrastructure to secure our interests into the future. MWRA requests that the proposed regulations give special consideration to MWRA’s ongoing need to obtain easements over existing infrastructure and new infrastructure appurtenant thereto.

Consideration for New and Existing MWRA Member Communities:

As stated in Article 97, the protection of the people in their right to the development and utilization of water as a natural resource is declared to be a public use. As water purveyors in Massachusetts contend with emerging contaminants, impacts of climate change, stressed basins with inadequate supply, and changing regulations, some have considered joining MWRA to supplement or replace

their water supply. As these communities connect to the MWRA waterworks system, improvements such as pump stations, may be required. Given limited land available to these communities, MWRA may allow these assets to be constructed on land under MWRA's care, custody and control, requiring easements granted by the Commonwealth to the community. MWRA requests that the Draft Regulations include special consideration for land transferring from MWRA control to another water supplier for the same purpose (*i.e.*, water supply). While this is in line with the currently proposed waiver for transfer of land between public entities, MWRA requests that the Draft Regulations include an exemption from when transferring land to a municipality or water supplier when those property interests are to support water supply. At a minimum, MWRA requests a specific exception to the "Replacement Land" requirements.

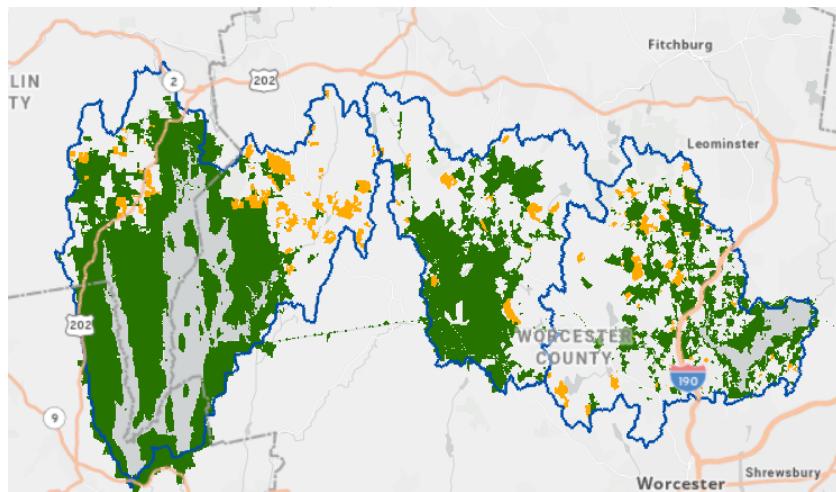
Section XX.07 Replacement Land:

MWRA suggests that the Draft Regulations be revised to further define or clarify how the "recreation value" is determined when evaluating the benefits Article 97 land provides. Additionally, while "natural resource value" and "value in use" are defined the Draft Regulations, it's unclear how these are determined. MWRA suggests that a transparent set of criteria be established for each component used in evaluating both the benefit of the Article 97 land and the proposed "Replacement Land". Finally, MWRA requests that land acquired under the extensive and ongoing watershed land acquisition program between MWRA and DCR Division of Water Supply Protection ("DCR-DWSP"), under which MWRA funds the acquisition of land and other real property interests in the name of the Commonwealth for watershed protection purposes be considered as replacement land. While these watershed protection lands may not be located in a "comparable location" per the Draft Regulations, they provide significant value in supporting the infrastructure throughout the MWRA service area and provide an immeasurable public benefit including preservation of forestland and associated carbon capture.

In 1985, MDC began the Watershed Land Acquisition program to protect watershed land from urbanization and to restore and maintain stable forest cover. The program focuses on maintaining water quality and preventing water quality degradation caused by development and storm water discharge from impervious surfaces. The DCR-DWSP was created by legislation in 2003 and assumed responsibilities for the construction, maintenance, and operation of the system of watersheds, reservoirs, water rights, and rights in sources of water for the purpose of providing a sufficient supply of pure water to the MWRA. On December 15, 2004, the MWRA Board of Directors approved the use of MWRA bond proceeds to purchase lands critical to protection of the watershed and water supply. MWRA now funds the acquisition, in the name of the Commonwealth, parcels of real estate or other real property interests (*e.g.*, watershed preservation restrictions or "WPR"), which are necessary and advisable to the improvement of the MWRA waterworks system, the maintenance of water quality in MWRA water supply sources, and to the assurance of watershed protection.

Since 1985, the Land Acquisition Program has successfully acquired and protected over 28,000 acres of water supply land in the Quabbin, Wachusett, and Ware River water supply watersheds at a cost of approximately \$146 million. MWRA is one of the few water systems nationwide with water sources that consistently deliver high enough quality water and are sufficiently well

protected naturally such that EPA and MassDEP regulations allow MWRA to only provide disinfection of the water, thereby avoiding the use of chemically enhanced filtration with its energy intensive processes and associated carbon footprint. One of the most significant factors in MWRA's ability to maintain a filtration waiver was increasing the area under Water Supply Protection Control in the Wachusett Reservoir watershed from 8% to 25% of the watershed area. Since that time, the Program has increased the percentage of protected land in the Wachusett watershed to nearly 30%. Additionally, MWRA continues to pay full Payment in Lieu of Taxes ("PILOT") to watershed communities for land in fee acquisitions. For FY24, MWRA's PILOT payments amounted to nearly \$8.5 million across 30 watershed communities.



Watershed Land in Protected Status 2024

Green shows DCR-protected land.

Orange shows other protected open space.

DCR-DWSP Watershed Acquisitions 1985 - 2024

Watershed	Acres Fee	Acres WPR	Total Acres	Awards from MWRA Bonds	% of Total Acreage	% of Total Awards	Average Cost/Acre
Wachusett	12,563	2,727	15,290	\$120,721,136	53%	83%	\$7,895
Ware	3,842	1,534	5,377	\$13,211,150	19%	9%	\$2,457
Quabbin	2,830	5,213	8,043	\$12,091,600	28%	8%	\$1,503
TOTAL	19,236	9,474	28,710	\$146,023,886	100%	100%	\$5,086
% of acreage	67%	33%					

MWRA is committed to, as necessary, identifying "Replacement Land" in a "Comparable Location" to the greatest extent possible for new infrastructure projects. MWRA has found this to be challenging in the communities where we work due to the densely developed locations in which our infrastructure is located. We ask that our robust watershed protection program, and in particular

lands and other real property interests acquired under this program, be given consideration in situations where “Replacement Lands” in “Comparable Locations” are not readily available. Our watershed protection program provides a significant public health benefit to the communities we serve, these same communities are where a majority of our infrastructure is located.

MWRA appreciates the opportunity to comment and looks forward to participating in future discussions with EEA as these regulations are refined. Please contact Colleen Rizzi (colleen.rizzi@mwra.com) with any questions or requested clarifications of MWRA’s comments.

Sincerely,



David W. Copes, P.E.
Chief Operating Officer

CC: Fred Laskey, Executive Director, MWRA
Matthew Romero, MWRA Advisory Board Executive Director



TOWN OF PLYMPTON, MASSACHUSETTS CONSERVATION COMMISSION

5 Palmer Road, Plympton, MA 02367

January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests. I am the conservation agent for the Town of Plympton and offer the following comments on the draft regulations.

Purpose. Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.

Notifications. Notification should be made at both the local and statewide levels on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition, and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner in this process and be able to collaborate on the disposition throughout the entire process.

Documentation of Surplus Vote by Public Entity. There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests.



TOWN OF PLYMPTON, MASSACHUSETTS

CONSERVATION COMMISSION

5 Palmer Road, Plympton, MA 02367

Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission), the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

Public Comment Period. A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

Natural Resource Values. The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).

In Lieu Funding. In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed of. Funding should be increased to 150% of the fair market value or Value in Use.

Enforcement. The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of these comments.

Sincerely,

Brian Vasa

Brian Vasa
Conservation Agent signing on behalf of the Plympton Conservation Commission

Gendron, Michael (EEA)

From: Lisa Carlin [REDACTED]
Sent: Wednesday, January 22, 2025 9:54 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of West Boylston and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments. Thank you for your commitment to ensuring our lands are protected and that any changes to that protection will be well thought out and known to the public.

Sincerely,

Lisa Carlin

57 Cavour Circle

West Boylston, MA 01583

Gendron, Michael (EEA)

From: Georgia Lee [REDACTED]
Sent: Wednesday, January 22, 2025 9:54 AM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Milton** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable. In Milton, we are seeing conversion proposals that do not uphold or enhance our open space and I am very concerned that Article 97 is not strong or clear enough to protect the Open Space that remains in our town.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Georgia Lee

Milton Resident

Chair, The Boston Committee

www.thebostoncommittee.org

Gendron, Michael (EEA)

From: Bruce Stedman [REDACTED]
Sent: Wednesday, January 22, 2025 9:58 AM
To: Gendron, Michael (EEA)
Cc: Dorothy McGlincy
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident and conservation commissioner of Amherst. In addition to the detailed comments offered by the Massachusetts Association of Conservation Commissions, I want to add:

- **Purpose.** In Section 1 of the regulations, (the Purpose & Applicability) the purpose should include clearly that "proponents" should include local, state, or federal agencies. It should also highlight that climate resilience and adaptation must be considered in depth as part of the review process.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including a detailed analysis of the effects of the proposed change on climate reliance and adaptation.

Thank you for your time and consideration of my comments.

Sincerely,

Bruce J. Stedman, Amherst Conservation Commission

20 Mount Holyoke Drive, Amherst, MA 01002

direct line: 413-835-0252
cell: [REDACTED]

Stedman & Associates: Executive Leadership & Fundraising

Climate Resilience, Nuclear Weapons Abolition, Marine & Freshwater Conservation, Ecological Design & Planning, Sustainable Agriculture

20 Mount Holyoke Drive
Amherst, MA 01002

Gendron, Michael (EEA)

From: Merilee Kelly <MKelly@townofrochester.com>
Sent: Wednesday, January 22, 2025 9:59 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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January 22, 2025
Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests. I am a resident of Mattapoisett and I offer the following comments to the draft regulations.

- Purpose. Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- Notifications. Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
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Thank you for your time and consideration of my comments.

Sincerely,

Merilee Kelly
60 Fairhaven Rd, Apt. 1E
Mattapoisett, MA 02739

Merilee

Merilee Kelly
Environmental Planner/Conservation Agent
Town of Rochester, MA
508 763-5421

Gendron, Michael (EEA)

From: Tony Beattie [REDACTED]
Sent: Wednesday, January 22, 2025 10:01 AM
To: Gendron, Michael (EEA)
Subject: 301CMR52.00

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vplease forward on to others as you see fit...
Sherrill

----- Forwarded message -----

From: **Dorothy McGlincy** <dorothy.mcglincy@maccweb.org>
Date: Tue, Jan 21, 2025 at 8:31 PM
Subject: URGENT CALL TO ACTION: Submit Comments to EEA to Protect Article 97 Lands by January 22, 2025
To: [REDACTED]

January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Pepperell** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
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Thank you for your time and consideration of my comments.

Sincerely,

Tony Beattie, 36 Oak hill St. Pepperell

Gendron, Michael (EEA)

From: Fred Beddall [REDACTED]
Sent: Wednesday, January 22, 2025 10:17 AM
To: Gendron, Michael (EEA)
Subject: comments on proposed regulations 301 CMR 52

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Dear Secretary Tepper,

I write with concern about the proposed regulatory change to allow the selling off or "disposing" of Article 97 lands. This represents a potential breach in trust between the Commonwealth and we, the citizens and property owners — both those who have supported the investment of taxpayer money into the conservation of land, and the landowners who have foregone financial gain by enrolling their property in programs under Article 97.

I am such a landowner, being the owner of land subject to an APR easement. The proposed regulatory changes might facilitate both the loss and erosion of natural resource values, and simultaneously, the enrichment of certain individuals or vested interests in a way that diminishes public faith in the very idea of "permanent" conservation.

Therefore the new regulatory framework must be very strict, with guardrails to defend the public interest and faith in the promises made by government officials, many dating back decades or longer. The Healey Administration should not be in the position of instituting "rollbacks" of land protections. Many of these properties were protected after long and difficult negotiations and compromise. It would be worse than ironic to see Governor Healey cast in the same light as President Trump.

I gather that Governor Healey has the view that the climate emergency requires sacrifices. However it is notable that the sacrifices requested seem to fall most heavily on natural lands, and wildlife habitat, rather than on the economic actors requiring ever more energy supply, such as the enormous new demand from "data centers" to power AI (and reward the small group of AI investors.)

In specific, I support the language suggested by the Massachusetts Association of Conservation Commissions, the MACC.

Sincerely,

Fred Beddall
280 W Franklin St
Holyoke MA 01040

3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org



CAPE COD
COMMISSION

Via Email

January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Proposed regulations, 301 CMR 52.00: *Disposition or Change in Use of Article 97 Interests*

Dear Mr. Gendron,

The Cape Cod Commission is the regional land use planning, economic development, and regulatory agency created in 1990 to serve the citizens and 15 towns of Barnstable County, Massachusetts. The Commission's mission is to protect the unique values and quality of life on Cape Cod by coordinating a balanced relationship between environmental protection and economic progress. The vision for the future of Cape Cod, as articulated in the Cape Cod Regional Policy Plan, is a region of vibrant, sustainable, and healthy communities, and protected natural and cultural resources. Open space is a critical element of achieving this vision. Open space preservation will ensure that the values and characteristics that make this place special will be sustained and stewarded for future generations.

Since its inception, the Cape Cod Commission has maintained a strong interest and role in open space protection in Barnstable County through both planning initiatives and regulatory processes. Commission staff provide technical assistance to Cape Cod communities developing local plans, bylaws and regulations, and work with municipalities and other parties to highlight opportunities to incorporate important open space actions and protections within their towns. The Commission also regulates Developments of Regional Impact and requires open space as mitigation where new development is proposed. The permanent protection and no net loss of the valuable open spaces Cape communities have worked so hard to conserve, is of utmost importance.

The Executive Office of Energy and Environmental Affairs (EEA) is proposing new regulations authorized by Chapter 274 of the Acts of 2022, An Act to Preserve Open Space in the Commonwealth. The proposed regulations, 301 CMR 52.00: Disposition or Change in Use of Article 97 Interests, are required by the Act and provide procedures and requirements for proposals to change the use or dispose of land or interests in land subject to Article 97 of the Amendments to the Constitution of the Commonwealth. The codification of EEA's "no net loss" policy into the Open Space Act was a remarkable achievement that underscores the Commonwealth's commitment to



strong and lasting open space protection. The Commission is pleased to see the draft regulations and is grateful for the opportunity to comment. Commission staff attended (via Zoom) EEA's public hearing on the proposed regulations on December 17, 2024, and supports many of the comments heard at that meeting.

The Commission agrees with recommendations for EEA to incorporate a stronger purpose statement to ensure the no net loss intent of the regulation is clear, that conversion of Article 97 land is a last resort, and that the avoid, minimize, mitigate hierarchy is followed. The Commission supports calls for high standards for public notice, including abutter notification and posting land disposition requests in the Environmental Monitor, and meaningful public and public entity involvement. The Commission also supports calls for more details about determining natural resource values, appraisals being required to meet state standards, and in-lieu fees factoring in additional costs of acquiring conservation land and land appreciation. The Commission agrees that process timelines for regulation should be clarified. The Commission shares concerns raised related to the consequences for non-compliance with the regulation and encourages EEA to provide clarification in the regulations regarding enforcement.

The Commission commends EEA for moving the Open Space Act forward with the tools and resources on the Open Space Act webpage. We look forward to seeing the final regulations and continued partnership with the Commonwealth in open space protection.

Sincerely,



Kristy Senatori
Executive Director

Gendron, Michael (EEA)

From: Pamela Hargh [REDACTED]
Sent: Wednesday, January 22, 2025 10:50 AM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Marshfield** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations

should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed of. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Pamela Harget (Open Space Marshfield)

75 Preston Ter, Marshfield, MA 02050

Gendron, Michael (EEA)

From: Christine [REDACTED]
Sent: Wednesday, January 22, 2025 10:51 AM
To: Gendron, Michael (EEA)
Subject: 310 CMR 52

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Dear Mr. Gendron,

I am writing to express my **strong opposition** to the proposed changes to Massachusetts State Constitution Article 97 outlined in the draft regulation 301 CMR XX.52. I respectfully ask that any proposal that weakens the protection of residents under Article 97 not be enacted.

My opposition stems from a strong belief that the residents of the Commonwealth have benefited from having land protected under Article 97, which has strong provisions safeguarding clean air, clean water, and natural resources while ensuring environmental preservation and **local community input into how protections are maintained**.

The first I heard about the state considering new regulations was just two hours before the January 16, 2024, hearing. Unfortunately, I could only briefly attend via Zoom, but I and other participants spoke about the event's lack of participation and notice. I agree with other speakers that the event should have been very well attended instead of closing before the allotted time because of a lack of participants. If MA is to continue to maintain national leadership status in the protection of our critical natural resources, the Healey administration cannot afford to enact regulations when there is strong evidence of a lack of public participation in the process.

While the Environmental Monitor is available, with so many other priorities in residents' lives, it cannot be pointed to as the information source that reaches the majority of citizens. Press releases and notifications to appropriate boards and commissions are necessary for hearings on paramount environmental importance.

My recommendation is that the Executive Office of Energy and Environmental Affairs (EEA) withdraw the proposed regulations due to a lack of notice, develop a plan for widespread outreach, and conduct a new series of hearings to learn the reaction from Conservation Commissions and other boards and community organizations in the majority of the 351

communities in MA that the proposals may impact.

The proposed provisions also indicate that the state agency will work with proponents. What happens to opponents? Will funds be allocated to allow them to conduct research and present information with expertise similar to that of the proponents?

Towns in western MA are already reeling from the energy-siting legislation that removes some local control in the decision-making process. Please don't compound the problem by issuing new Article 97 regulations that have not been vetted by the residents who will be impacted by potentially weakening an important Constitutional guarantee.

Respectfully submitted,

Christine Rasmussen

Please acknowledge receipt of these comments

Christine

Gendron, Michael (EEA)

From: Maureen Coulter [REDACTED]
Sent: Wednesday, January 22, 2025 10:53 AM
To: Gendron, Michael (EEA)
Cc: Maureen Coulter
Subject: 301 CMR 52

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Dracut, MA** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly

delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Maureen M. Coulter

57 Lantern Lane, Unit 6, Dracut, MA 01826

Gendron, Michael (EEA)

From: John Grieb [REDACTED]
Sent: Wednesday, January 22, 2025 11:01 AM
To: Gendron, Michael (EEA)
Subject: Support for the MACC's comments regarding 301 CMR 52.00,

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Dear Secretary Tepper:

January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Wellfleet and I endorse the following comments proposed by the Massachusetts Association of Conservation Commissions (MACC):

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
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- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
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Thank you for your time and consideration of my comments.

Sincerely,

John Grieb
165 Bayberry LN
Wellfleet, MA 02667

Gendron, Michael (EEA)

From: John Keeley [REDACTED]
Sent: Wednesday, January 22, 2025 11:07 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52 - Proposed Open Space Act regulations

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Wilmington and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open

Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
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- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

John Keeley
60 Lawrence Street
Wilmington, MA 01887



Gendron, Michael (EEA)

From: [REDACTED]
Sent: Wednesday, January 22, 2025 11:10 AM
To: Gendron, Michael (EEA)
Cc: Kristin Carnahan
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Longmeadow, MA and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
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- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and

infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

V/R,

Patrick Carnahan
311 Farmington Rd, Longmeadow MA 01106



LINCOLN CONSERVATION COMMISSION

CONSERVATION DEPARTMENT
16 LINCOLN ROAD
LINCOLN CENTER, MA 01773
781-259-2612
CONSERVATION@LINCOLNTOWN.ORG

January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper,

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. Town of Lincoln Conservation Commission staff offer the following comments on the draft regulations.

1. **Purpose.** Section 1 of the regulations (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
2. **Notifications.** Notification should be made at the statewide level on platforms that provide regular email notification (such as the Environmental Monitor) and also at the local level (i.e. municipal Conservation Commission or Open Space Committee webpage). The Notification should also be posted at the land proposed for disposition. Furthermore, a public site inspection of the land proposed for disposition and the Replacement Land should be required. The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
3. **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

4. **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
5. **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
6. **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
7. **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction, and ineligibility for state assistance programs.

Thank you for your time and consideration of our comments.

Sincerely,

Michele Grzenda

Michele Grzenda
Conservation Director

Stacy Carter

Stacy Carter
Conservation Planner



Town of Pepperell
Conservation Commission

Town Hall, One Main Street
Pepperell, Massachusetts 01463
(978) 433-0325

town.pepperell.ma.us/conservation

January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, *301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)*

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. On behalf of the Town of Pepperell Conservation Commission and as a resident of the Town of Pepperell, I offer the following comments to the draft regulations.

As the Conservation Agent, I understand the enormous amount of work involved with preserving each and every acre of our protected, valuable open spaces. Negotiations with landowners; securing funding from federal, state, local, and private entities; and coordination with Town boards or Town Meeting schedules, all include countless hours of time and effort. We love the work we do and we know when our efforts are successful, we are rewarded with the knowledge that we have done our job to protect so many important, critical natural resources. We want to ensure that the work we are responsible for has the appropriate, clearly defined regulations in place to assist EEA and every community through a thorough, thoughtful Article 97 Disposition process as suggested in the bulleted list below.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for

the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board, or Town Meeting.

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Thank you for your time and consideration of my comments.

Sincerely,



Paula Terrasi
Conservation Administrator
1 Main Street, Pepperell, MA 01463 (office)
77 Jewett Street, Pepperell, MA 01463 (home)

Gendron, Michael (EEA)

From: Glorianna Davenport <glorianna@livingobservatory.org>
Sent: Wednesday, January 22, 2025 11:26 AM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00:

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Plymouth Massachusetts and I support the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97

Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Glorianna Davenport

139 Bartlett Road

Plymouth, Ma 02360

glorianna@livingobservatory.org

--
Glorianna Davenport
President, [Living Observatory](#)
Member of the Board, [The Plymouth Independent](#).
Research Associate, MIT Media Lab
617 642 7934

[Link to recent Learning Report](#)

Gendron, Michael (EEA)

From: Nancy Erikson [REDACTED]
Sent: Wednesday, January 22, 2025 11:29 AM
To: Gendron, Michael (EEA)
Subject: Article 97

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

I am writing to express my opposition to the proposed changes to Article 97. I believe that it is very important to protect our natural environment from disturbance and even destruction by these wind energy projects. I also believe that it is important that the communities affected by these projects should not be shut out of the decision making by streamlining the permitting process. These are historic recreational areas that are quite fragile. We value these areas and they are necessary to our economy. Please reject the proposed changes to Article 97 that weaken the protections that it was meant to provide to our communities. We need more input in the decision making process not less. Please consider carefully the impact on our communities that the weakening Article 97 would have and reject this proposal.

Thank you,
Nancy Erikson
Falmouth MA



247 Station Drive, SZE270
Westwood, MA 02090

Marc J. Richards
Vice President, Sustainability and
Environmental Affairs

January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114
(VIA Electronic Mail)

RE: Commonwealth of Massachusetts Draft Regulations for Disposition or Change in Use of Article 97 Interests

To Whom it May Concern:

Eversource Energy Service Company (“Eversource”) appreciates the opportunity to submit comments in response to the Commonwealth of Massachusetts *Draft Disposition or Change in Use of Article 97 Interests*. Eversource is New England’s largest energy delivery company with approximately 4 million electric, natural gas and water customers in Massachusetts, Connecticut, and New Hampshire and owns and maintains over 42,000 acres of land throughout our service territory. Its operating companies in Massachusetts include NSTAR Electric Company, NSTAR Gas Company, and Eversource Gas Company of Massachusetts. The following are the company’s comments on the draft regulations and recommendations for modifications to the proposed rule.

The proposed regulations will implement and codify the requirements of the Public Lands Protection Act (“PLPA”, Mass. General Laws, ch. 3 §5A), which provides for a public notification process and alternatives analysis prior to filing legislation seeking 2/3 approval from the legislature for an Article 97 disposition. Eversource supports the concepts of transparency and public engagement presented in the draft regulations. Eversource and its operating companies occasionally need to use Article 97 lands while building or maintaining our electric and natural gas supply systems. This need may increase as the breadth of projects that contribute to the Commonwealth’s clean energy transition continue to be identified. Decarbonization through electrification will necessitate the acquisition of more land or interests in land for transmission lines, substations, gate stations and other needs as the demand for energy increases. While efforts are made to avoid needing additional interests in Article 97 properties, the need for such interests may be unavoidable due to utility congestion and increasing need to place utilities underground outside of existing corridors.

Eversource requests clarification on a few aspects of the proposed regulation. First, will more instructions or guidance be provided for the order of operations to fulfill notice requirements of



Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
January 22, 2025 – Page 2

the regulations? Eversource is unclear if the proposed regulations are intended to prescribe the timing of a proponent's formal notice. It has traditionally taken instruction from the agency or municipality that owns or controls the Article 97 property on this timing. Of particular concern is clear identification of when the 21-day notification period starts and whether submitting this information into the currently available portal suffices as providing notice. Are there any other mechanisms of notice anticipated that would be required to trigger the start of notification?

Second, the concept of "change in use" has been reviewed over the course of Article 97's history by the Commonwealth's courts and prior to Article 97 under the Prior Public Use Doctrine. State and municipal entities that hold Article 97 lands and those that hold underlying easements have come to rely on longstanding jurisprudence affirming that a change of use in this context does not include improvements or maintenance activities associated with the day-to-day operation of the property in accordance with its current use. This legal standard must be preserved and "change in use" should continue to apply only in more drastic scenarios such as an attempt to use municipal parkland for a new educational facility (See *Smith v. City of Westfield*, 478 Mass. 49 (2017)) or filling a Great Pond for transportation use (See *Sacco v. Department of Public Works*, 352 Mass. 670 (1967)). Finally, Eversource agrees with the provisions in XX.07 of the proposal that recognize certain dispositions should not require the provision of replacement land because they do not impact the ultimate Article 97 use of the property. The limited impact to this use during construction can be addressed through the purchase price of the interest or applicable permit conditions. Eversource seeks confirmation that the exemption for air rights easements would apply to overhead utility lines crossing Article 97 property as well as utility line clearances needed to promote reliability and mitigate fire risk.

Thank you for your consideration of our comments. Should you have any questions or need additional information, please contact Tracy Gionfriddo, Climate and Environmental Regulatory Program Lead, at 860-665-5762.

Sincerely,

Eversource Energy Service Company

A handwritten signature in blue ink that reads "Marc J. Richards".

Marc Richards, PE, LSP
Vice President – Sustainability and Environmental Affairs

Gendron, Michael (EEA)

From: Kenneth Doucet [REDACTED]
Sent: Wednesday, January 22, 2025 11:50 AM
To: Gendron, Michael (EEA)
Subject: Concerns with the Proposed Changes to Massachusetts State Constitution Article 97 as outlined in the draft regulation 301 CMR XX.00

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Dear Mr. Gendron,

I am writing to express my strong opposition to the proposed changes to Massachusetts State Constitution Article 97 as outlined in the draft regulation 301 CMR XX.00. I am deeply concerned that these changes would significantly weaken the protections afforded to the people of the Commonwealth under Article 97, which safeguard clean air, clean water, and natural resources, while ensuring environmental preservation and local community input.

My specific concerns are as follows:

Erosion of Environmental Protections:

- Article 97 was enacted to protect the public's right to clean air and water, and to preserve the natural, scenic, and historic resources of the Commonwealth. The proposed changes prioritize expedited permitting for energy projects over these vital protections. This would set a dangerous precedent, allowing developers to

bypass safeguards that ensure environmental and community well-being.

Diminished Local Input and Oversight:

- By streamlining permitting processes under a centralized state authority, such as the Energy Facility Siting Board (EFSB), the proposed changes would significantly reduce the influence of local governments and communities in the decision-making process. This undermines the voices of the residents who are most directly affected by these projects.

Impacts on Falmouth and Similar Communities:

- As a resident concerned about the potential designation of Falmouth

as a cable landing site for the SouthCoast Wind project, I am alarmed by the implications of weakening Article 97 protections. Our community's natural resources and quality of life should not be sacrificed for the convenience of developers.

Lack of Public Awareness:

- Many residents remain unaware of the proposed changes and their long-term implications. The limited outreach and initial notice regarding the December 2024 public hearing suggest a lack of transparency in the process. Extending the comment period and holding additional hearings is a

step in the right direction, but more effort is needed to ensure widespread public engagement.

Balancing Clean Energy Goals with Environmental Integrity:

- While I support clean energy initiatives, I firmly believe they must not come at the expense of fundamental environmental protections. The proposed changes shift the balance too far in favor of expedience, threatening the very resources that clean energy projects aim to preserve.

I urge the Executive Office of Energy and Environmental Affairs (EEA) to reject these proposed changes and preserve the integrity of Article 97. Protecting our natural resources and ensuring fair and transparent processes should remain a top priority as we pursue a sustainable energy future.

Thank you for considering my concerns. I would appreciate confirmation that my comments have been received and recorded.

Sincerely,

Kenneth Doucet

Gendron, Michael (EEA)

From: Nick Lowell [REDACTED]
Sent: Wednesday, January 22, 2025 11:51 AM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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I am writing to express my support for the changes proposed in Article 97 regarding public lands. I believe the changes add clarity to the regulation and will be a net benefit.

Thank you,
Nick Lowell
27 Atamannsit Rd.
East Falmouth, MA 02536

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Wednesday, January 22, 2025 11:56 AM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Peru and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Kimberly Wetherell

10 South Rd.

Peru, MA 01235

*"We worship an invisible god and slaughter a visible nature-
Without realizing that this nature we slaughter is the invisible God we worship."*
Graffity on a electrical box at the corner of Blindernveien and Apalveien.

Gendron, Michael (EEA)

From: Craig Hannafin [REDACTED]
Sent: Wednesday, January 22, 2025 12:02 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulation 301 CMR 52.00

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Marshfield and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the

municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Craig Hannafin, Marshfield Conservation Commission Chair

Gendron, Michael (EEA)

From: Susan Caron [REDACTED]
Sent: Wednesday, January 22, 2025 12:05 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52 Comments on Proposed Open Space Act Regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Secretary Tepper,

As the Chair of the Open Space Committee in Marshfield, I am very concerned that the proposed Open Space Act Regulations be clear, specific and enforceable. The residents of Marshfield have worked for decades to acquire and ensure perpetual protection for land of high conservation and recreation value for our community.

Many properties that were acquired prior to the passage of the Community Preservation Act are not protected by Conservation Restrictions that are required today making Article 97 the only way to ensure that land is used as intended for conservation, water supply protection and passive recreation.

I appreciate the opportunity to comment on 301 CMR 52.00 for the CHANGE IN USE OR DISPOSITION OF ARTICLE 97 INTERESTS and hope you will consider the following comments.

1. Purpose . Sec 1 should clearly state that the regulations are intended to protect, preserve and enhance open spaces that are protected by Article 97 and the bar must be high to convert land to any other use. There must be no net loss of open space as a result of any conversion. This should be stated.
2. Notifications of proposed conversions should be sent to local communities and statewide by use of platforms that provide additional outreach to stakeholders and conservation groups.
3. The conversion of land to any use that conflicts with the original intent for acquiring or otherwise protecting the property should require 2/3 vote of the public entity that has care and custody of the property.
4. The Natural Resource Values should be specific and state if the land is included in an approved Open Space and Recreation Plan.
5. The regulations should include Enforcement and Penalties for unapproved conversions that are substantial enough to act as a deterrent to such activities.

I appreciate your time and thank you for considering my comments

Sincerely,
Susan Caron, Chair

Marshfield Open Space Committee
PO Box 907
Marshfield , MA 02050



TOWN OF EASTON
Conservation Commission
Department of Planning & Economic Development
136 Elm Street, Easton, Massachusetts 02356
Tel: (508) 230-0630 Website: www.conservationcommission.org



January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Proposed Regulations *301 CMR 52.00: Disposition or Change in Use of Article 97 Interests (Open Space Act)*

Dear Mr. Gendron,

On behalf of the Easton Conservation Commission (ECC), I want to express my appreciation for this opportunity to provide comments to the Executive Office of Energy & Environmental Affairs (EEA) on the proposed regulation updates, *301 CMR 52.00: Disposition or Change in Use of Article 97 Interests*.

Municipal staff and conservation organizations play a critical role in making sure Art 97 land isn't converted or if necessary, making sure a conversion is done within the required guidelines to protect natural resource values. Municipal staff are the boots on the ground partners reminding or informing our professional counterparts about Art 97 and the steps that are required to comply. Municipal staff and conservation organizations ensure Art 97 requirements aren't ignored.

As municipal leaders and long-time partners in land preservation, ECC applauds EEA and the Legislature for passing this important Legislation. **We believe that it is critical that the implementing regulations be clear and respect the key role that municipalities play in the disposition process.**

Key Points to consider

- Chapter 274: An Act Preserving Open space in the Commonwealth states that a Public Entity can request the disposition or change in use. It does not recognize individuals, partnerships, trusts, firms, corporations, or associations as an entity that can make such a request. Please remove individuals, partnerships, trusts, firms, corporations, or associations from the definition of "Proponent".
- The Public Entity should be a partner and collaborating on the disposition throughout the entire process
- The requirement by the Public Entity to declare the proposed land for disposition as surplus to Article 97 Interests and needs and a unanimous vote should be included in the Regulations.

- Notification should be made at both the local and statewide level on platforms that provide a regular email notification, include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land.
- The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- In Lieu Funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed, funding increased to 150% of the fair market value or Value in Use, and improved coordination with the Public Entity to determine available staffing and resources to complete the Action.
- Clarification of definitions, difference between Waivers and Certain Easements sections, and logistical improvements to the process.

EEA has made great strides in improving transparency of the Article 97 disposition process and ECC applauds your efforts for tackling this complicated and important issue. Your commitment to land protection is clear and we look forward to working collaboratively on our shared goals.

Thank you!

Sincerely,



Benjamin Carroll,
Chair, Easton Conservation Commission

Enclosure

CC: via email

Governor Maura Healey, Maura.Healey@mass.gov

Representative Ruth B. Balser, Ruth.Balser@mahouse.gov

Senator James Eldridge, James.Eldridge@masenate.gov

Under Secretary Stephanie Cooper, Stephanie.Cooper3@mass.gov

Assistant Secretary Kurt Gaertner, kurt.Gaertner@mass.gov

Secretary Rebecca Tepper, Rebecca.L.Tepper@mass.gov

Robb Johnson, Mass Land Trust Coalition, robb@massland.org

Bob Wilber, Robert.Wilber@mass.gov

Massachusetts Society of Municipal Conservation Professionals, massconpros@gmail.com

Dorothy McGlincy, Massachusetts Association of Conservation Commissions

dorothy.mcglincy@maccweb.org

Gendron, Michael (EEA)

From: Brent Baeslack <brent@townofrowley.org>
Sent: Wednesday, January 22, 2025 12:16 PM
To: Gendron, Michael (EEA)
Cc: Bruce Tarr; andy.vargas@mahouse.gov; Barry.Finegold@masenate.gov; Kristin.Kassner@mahouse.gov
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Bradford (part of Haverhill) and serve the Town of Rowley as their Conservation Agent, I offer the following comments to the draft regulations:

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable. The principle of “no net loss” should be primary and strongly declared as the intent.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition. It is very important to include a site inspection of the land proposed for disposition and the Replacement Land. Included should be a requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public

Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly stated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a unanimous vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP). Ensure that the regulations include a framework for a meaningful evaluation of natural resource values for the compensatory land and require the opinion of the Public Entity on the compensatory land. Recommend using the Riverfront Alternatives Analysis assessment framework as a model to provide decision-makers with a tool to determine compliance.
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. The regulations should be more explicit about what efforts are needed to document that In Lieu Fees are the only feasible option. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Brent Baeslack

20 Montvale Street

Bradford, MA 01835

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Wednesday, January 22, 2025 12:18 PM
To: Gendron, Michael (EEA)
Cc: [REDACTED]
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Somerville, MA and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
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- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Edward Woll
80 Winslow Ave
Somerville, MA 02144

Edward Woll
Cell: [REDACTED]
Email: [REDACTED]

Gendron, Michael (EEA)

From: Andrew Reed [REDACTED]
Sent: Wednesday, January 22, 2025 12:26 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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I am writing to you about the proposed regulations to implement *An Act Preserving Open Space in the Commonwealth*. From my reading, they seem reasonable if a bit too vague in certain areas. I strongly support the increased role of the Secretary of EEA to waive certain requirements.

One concern I have is that it does not further delineate exactly *when* an analysis of alternatives is complete and provide liability shielding to the entity that filed the bill or submitted the . This will an opening NIMBYs will weaponize via lawsuits to continue strangling the Commonwealth's goals of achieving economic growth and affordability in an environmentally sustainable way. In particular, I am thinking of SouthCoast Wind's effort to grow our renewable energy being attacked by a small vested group of anti-wind reactionaries who view the Article 97 as a tool to try to kill desperately needed offshore wind.

Sincerely,
Andrew Reed
Mashpee, MA

Gendron, Michael (EEA)

From: David White [REDACTED]
Sent: Wednesday, January 22, 2025 12:35 PM
To: Gendron, Michael (EEA)
Cc: ConCom Admin; Dorothy McGlincy
Subject: 301 CMR 52

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Arlington and a member of both the Conservation Commission and the Open Space Committee and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

We need to make sure that Article 97 lands are adequately protected.

Thank you for your time and consideration of my comments.

Sincerely,

David White, 55 Bow Street, Arlington MA

Gendron, Michael (EEA)

From: Amyrah [REDACTED]
Sent: Wednesday, January 22, 2025 12:41 PM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **[add your TOWN/CITY]** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Amyrah Arroyo, 26 Bruce St Grafton MA



Town of Stow
Conservation Commission
380 Great Road
Stow, Massachusetts 01775
(978) 897-8615
FAX (978) 897-4534
conservation@stow-ma.gov

January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Proposed Regulations 301 CMR 52.00: *Disposition or Change in Use of Article 97 Interests (Open Space Act)*

Dear Mr. Gendron,

Thank you for this opportunity to comment on the draft regulations for the Open Space Act. The Town of Stow Conservation Commission has been a strong advocate for the Public Lands Protection Act for many years. The Commission has voted unanimously to submit these comments and want to thank you for your work developing regulations for the recently passed Open Space Act and for the increased transparency that these regulations will foster.

In Stow, we have a strong and proud history of protecting land, and the Conservation Commission protects and stewards more than 1600 acres of land in fee and more than 800 acres of conservation restrictions. During that time, we have fended off several efforts to divert conservation land for a new school and playing fields, airport landing lights, and for water supply wells. In each case, we felt that alternatives were available that had not been explored. More recently we have shepherded two Article 97 dispositions through the process, assisting with the evaluation of alternatives, identifying and protecting replacement lands for both that had equal or greater natural resource values, and collaborating with the proponents and EEA through every step of the process. As a result, we are very familiar with this issue and with the process of seeking legislative approval for repurposing conservation land. Over the years, the Article 97 policy, particularly the requirement that the Conservation Commission's vote be unanimous, have been critical to our success in defending our public resources

We want to identify five issues for your attention as you work to revise and finalize the regulations.

1. First, the interaction between the regulations and the policy is unclear and we do not have the benefit of being able to review revisions to the policy. However, we think it important that three things be incorporated into the *regulations*, since they have greater force of law than a policy document. These are 1) an affirmative statement of the no net loss goal; 2) the requirement for the public entity to declare the land surplus; and 3) the quantum of vote that must be taken by the Public Entity where this is required. As we have already indicated, the current requirement that the vote be unanimous has been critical for us in the past in safeguarding our conservation holdings.
2. Second, we understand that it is the intent of the regulations that the public entity with land taken for another purpose be involved in the process, but this should be made more explicit in the regulations and in any flowcharts explaining the process. We are the ones that know the

land, that will have to manage any replacement land, that can identify alternatives that may not have been considered, and that can provide information on the comparative natural resource values of various properties. As written, the regulations are very explicit about the need for Proponents to consult with EEA, but less so about the involvement of the Public Entity in the process. Adequate time and opportunity for comment by the Public Entity and the public should be provided for all dispositions.

3. The provision of in lieu funds as an alternative to replacement land should be the exception, with every effort made to find replacement land during the disposition process. The regulations should be more explicit about what efforts are needed to find replacement land. Importantly, the land to be purchased with in lieu funds should be reviewed by the Secretary prior to the expenditure of in lieu funds to ensure that it meets the letter and spirit of the regulations.
4. Also, with regard to in lieu funds, the regulations currently provide several options for the deposit of the in lieu funds, one of which is the local Community Preservation Fund, if one exists. The expenditure of Community Preservation Funds requires the positive vote of the Community Preservation Committee and a vote of the community's legislative body. These are two requirements that could sidetrack the expenditure of the in lieu funds. It is important that the in lieu funds be placed in a dedicated municipal fund where they are able to be expended by the Public Entity that lost the land without further appropriation.
5. Finally, attention needs to be given to enforcement. We understand that there is no explicit enforcement provision in the law but believe that EEA should work with the Attorney General's office and the Legislature to explore options. We note that there was virtually no enforcement mechanism in the MBTA Communities Act, however the SJC has recently upheld the ability of the Commonwealth to file suit to ensure compliance.

Thank you again for this opportunity to comment on the regulations and thank you for the extension of the deadline to give us time to weigh in in a meaningful way.

On behalf of the Stow Conservation Commission,



Kathy Sferra
Conservation Director

cc: Senator Jamie Eldridge
Rep. Kate Hogan
Select Board
Massachusetts Association of Conservation Commissions

Gendron, Michael (EEA)

From: Michael Curtin [REDACTED]
Sent: Wednesday, January 22, 2025 12:53 PM
To: Gendron, Michael (EEA)
Subject: Comment on draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Northampton and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).

- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely, Michael Curtin

Gendron, Michael (EEA)

From: Dan Nolan [REDACTED]
Sent: Wednesday, January 22, 2025 12:55 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52.00 - Comments on regulations for Open Space Act, Change in Use or Disposition of Article 97 Interests

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Hello Secretary Tepper,

My name is Dan Nolan and I'm a member of the Belmont Conservation Commission (and an avid appreciator of the Article 97 lands in Belmont, MA.) My main purpose in commenting on the regulations is to urge you to make sure that they are sufficiently stringent to deter conversion of conservation lands for anything other than the sustenance of the protected ecosystem. If there are situations in which this is unavoidable, the regulations should be strict enough that the proponents of conversion have to re-examine whether it is truly unavoidable. And the compensation should be significant enough to mitigate as much loss as possible.

Strengthening the regulations should be achieved through expanded notifications, documentation, required voting margins, longer public comment periods, and consequences for non-compliance. All of these will raise the bar on necessary land conversions.

As for the mitigation of ecological loss, I would suggest that the in lieu funding be increased from 150% to 200% of the fair market value or Value in Use, of the land. But I am less concerned about financial value than ecological value. I would strongly recommend including some language mandating that, if possible, the amount of land converted from a conservation space should be returned to the space in equal or greater acreage of contiguous land. And if contiguous land to the property is not available, then the proponents should be required to get approval of the land's steward (eg. a Conservation Commission or Land Trust) to establish a conservation restriction on the closest or next best option to support the ecosystem that the conservation land supports. Contiguous land is of much greater ecological value than non-contiguous land and great effort should be made to prevent people from carving off pieces of conservation land and trading them for isolated plots that are completely ecologically disconnected.

Thanks for your time.

Sincerely,
Dan Nolan
[REDACTED]

Belmont Conservation Commission

Sent from iPhone

January 21, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Chapter 274 of the Acts of 2022: 301 CMR 52.00

Sent via email to: Michael.gendron2@mass.gov

To whom it may concern:

I am writing to thank you for your vital public service to the Commonwealth and your hard work in implementing the requirements of Chapter 274 of the Acts of 2022 through new draft regulations 301 CMR 52.00.

The Alliance for Climate Transition (ACT) is a clean energy business, policy, and innovation organization whose mission is to lead the just, equitable, and rapid transition to a clean energy future and diverse climate economy.

ACT is dedicated to growing the clean energy economy in Massachusetts and across the region in pursuit of our mission to create a world-class, equitable clean energy hub in the Northeast. Our 250+ clean energy members include companies based in Massachusetts, doing business here, and hoping to make future investments in the state.

I am writing on behalf of the membership of ACT to offer brief comments on the draft regulations:

Conservation Commission Commission Concurrence Vote

The draft regulations do not address an important element of the Article 97 process: a current component of the 1998 policy requires a unanimous vote of a municipal Conservation Commission to approve the disposal of Article 97 land. It is not clear if these new regulations will fully supersede the 1998 policy, or if a further updated policy will be forthcoming to supplement these new regulations. Regardless, this element deserves consideration.

We would strongly advocate for a more reasonable threshold of a simple majority or 2/3 vote by a municipal Conservation Commission.

Support for XX.07.04 (Replacement Land, Certain Easements)

We strongly support this section, especially the clearly articulated differentiation for subsurface and air easements that do not require replacement land.

We greatly appreciate your consideration of these comments. Should you have any questions, please do not hesitate to contact us.

Thank you again for your public service.

Respectfully,

/s/ Tim Snyder

Tim Snyder – Vice President, Public Policy & Government Affairs
Alliance for Climate Transition (ACT)



Massachusetts Society of Municipal
Conservation Professionals
c/o Conservation Office, 1000 Commonwealth Ave.,
Newton, MA 02459

January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Proposed Regulations 301 CMR 52.00: *Disposition or Change in Use of Article 97 Interests (Open Space Act)*

Dear Mr. Gendron,

On behalf of the Massachusetts Society of Municipal Conservation Professionals (MSMCP), we want to express our appreciation for this opportunity to provide comments to the Executive Office of Energy & Environmental Affairs (EEA) on the proposed regulation updates, *301 CMR 52.00: Change in Use or Disposition of Article 97 Interests*.

MSMCP is a non-profit 501(c)3 organization dedicated to serving the professional staff members that work for Massachusetts Conservation Commissions. MSMCP was founded to provide networking and educational opportunities to these municipal professionals focused specifically on their needs. MSMCP works to raise the level of professionalism by providing a forum for professional information exchange, sponsoring technical and scientific seminars and conferences, and fostering cooperation among contiguous or regionally related conservation commissions and their staffs.

As municipal leaders and long-time partners in land preservation, we applaud EEA and the Legislature for passing this important Legislation and all of the work that you have put into drafting these regulations and associated documents. In particular, we appreciate the increased transparency of the review process through the EEA Portal, including the posting of documents relative to dispositions.

We believe that it is critical that the implementing regulations be clear and respect the key role that municipalities and state agencies as conservation land holders play in the disposition process. In particular, the entity that is the holder of the land proposed for disposition should have a key role throughout the process.

We offer the following suggestions for improvements – and have also appended a redlined version of the regulations where we have attempted to offer suggested language with regard to some of the items below.

Summary Comments:

- State the goal of “No Net Loss” right up front in Section 1 - Purpose and Applicability
- Chapter 274: An Act Preserving Open space in the Commonwealth states that a Public Entity can request the disposition or change in use. It does not recognize individuals, partnerships, trusts, firms, corporations, or associations as an entity that can make such a request. Please remove individuals, partnerships, trusts, firms, corporations, or associations from the definition of “Proponent”.
- Make explicit in the regulations the requirement for the Public Entity to declare the land as surplus to Article 97 needs
- The quantum of the vote by the Public Entity to dispose of Article 97 land should be clarified and clearly written into the regulations. The current policy is for a unanimous vote and this should be maintained.
- Ensure that the regulations include a framework for a meaningful evaluation of natural resource values for the compensatory land and require the opinion of the Public Entity on the compensatory land. Recommend using the Riverfront Alternatives Analysis assessment framework as a model to provide decision-makers with a tool to determine compliance.
- Provision of In Lieu Fees should be the exception with every effort made to find replacement land during the process. The regulations should be more explicit about what efforts are needed to document that In Lieu Fees are the only feasible option.
- The regulations must clarify the enforcement options available to EEA. It is clear from the recent SJC decision in the MBTA Communities case that the AG’s office plays a key role in the enforcement of state laws, even when their role is not explicit in any given statute.

Our more detailed comments follow, keyed to the Sections of the draft regulations:

Section 52.02 Definitions:

- *Article 97 Interest* – Please expand on this section so that it is clear which interests need to be released through this Action and which do not. In the past there has been grey area about leases and licenses. What length License of Limited Duration is acceptable without triggering a Disposition? How does this apply to Conservation Restrictions? Clarity will be helpful for all involved.
- *Comparable Location* - Can this be more directly tied to the Natural Resource Value of an interest subject to disposition? For example, in the same watershed, or adjacent to the same pond or stream?
- Can a new definition for “Public Interest” be added? Numerous times in the regulations a threshold requirement is that an activity serve a “significant public interest.” Guidance on this would be helpful.
- *Proponent* - Includes individuals, partnerships, and corporations. MGL Chapter 3 Section 5A only allows public entities to propose Article 97 dispositions, it says nothing about individuals or corporations proposing such projects. Private parties should not be allowed to propose Article 97 dispositions.

Section 52.03 Pre-submission Consultation

- We are concerned that, as drafted, “pre-submittal consultation” might occur without the involvement of the Public Entity holding the Article 97 Interest. We request that the Public Entity be explicitly required to be a party to all of the discussions – so that there is consultation throughout the process. It is important to state in the regulations that proponents of Article 97 Actions are expected to coordinate with the Public Entity that has custody and control of the land (e.g. the Conservation Commission or Recreation Commission, not just the Select Board) on the request throughout the process. This is generally a concern throughout, where the Proponent could be doing an alternatives analysis, identifying replacement land, issuing public notices, offering in-lieu funding, etc. and providing all of this to the Secretary without any involvement of the holder of the Article 97 land.
- In keeping with the goal of full participation by the Public Entity, we ask that 52.03(1) and 52.03(2) be modified to state “Prior to proposing any Article 97 Action” rather than “taking.”

Section 52.04 Requirements

- In 52.04(2) we ask that the Proponent be required to submit the Alternatives Analysis to the Public Entity in addition to the Secretary and the public if not the Proponent.
- In the outline of the process, there is nothing about the vote required to be taken by the Public Entity (where appropriate). Our understanding is that the Public Entity (if a municipal board) is required to vote that the land is surplus to their needs. The regulations should specify where in the process this is to occur and what the quantum vote is required. The EEA has long stated in its Article 97 policy that this vote must be unanimous. This should be carried forward into the regulations and retained in the new policy that is forthcoming.

Section 52.05 Notification

- We believe that it is in the public interest to have broad access to notices of proposed Article 97 Change in Use or Dispositions at both the municipal level and in one place where they are available for statewide public viewing. There should be a place on the EEA Portal and in the Environmental Monitor for these notices, so that they are publicly visible, notice is provided by email, and the process more transparent for the public and statewide advocacy organizations. If there is a bill number that should be cross referenced as well.
- At the local level, it won’t be possible for Proponents to post on the municipal website without the involvement of the municipality and they should also be required to post notice in a newspaper or newsletter of general circulation, and on the property and conduct a site visit during the process.
- With regard to the duration of the public comment period, this should be at least 30 days for all projects, not just those proposing to provide in lieu funding (current draft says 21 days for in lieu projects).
- The Notification requirements seem to be out of order. Items that should be submitted to the Secretary are listed as the last step as opposed to the first step followed by where it shall be posted and the timeframe for comments for In Lieu Funding.

- These comments on Notification also apply to Section 52.10(2) of these proposed regulations.

Section 52.06 Alternatives Analysis

- Section 52.02 Contents of the Alternatives Analysis should include more detail such as whether State or Federal funding was received in the initial acquisition of the property proposed for disposal; description of existing Article 97 Interests and Natural Resource Value, description of how the disposition is not contrary to an Open Space and Recreation Plan, and declaration by the Public Entity that the land is surplus or not.
- Section 52.06(2)(f) reads "...an affirmative vote by the Public Entity, if applicable.". What is the quantum of vote that is required and when would a vote NOT be applicable. This should be spelled out in more detail in the regulations and not be located elsewhere in a policy where it will not have the same force of law. Also, can a Public Entity reject the request if they believe that the Alternatives Analysis is insufficient or otherwise guide the evaluation of alternatives.
- Section 52.06 (3)(c). Why are parcels that are reasonably available only when *first* considered the Article 97 Action? Expand to indicate that replacement land that becomes available during the process may be required to be evaluated by removing the word "first" or clarifying.

Section 52.07 Replacement Land

- Please clarify that land already held by a conservation nonprofit organization, such as a land trust, for conservation purposes is not eligible as replacement land in Section 52.07(2)(d). Some of this land may not technically have Article 97 protection.
- Please clarify that replacement land should be placed in the same ownership as land that is subject to disposition under these regulations.
- The Secretary should provide an opportunity for the holder of the replacement land to weigh in on the acceptability of proposed replacement land (especially if they will be the ones managing it) and to provide information on the relative Natural Resource Values. The Public Entity is likely to have more information on this than the Proponent.
- Please clarify whether and under what circumstances appraisals can be done by real estate agents and when they must be done by a licensed appraiser to EEA standards. It should be made clear that easements must also be appraised.
- Proponents must provide full appraisals to the Public Entity. There should be a process for resolution of disputes between the Public Entity and the Proponent regarding the appraisal value. Appraisals should only be valid for one year and updated as needed.
- With regard to Section 52.07(4), there is a question about the presumption that zero acres are affected. In many cases, trees above easements need to be removed and cannot be allowed to regrow. Please clarify that in such cases the presumption of zero acres does not apply. We believe that the law should be interpreted in favor of replacement of Article 97 values in situations like this. Stabilization should be required within 6 months, with re-vegetation within two growing seasons. Whose responsibility is it to verify that this has been done and what happens if this standard has not been met?

Section 52.08 Determination of Natural Resource Value

- Please add significantly more details to the Natural Resource Values section. Natural Resource Values can't be described by aerial photography and mapping alone. While they are great tools, it misses the local knowledge component. An inspection of the land to be disposed of and the replacement land should also be required.
- In determining Natural Resource Values, the role the proposed Article 97 disposition land plays in meeting the Interests in Article 97, whether the proposed Article 97 disposition land provides a unique or significant resource, and whether the land is described within the Open Space and Recreation Plan (OSRP) should be added to the evaluation criteria. A site inspection should also be required of the land to be disposed of and the Replacement Land by all parties.

Section 52.09 Funding in Lieu of Replacement Land

We have significant concerns about this section. Overall, we are concerned that there is nothing in this section that requires that the land acquired with in lieu fees be of equal or greater natural resource and economic value as would be required of replacement land. In addition, the three-year timeframe, along with other requirements leave room for the commitment for the expenditure of in lieu funds to be forgotten or ignored. The acquisition of property using in lieu funds will now become the responsibility of the Public Entity rather than the Proponent.

- With regard to 52.09(4)(b)(i)(1), Monies in municipal Community Preservation Funds generally require appropriation at Town Meeting, whereas funds in municipal Conservation Funds do not. We believe that the funds should be placed in a Conservation Fund or other dedicated account that the Public Entity is authorized to expend without further appropriation. Funds should not be held in the Community Preservation Fund where their appropriation would require assent by the Community Preservation Committee (who may have other priorities) and be subject to further appropriation.
- Section 52.09(2)(a)(ii) should contain more guidance on when the provision of replacement land is feasible vs. infeasible. Consultation with the Public Entity should be required as part of this process.
- In Section 52.09(4)(c) EEA should spell out what is required to "dedicate the land in perpetuity for Article 97 purposes." Specifically:
 - This must be specified in the deed if new land is being acquired
 - If no deed is required (e.g. a transfer from non-Article 97 purposes), the vote making such transfer including the dedication to Article 97 purposes must be recorded at the relevant Registry of Deeds.
- In Lieu Funding of not less than 110% of the fair market value or value in use, is not adequate. This burden includes more than just the land purchase. It includes funding appraisals, title searches, new survey plans, time to negotiate with a landowner and significant staff time to complete the negotiations, title insurance and recording fees, the land purchase, and the follow up reporting. In addition, land value in MA will change significantly in 3 years. If it takes 3 years to find suitable Replacement Land, the land value will have

increased and 110% would not yield comparable acreage or Natural Resource Values. 110% is not enough funding. We suggest increasing this requirement to 150%.

- In Section 52.09(6), the Public Entity should be required to consult with the Secretary in advance prior to the expenditure of funds to ensure that the land meets the Replacement Land requirements and is of comparable or greater Natural Resource Values and appraised values. If the community is already working on acquisition of Article 97 land which requires funding, the in-lieu funds should be available to assist with that effort (e.g. if there is a fundraising component to a land acquisition project that is already underway). We are concerned about the possibility that the land acquired with in lieu funding will not meet the intent of the replacement land requirements, and it will be too late for the Secretary to weigh in after the funds have been spent.

Section 52.10 Waiver or Mitigation

- In Section 52.10(1)(a) clarity is needed on the waiver for situations where the use does not change. For example, in the Q & A document on the EEA website it is stated that a transfer of water supply protection land from a Conservation Commission to a Water Department is not a change of use. However, given the likelihood that such a transfer would result in wells, access roads, water treatment facilities etc., and possible limitations on public use and enjoyment of the land for conservation and passive recreation, this seems like it would be a change of use. Similarly, in a transfer from Conservation Commission to Recreation Commission, the land would still be managed by a Public Entity, but the use could change.
- In Section 52.10(1)(b) what standards are the Secretary to use to determine “insignificant natural resource and recreation value”?
- With regard to Section 52.10(2), there should be an opportunity for the Public Entity to weigh in on whether or not a Waiver or Modification is appropriate.
- Section 52.10(3) Lacks any checks in balances. What if the holder of the Article 97 Interest does not agree with the Waiver or Modification is granted by EEA? There should be some appeal process or the ability of the Legislature to override an extreme decision.

General Comments

Need for Education and Outreach – One of the biggest challenges to compliance with the law is likely to be ignorance of the process by the holders of Article 97 land. To counter this, EEA needs to make explicit what the definition of Article 97 lands is and what is a disposition of an Article 97 interest. It is critical to be clear. Ignorance of the process by the holders of Article 97 land about interests like leases, rights of way, and licenses that may affect Article 97 lands while still allowing them to be used for their intended purpose. Once this is done, there needs to be a concerted effort to reach out to municipalities about these rules through MMA, MACC, MSMCP, Mass Planners and similar statewide entities.

Overall Process Timeline - the sequence of events for Article 97 dispositions is confusing and would benefit from a clear timeline as an addendum to the regulations. The timelines should be explicit about the timing of consultation with the Public Entity and should list the steps from start

to finish in the required order. It would be helpful to develop a model Alternatives Analysis for use by Proponents.

Appeals - The regulations should include an appeals process to decisions under these regulations.

Enforcement -The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for noncompliance with this law and regulations, for the Proponent and the Public Entity. Potential enforcement could include invoking the EEA's civil enforcement, suspension of permits issued by EEA until the non-compliance is corrected to the Secretary's and Public Entity's satisfaction and ineligibility for state assistance programs.

Thank you for providing an opportunity to provide comments on this important Regulation. We look forward to further discussions as needed to provide clarification of any of these comments, or to review potential revisions.

On behalf of the MSMCP Board of Directors,



Regen Jamieson, President

Angela Panaccione, Vice President

Leah Grigorov, Longmeadow, Co-Treasurer

Kathy Sferra, Stow

Rebecca Bucciaglia, Bolton

Delia Kaye, Concord

Michelle Greene

Cassie Tragert

Jennifer Steel, Newton, Co-Treasurer

Brian Vasa, Plympton, Clerk

Liz Allard, Harvard

Jennifer Carlino, Easton

Michele Grzenda, Lincoln

John Keeley

Dorothy McGlincy, MACC ex-officio

cc: Governor Maura Healey via email Maura.Healey@mass.gov

Representative Ruth B. Balser via email Ruth.Balser@mahouse.gov

Senator James Eldridge via email James.Eldridge@masenate.gov

Secretary Rebecca Tepper via email Rebecca.L.Tepper@mass.gov

Under Secretary Stephanie Cooper via email Stephanie.Cooper3@mass.gov

Assistant Secretary Kurt Gaertner via email kurt.Gaertner@mass.gov

Director Robert Wilber, via email Robert.Wilber@mass.gov

Robb Johnson, Mass Land Trust Coalition via email robb@massland.org

Gendron, Michael (EEA)

From: Laurel Facey [REDACTED]
Sent: Wednesday, January 22, 2025 1:26 PM
To: Gendron, Michael (EEA)
Subject: Open Space Act

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Wendell, and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Laurel Facey

47 Davis Road, Millers Falls, MA 01349

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Wednesday, January 22, 2025 1:28 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

It's like apartheidists calling themselves abolitionists. Nothing could be more absurd than handing over precious conservation lands and waters even to state groups now posing as environmentalists.

Please do not allow our conservation lands to be subject to violation and exploitation for ANYONE'S benefit, least of all multinational corporations. Who, with taxpayer funded subsidies, anticipate energy costs to triple. Energy that BOEM says will do nothing to reduce carbon output. And which has already wreaked more carnage and destruction of our oceans, before it's hardly begun!

We know that Avangrid's Ken Kimmel, while head of EOEA, drove through legislation to streamline avangrid's goals. At the expense of the people, lands and waters of this state. While stripping municipalities of our rights to protect our homes. Buying off conservation organizations...

Right now my home is shuddering from the construction of a 5MW Solar installation 140' away. It's being built on 20 acres of residentially zoned land, on top of the Hayden Wellfield. TJA Clean energy sued the town of Barnstable. I fought this for 5 years.

If there is anything you can do to put a halt to any of this, please do your utmost.

Thank you.

Sincerely,

Anne Salas
145 Mockingbird Lane
Marstons Mills, MA 02648
[REDACTED]

Some hearsay: Fishermen from Maine, now barred from their work due to OSW, are being paid to haul whale carcasses away from shore to attempt to hide them from BOEM/NOAA's "take" lists. OSW has just begun and they are already reaching these kill limits.

Gendron, Michael (EEA)

From: Eileen Coleman <ecoleman@burlington.org>
Sent: Wednesday, January 22, 2025 1:32 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a the Conservation Administrator for the Town of Burlington and resident of the Town of Arlington and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Eileen Coleman, Conservation Administrator

Town of Burlington | Conservation Department | 25 Center Street | Burlington, MA 01803,
t [781-270-1655](tel:781-270-1655) | www.burlington.org

All email messages and attached content sent from and to this email account are public records unless qualified as an exemption under the [Massachusetts Public Records Law](#).

Gendron, Michael (EEA)

From: Jodi Rodar [REDACTED]
Sent: Wednesday, January 22, 2025 1:35 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Michael Gendron:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **[add your TOWN/CITY]** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Dr. Jodi Rodar

223 North Valley Road

Pelham, MA 01002

Gendron, Michael (EEA)

From: Diane Regan [REDACTED]
Sent: Wednesday, January 22, 2025 1:37 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

I recently learned about Massachusetts State Constitution Article 97 as outlined in the draft regulation 301 CMR XX.00. As a resident of Massachusetts my whole life, I am greatly saddened to learn that the protection that has been put into place to ensure the preservation of historical land, common space land, and land gifted to a town with strict guidelines, and many more scenarios is now in jeopardy of being greatly altered if this change happens.

As you know Article 97 was originally enacted to protect the public's right to clean air and water and to preserve the natural, scenic and historic resources of the Commonwealth. With companies and organizations being allowed a much easier permitting process at the State level, local governments will have little say in what happens in their towns, which will in turn could potentially affect residency and economic growth. I am all for changing with the times and embracing alternative solutions, but why should we not make this a town's decision?

I can see possibly enacting some sort of change to this Article with Open Space land going forward, and being completely transparent to those generous individuals or families willing to donate land in the future, but it is a tragedy to those individuals and families that until now have so generously given so much to ensure open space in their towns benefiting the Commonwealth, only to now possibly have that land be used for something completely different than what it was intended for. What a deception to take these parcels of land for free in years past for the benefit of the Commonwealth only to have the rules changed after the land was received.

Please take this under serious consideration and please confirm that this was received and read.

Thank you so much for your time.

Diane Regan

Gendron, Michael (EEA)

From: Margaret Sisson [REDACTED]
Sent: Wednesday, January 22, 2025 1:44 PM
To: Gendron, Michael (EEA)
Subject: proposed regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Harvard, MA who has been a Conservation Commissioner for 25 years and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable. **The State and EEA should recognize the effort, trust and sacrifice over the past 60+ years on the part of families that gave their land into the care of the government in order to protect it as farmland or forest, on the part of conservationists with foresight who gave their lives to land protection, on the part of townspeople who allocated their tax money for conservation, all believing that "in perpetuity" meant just that. It is your job to respect those who preceded you even as you respond to the clamor of people's desires today.**
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the

Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Margaret Sisson, Chair

Land Stewardship Subcommittee

Gendron, Michael (EEA)

From: Jane Sears Pierce [REDACTED]
Sent: Wednesday, January 22, 2025 1:47 PM
To: Gendron, Michael (EEA)
Subject: RE: 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act) to Protect Article 97 Lands

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Holliston and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests.

Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Jane Sears Pierce

835 Marshall Street

Holliston, MA 01746



CITY OF WATERTOWN

Conservation Commission
Administration Building
149 Main Street
WATERTOWN, MASSACHUSETTS 02472

Maria Rose, Chair
Jamie O'Connell, Vice Chair
Leo Martin, Member
Rachel Danford, Member
Jill Ayers, Member
Patrick Towler, Member

January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Proposed Regulations *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests (Open Space Act)*

Dear Secretary Tepper,

On behalf of the Watertown Conservation Commission (WCC), I want to express my appreciation for this opportunity to provide comments to the Executive Office of Energy & Environmental Affairs (EEA) on the proposed regulation updates, *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests*.

Municipal staff and conservation organizations play a critical role in making sure Article 97 land isn't converted or if necessary, making sure a conversion is done within the required guidelines to protect natural resource values. Municipal staff and conservation commissions are the boots on the ground partners reminding or informing our professional counterparts about Article 97 and the steps required to comply.

As municipal leaders and long-time partners in land preservation, WCC applauds EEA and the Legislature for passing this important Legislation. We believe that it is critical that the proposed regulations be clear and respect the key role that municipalities play in the disposition process.

We offer the following comments to the draft regulations:

- **Purpose:** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.

- **Notifications:** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity:** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period:** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values:** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding:** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Waivers and Easements:** Publicly owned land often has existing sewer and drain easements below the surface. Many municipalities are looking for ways to reduce the volume of stormwater runoff flowing directly to rivers and streams and improve water quality by implementing stormwater infiltration to the subsurface on Town-owned land (e.g., parks), which does not detract from the land use on the surface. We encourage EEA to consider a waiver for these important environmental best management practices.
- **Enforcement:** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

EEA has made great strides in improving transparency of the Article 97 disposition process and we applaud your efforts for tackling this complicated and important issue. Your commitment to land protection is clear and we look forward to working collaboratively on our shared goals.

Thank you for your time and consideration of my comments.

Sincerely,

A handwritten signature in blue ink that reads "Maria Rose".

Chair, Watertown Conservation Commission, concom@watertown-ma.gov

Gendron, Michael (EEA)

From: Dale LaBonte [REDACTED]
Sent: Wednesday, January 22, 2025 2:19 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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Dear Secretary Tepper,

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Northampton and I offer the following comments to the draft regulations.

I reiterate the recommendations from the Mass. Assn. of Conservation Commissions, circulated by Dot McGlincy included below.

In addition, I would urge:

1. Lands that have permanent protection should only be replaced by other lands that also have permanent protection or are upgraded to permanent protection.
2. The Secretary should not have the level of discretion granted in the draft, namely to waive or modify any section of the regulations or requirements. This amount of power renders the regulations meaningless.
3. An appeals process that follows standard rules of practice and procedure is needed
4. A public notification process in a local newspaper and through the Environmental Monitor is needed.

Recommendations of the MACC:

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for the opportunity to comment.

Dale LaBonte, she/her
32 Crabapple LN
Northampton MA 01060
[REDACTED]

January 21, 2025

Mr. Michael Gendron
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: 301 CMR 52 – Proposed regulations Article 97 & An Act Preserving Open Space in the Commonwealth M.G.L. c. 3, § 5A

Dear Mr. Gendron,

Following are my comments regarding proposed draft regulations for 301 CMR 52:

I ask that any new regulations strengthen, not weaken, protections for Article 97 properties. After reading the existing rules (301 CMR: 51.00) and the proposed draft, there seems to be more work to do in this regard.

- For example, the proposed rules go into detail about providing an “Alternatives Analysis.” The existing rules make little or no mention of this. If developers are allowed to create and assess alternatives for their projects, this is not in the best interest of the public and inconsistent with the intention of Article 97. The proposed new rules are providing an easier path for developers to use protected vs. unprotected lands. Therefore, this Alternatives Analysis provision should not be included.

There is mention of Natural Resources in the draft regulations. It is important to emphasize that using properties such as residential beaches, woodland, wildlife habitats, walking trails, properties sited on or near wellhead protection areas or over a Sole Source Aquifer for large scale infrastructure is unacceptable. Many of these sorts of areas mentioned are conservation land and often protected by Article 97 for good reasons.

- For example, on Cape Cod, whose way of life is focused on its beaches and other natural habitats, developers have targeted iconic residential beaches where people and wildlife commune, to install extra high voltage infrastructure, site massive wind substations in residential, wooded, and natural habitat areas, and site this infrastructure with massive amounts of toxic dielectric fluids over the Cape’s Sole Source Aquifer, and on or near wellhead protection areas. Developers should be choosing non-Article 97, non-conservation, more appropriate land sites. They should *not* have the opportunity to even consider Article 97 land.

I ask that the EEA look at projects holistically, not just individually. EEA should adopt regulations so that any one community should not be asked to trade off similar types of land for similar sorts of projects. Any new regulations should prevent multiple similar projects from being considered in one town.

- For example, in the Town of Barnstable, a developer has targeted three Article 97 residential beaches, all close to each other, for installation of extra high voltage electrical infrastructure. If successful, these three offshore wind projects will produce four times the power output of the former Plymouth Nuclear plant at peak transmission. This is a completely unsuitable use of Article 97 land, and indeed any sort of conservation land that is dedicated to the well being of its citizens.

It seems that the proposed regulations encourage replacement lands or money be used to offset the use of Article 97 land. I ask that the EEA mandate that certain types of Article 97 land are priceless to the public and that such lands, by law, cannot be replaced with other property – or any amount of money.

- For example, I point to my earlier mention of small residential beaches, and also to an outrageous amount of unspoiled wooded land being targeted by developers for their infrastructure. In reality, developers can site their projects on already industrialized lands, or buy their own property, and label it as extra high voltage electrical infrastructure. Also, this applies to lands targeted for massive substations, often filled with hundreds of thousands of gallons of toxic fluid, proposed to be built over or near conservation areas, well-head protection areas and over a sole source aquifer, the only source of drinking water on Cape Cod.

I ask the EEA to incorporate better provisions to deny developers the opportunity to consider or study certain types of Article 97 land, and require that this be done well in advance of any vote by any legislative body. The process would benefit if the State and citizens were involved earlier in processes, versus waiting to inform them until a process is well underway.

The proposed regulations omit mention of the Applicability of the Policy to Municipalities, as stated in the Article Disposition Policy dated February, 1998. By excluding the language in item IV, the requirements and protections when a municipal body is involved with the disposition of an Article 97 property, will be weakened or removed. It is critical that local municipalities retain strong control in the form of a two-thirds vote requirement by one or more local governing bodies (Town Council), over the disposition of their Article 97 properties.

I submit that the public, including the press, has not been adequately notified of these proposed draft changes. I ask that you not formalize any new regulations at this time. This opinion is not just my own; it was voiced by many citizens on your 1/16/2025, 1:00 pm webinar. I also ask that you publicly post both of your Zoom meetings on this subject. Right now, it is being left up to a few citizens who happen to be following the Article 97 issue to inform the public. Please consider robustly advertising this process, as it is important to the citizens of Massachusetts who cherish their way of life.

Thank you for your time and service to the public.

Sincerely,

Anastasia Guenther
Barnstable, Mass.



TOWN OF WAYLAND

MASSACHUSETTS
01778

CONSERVATION COMMISSION

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3669

January 22, 2025
Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114
Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests. Municipal staff and conservation organizations play a critical role in making sure Article 97 land isn't converted or if necessary, making sure a conversion is done within the required guidelines to protect natural resource values. Municipal staff are the boots on the ground partners reminding our professional counterparts about Article 97 and the steps that are required to comply. Municipal staff and conservation organizations ensure Article 97 requirements aren't ignored. We believe that it is critical that the implementing regulations be clear and respect the key role that municipalities play in the disposition process.

On behalf of the Wayland Conservation Commission, I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.



TOWN OF WAYLAND

MASSACHUSETTS
01778

CONSERVATION COMMISSION

TOWN BUILDING
41 COCHITUATE ROAD
TELEPHONE: (508) 358-3669

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Linda Hansen
Conservation Administrator

January 22, 2025
Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Eastham, chair of the Conservation Commission, member of the Open Space Committee, and vice-chair of the town's Strategic Planning Committee. While I am not writing on behalf of those entities, I note them to add emphasis to the points that follow. I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
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- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
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Thank you for your time and consideration of my comments.

Sincerely,
Karen Strauss
15 Great Pond Road,
Eastham, MA 02642

Gendron, Michael (EEA)

From: Daniel Leahy [REDACTED]
Sent: Wednesday, January 22, 2025 2:48 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52.00 Comments

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. **First, I want to say that I think that most citizens of the Commonwealth would be appalled to learn that permanently protected conservation land can be disposed of and developed.** With that said, I am a resident of **Wendell** and 63% of our community is permanently protected land. We are greatly concerned that our permanently protected land will be impacted by additional energy infrastructure. I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality)

should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
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- **Additional Comments.** I also support the very detailed comments submitted on January 21, 2025 by Robb Johnsonson, Executive Director, Massachusetts Land Trust Coalition and signed on to by more than 40 land conservation organizations and individuals.

Thank you for your time and consideration of my comments.

Sincerely, Daniel G. Leahy

71 Bullard Pasture Road

Wendell, Massachusetts 01379

Gendron, Michael (EEA)

From: Frank Rizzotti [REDACTED]
Sent: Wednesday, January 22, 2025 2:50 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Dear Mr. Gendron,

I attended the public hearing last week on 1/16 and was disappointed that there was no discussion on the intended purpose of the regulatory proposal seeking, "to provide further procedures and requirements for proposals to change the use, or dispose of land, or interest in land subject to Article 97." The lack of notification to the public regarding the hearings in December and January, along with the refusal to provide an overview or allow for a discussion on of the reasoning behind the draft regulations leaves me to believe this process is intended to obfuscate rather than enlighten the public.

I'm left to conclude that the proposed changes are intended to cede interpretation of applicability, and use of Article 97 protection from elected, local and legislative entities to an appointed executive official. Please record my opposition to draft regulations.

Thank you,

Frank Rizzotti
49 Russell Road
Falmouth, MA

Gendron, Michael (EEA)

From: Kate O'Connor [REDACTED]
Sent: Wednesday, January 22, 2025 3:07 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. We are residents of **Westhampton, MA** and we offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
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Thank you for your time and consideration of our comments.

Sincerely,

Kate O'Connor and Frederick Spence

Gendron, Michael (EEA)

From: Constance Gee [REDACTED]
Sent: Wednesday, January 22, 2025 3:10 PM
To: Gendron, Michael (EEA)
Cc: rebecca.tepper@state.ma.us; zzzJudge, Michael (ENE)
Subject: 301 CMR 52 - Comments on proposed Article 97 regulations

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

TO: Mr. Michael Gendron
Executive Office of Energy and Environmental Affairs

CC: Secretary Rebecca Tepper
Undersecretary Michael Judge

RE: Public Comment to Proposed Article 97 Regulations

DATE: January 22, 2025

This public comment is submitted on behalf of the *ad hoc* citizens' group Protect Our Westport Waters (POWW) and the non-profit 501(c)(3) organization Green Oceans, in response to the Secretary of Energy and Environmental Affairs proposed Article 97 regulations.

Horseneck Beach State Reservation in Westport, MA has been identified as a primary landing site for 800MW of export cabling from the proposed Vineyard Northeast (Vineyard Wind 2) offshore wind project and may also be under consideration as a site for other offshore wind cable landings. Horseneck Beach is a much beloved Article 97 protected public space that was gifted to the Commonwealth by the citizens of Westport in 1956.

The proposed Article 97 regulations appear tailor made to enable the State to rapidly advance siting and construction of so-called "renewable" energy project infrastructure, placing the interests of developers over those of the public. These proposed regulations fit hand-in-glove with the recently and swiftly passed Senate Bill 2967, which fast-tracks renewable energy infrastructure and reduces the authority of municipalities and the public in zoning and siting these facilities.

We wish to focus on five of the proposed regulations:

XX.07.4. Certain Easements.

The idea that what is done *beneath* the ground has no effect on a natural area as long as no one can see it is patently absurd. How can the laying of permanent extra high voltage cabling under a public beach be considered a "non-fee simple interest" or that it will "affect zero acres," thus requiring no replacement land if the land surface is "returned to conditions and function existing prior to disturbance?" No one in her right mind will want to sit on a beach atop 800MW of HVDC cabling or have her children play in the immediate area. Resulting EMF radiation emissions can have extremely negative effects on all nearby animals, humans and non-humans.

The caveat that the developer "provides monetary value in the amount equal or greater to the value of the easement" is also absurd. An easement for high voltage cabling could be relatively narrow and thus the replacement acreage would be but a small parcel. Yet the affected area surrounding extra-high voltage cables will extend outward, upward, and downward from the easement trenching for many feet.

The entire section of "Certain Easements" should be deleted.

XX.07 Replacement Land.

There *is no* such thing as "replacement land" when a public beach and natural area is severed by extra-high voltage cabling. Westport has no such "replacement land" available.

XX.09 Funding in Lieu of Replacement Land.

A monetary payout is nothing to offshore wind companies or to any big developer—especially with "green siting" already given the green light by the current Commonwealth Administration.

Whatever happened to the option of denying a project on Article 97 land? At no point throughout these proposed regulations is that option even mentioned.

XX.05 Notification.

This regulation states that notice of a proposed action should be posted "on the website of the Public Entity with care and control of an Article 97 Interest." In the case of Horseneck Beach that would be on the Mass.gov website, the very same "Public Entity" that is keen on fast-tracking renewable energy infrastructure and reducing the authority of municipalities in the zoning and siting of these facilities.

Notice should also be posted on the municipal website of the towns wherein a State-controlled Article 97 property is located. If the Commonwealth truly wants the public notified of the proposed development of a cherished public space, then notification should also be posted in the local paper of record.

Furthermore, "providing the public with a public comment period of at least 21 days" is not nearly enough time for the lay person "to review and comment on the proposed Article 97

Action and Alternatives Analysis." *A minimum of 60 days should be required for public comment.*

The Secretary of Energy and Environmental Affairs being allowed "sole discretion" on Findings and Determinations.

Throughout XX.08 Determination of Natural Resource Value, XX.07 Funding in Lieu of Replacement Land, and XX.10 Waiver or Modification it is reiterated that "the Secretary" reserves "sole discretion" to make all manner of judgements about valuing, waivers, and actions. The Secretary's sole discretion is most frequently based on whether "the proposed Article 97 Action serves a significant public interest" or is determined "to provide greater public benefit" than an Article 97 property does in and of itself. Such absolute power given to a single individual is subject to decisions based purely on authoritarian ideology and for benefit of political and career advancement. *Giving the Secretary "sole discretion" to determine the fate of State-protected open space is dangerous and undemocratic and should not be allowed.*

Thank you for the opportunity to submit these comments on the proposed new regulations regarding change in use of Article 97 Interests.

Constance B. Gee, Ph.D.
President, Protect Our Westport Waters
Founding member, Green Oceans
Westport, Massachusetts



January 22, 2025

BY ELECTRONIC MAIL ONLY — michael.gendron2@mass.gov

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02110

Re: National Grid Comments on Proposed Regulations, 301 CMR 52.00: Disposition or Change in Use of Article 97 Interest

Dear Mr. Gendron:

On behalf of National Grid, thank you for the opportunity to provide comments on EEA's proposed regulations to implement *An Act to Preserve Open Space in the Environment*.

National Grid provides energy to millions of customers in Massachusetts through a complex web of state-wide infrastructure, maintaining and operating over 2,700 miles of electric transmission lines, in addition to electric distribution and gas facilities. We are committed to meeting our responsibilities as a public utility while preserving and enhancing open space and conservation land and minimizing any negative impacts on the environment. While our efforts in this area are longstanding and widespread, we are particularly proud of recent conservation partnerships in Attleboro, Harvard, North Andover and Plainville.

In addition to pursuing these shared goals on a site by site and project by project basis, we are committed to doing our part to help the Commonwealth achieve its decarbonization goals. Maintaining, enhancing and expanding our electric transmission infrastructure is critical to ensure the clean energy transition is a success.

National Grid's transmission network stretches across the Commonwealth, and it is not uncommon for our projects to intersect with state and municipal interests in land that are subject to Article 97 ("Article 97 Interests"). Accordingly, National Grid has a strong, shared interest with EEA in ensuring that these regulations provide clarity.

To that end, we offer the following comments on the proposed regulations. A redline with suggestions as to how to address each of these comments is attached as Appendix A to this letter.

SECTION XX.02 DEFINITIONS

First, we suggest revising the definition of "Article 97 Action." By its terms, Article 97 applies not only to land (i.e., fee ownership), but more broadly to any "lands and easements or such other interests therein" taken or acquired by a public entity for Article 97 Purposes. The proposed definition of "Article 97 Interest" precisely tracks the constitutional provision. However, the proposed definition of "Article 97

Action” introduces some ambiguity and may be underinclusive insofar as portions of the proposed definition could be read to refer to “land” rather than Article 97 Interests more broadly and overinclusive insofar as portions of the proposed definition could be read to refer to privately held interests in land rather than only publicly held interests in land.

Second, we suggest revising the definition of “Comparable Location” so that geographic area is evaluated in light of the Article 97 purpose for which an Article 97 Interest was taken or acquired rather than limiting consideration to census block or municipal boundaries. There are three reasons for this suggestion. First, some Article 97 interests are taken or acquired in order to provide benefits for populations that are distant from the site of the interest or to provide benefits for the Commonwealth as a whole. For example, geographic location means something different in the context of an Article 97 interest acquired to allow for carbon sink or to provide watershed protection than it does in the context of an Article 97 Interest acquired to build a playground. Second, using census block and municipal boundaries could have unintended effects in rural areas and along the coastline, where Article 97 interests are more likely to cross municipal boundaries. Additionally, in rural areas, particularly in Western Massachusetts, census blocks tend to cover a larger geographic area than in urban areas. Third, census blocks are drawn based on population. With very limited exceptions, people do not live on land protected by Article 97. Accordingly, whether Article 97 land is included in a particular census block or its neighbor is likely to be somewhat arbitrary.

Third, we note the use of the word “settlement” in the definition of “Disposition” and are unclear on its meaning. Please consider an alternative term or whether this term is necessary in view of the other elements of the definition.

SECTION XX.06 ALTERNATIVE ANALYSIS

National Grid agrees that cost differences between Article 97 land and otherwise available privately owned land should not, in the ordinary case, be a basis for rendering an alternative infeasible. However, if there are no limits on this principle, a private landowner would be able to charge an exorbitant fee for an alternative. In addition to providing a windfall to that private landowner, allowing a private landowner to charge monopolistic prices would harm the public. National Grid’s projects provide a straightforward example. Any costs of acquisition of land would be passed on to ratepayers. With respect to other project proponents, the burden of increased costs is also likely to fall on the public, even if the path is less direct. The regulations suggest that an Article 97 Action must be for a “public purpose.” *See XX.06 2.a.* If this is the case, then the project proponent is likely to pass on increased project costs to the public, directly or indirectly. Accordingly, National Grid suggests that the regulations acknowledge that a private landowner’s demand for payment grossly in excess of fair market value may render an alternative infeasible.

SECTION XX.07 REPLACEMENT LAND

National Grid appreciates that the proposed regulations seek to address situations in which an Article 97 Action is required, but because the interest being transferred is less than a fee interest, it is most appropriate to deem the Action to impact zero acres. We have three suggestions with respect to this provision.

First, the placement of the word “temporary” before the word “easement” in the first sentence creates some ambiguity as to whether “temporary” applies only to “easement” or also applies to “subsurface or air rights easement.” Based on XX.07 4.a., we believe the intent was to modify only “easement” and, in

any event, we believe that permanent subsurface and air rights easements should be deemed to impact zero acres. We suggest adding “a permanent” before “subsurface or air right easement.”

Second, National Grid believes this provision should be applied in any situation where the proposed grant will not change how the Article 97 land is currently used. For example, consider a parcel of Article 97 land owned by a public entity in fee simple with a long-established, licensed driveway. Granting a permanent easement to use the long-established driveway would require an Article 97 Action, but should be deemed to impact zero acres such that no replacement land should be required.

Third, we believe that XX.07 4.d may contain an erroneous cross-reference to XX.07(2). This portion of the proposed regulations sets forth requirements for Replacement Land, which should be inapplicable if XX.07 4 applies.

SECTION XX.08 DETERMINATION OF NATURAL RESOURCE VALUE

The proposed regulations incorporate the long-standing EEA policy of no net loss with respect to replacement land. As such, they appropriately require that Replacement Land be of equal or greater Natural Resource Value than the Article 97 Interest that is subject to disposition. However, the proposed regulations fail to place a cap on the Natural Resource Value that the Secretary may require. This lack of a cap, combined with the broad discretion for the Secretary in determining Natural Resource Value, is concerning. Accordingly, National Grid recommends that the regulations include an upper limit on how much more Natural Resource Value the Secretary may require a project proponent to provide.

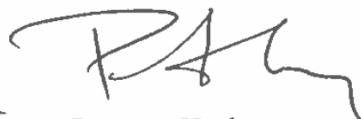
* * * *

Again, we greatly appreciate the opportunity to comment on these proposed regulations and look forward to working with EEA on future projects involving Article 97 Interests.

Sincerely,



David J. Aho
Director - Right of Way & Survey Engineering,
New England



Peter E. Harley
Director – Environmental, New England

APPENDIX A

SECTION XX.02 DEFINITIONS

“Article 97 Action means a Disposition or a change in use of an Article 97 Interest subject to M.G.L. c. 3, § 5A and requiring legislative approval pursuant to Article 97.

1. The following are Article 97 Actions:
 - a. transfer or conveyance of an Article 97 Interest;
 - b. change in a Public Entity's physical or legal control ~~of land~~, including care, custody and control, of an Article 97 Interest; or
 - c. change in a Public Entity's use of ~~land subject to~~ an Article 97 Interest.
2. An Article 97 Action does not include the issuance of a revocable permit or license of limited duration, provided that no interest in land is transferred to the permittee or licensee and the permit or license does not authorize a change in use or change in physical or legal control of an Article 97 Interest-the land.”

“Comparable Location means in the same geographic area in view of the purpose for which the Article 97 Interest was taken or dedicated, including where reasonably feasible and applicable, in the same census block or municipality, and, serving substantially the same population as the land that is subject to the Article 97 Action.”

Disposition means any conveyance, sale, lease, alienation, transfer, assignment, ~~settlement~~, delivery, or other change in physical or legal control.

SECTION XX.06 ALTERNATIVE ANALYSIS

“b. identify each alternative to the Article 97 Action that was considered and describe why each alternative not selected is not feasible or substantially equivalent to the proposed Article 97 Action. Cost differences between land owned by the Public Entity and equivalent private land shall not be the sole basis for infeasibility, unless the cost difference is grossly in excess of fair market value;”

SECTION XX.07 REPLACEMENT LAND

“4. **Certain Easements**. A temporary easement, a permanent subsurface or air rights easement, or other non-fee simple interest in land that is an Article 97

Interest will be deemed to affect zero acres and therefore not require Replacement Land, provided that:

- a. any anticipated disturbance of the surface will be temporary;
- b. the land surface will be returned to conditions and function existing prior to disturbance, or better, within 24 months of the initial impact to land subject to Article 97, or the existing land surface conditions and function will not change as a result of the grant of easement;
- c. the Proponent provides monetary value in an amount equal or greater to the value of the easement, as determined pursuant to 301 CMR XX.07(3);~~and~~
- d. ~~all other applicable requirements of 301 CMR XX.07(2) are met.~~
"

SECTION XX.08 DETERMINATION OF NATURAL RESOURCE VALUE

"4. The Secretary reserves the sole discretion to determine whether the Replacement Land is of equal or greater Natural Resource Value than the impacted Article 97 Interest; provided that a Proponent shall not be required to supply land that is more than three times the Natural Resource Value of the Article 97 Interest."

January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Montague. I have worked as a Conservation Administrator or Agent in several towns, and have seen Article 97 ignored and recreational conservation land developed for other uses by the Town. I feel strongly about the need to get full protection in place. I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to *protect, preserve, and enhance open spaces* protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. *A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself* and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** *A minimum public comment period of 21 days should be required for all Article 97 actions*, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **Replacement Land.** Land owned and managed or otherwise restricted by non-profit conservation organizations should be specifically removed from consideration of Replacement Land. Non-profit land is already public open space and typically protected from conversions through the non-profits' charters
- **In Lieu Funding.** *In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed.* Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. *A new section should be added to include consequences for non-compliance with the law/regulations*, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Janice S. Stone

296 Turners Falls Rd, Apt 3
Montague, MA 01351

Former MACC Board Member

MSMCP Member

Over 20 years of experience working with municipal Conservation Commissions.



Massachusetts Municipal Lawyers Association

"Dedicated to Effective Local Government Through the Advancement of Municipal Law"

January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114
Via email: Michael.gendron2@mass.gov

Re: Comments on Draft Regulations 301 CMR XX.00: Disposition or Change in Use of Article 97 Interests (301 CMR 52)

Dear Mr. Gendron:

The Massachusetts Municipal Lawyers Association (MMLA) appreciates the opportunity to provide comments on the draft regulations 301 CMR XX.00 regarding the Disposition or Change in Use of Article 97 Interests (the Regulations). As legal representatives for municipalities across the Commonwealth, we recognize the importance of these Regulations in preserving open spaces while also addressing the practical needs of local governments. Our comments focus on several key areas where legal clarity and procedural safeguards are essential to ensure fair and effective implementation.

1. Definitions (XX.02):

The definitions provided in the draft Regulations are foundational for understanding and applying the rules. We recommend the following clarifications:

- Article 97 Interest: Clarify the scope of “another real property interest” to ensure it includes all relevant forms of property interests held by municipalities.

2. Pre-submission Consultation (XX.03):

We support the requirement for pre-submission consultation, as it promotes collaboration and transparency. However, we suggest:

- Including a specified timeframe for consultations to ensure timely feedback and reduce delays in the process.

3. Requirements (XX.04):

The obligations placed on proponents are extensive and necessary. To aid municipalities in compliance, we recommend:

- Developing a standardized notification template to streamline the public notification process.
- Offering technical assistance or resources for municipalities to conduct Alternatives Analyses, especially for smaller communities with limited capacity.

4. Alternatives Analysis (XX.06):

The requirement for an Alternatives Analysis is vital for assessing the impacts of proposed actions. We recommend:

- Providing clear criteria for what constitutes a “feasible or substantially equivalent alternative” to prevent subjective interpretations in XX.06(1).
- Providing clarity on the statement in XX.06(2), Contents of Alternatives Analysis, which states that the Alternatives Analysis “shall be commensurate with the type and size of the proposed Article 97 Action.”
- Providing clarity on the use of the word “proposal” in XX.06(2)(c).
- Providing clarity on the use of “and an affirmative vote by the Public Entity, if applicable” in XX.06(2)(f).
- Providing clarity on the use of the phrase “intended use” in XX.06(3)(b), and the use of “appropriate market area” in XX.06(3)(c).
- Including examples of acceptable Alternatives Analyses to guide municipalities in their submissions.

5. Replacement Land (XX.07):

Securing appropriate Replacement Land is a significant challenge for municipalities. To support this effort:

- Allow flexibility in the geographic area considered for Comparable Location, particularly in densely developed regions where suitable land may be scarce.

6. Determination of Natural Resource Value (XX.08):

The process for determining the Natural Resource Value should be transparent and objective. We suggest:

- Considering the inclusion of a definition for “Determination of Natural Resource Value” or “Determination,” and if “Determination” is not defined, do not capitalize it in this section.
- Developing clear, measurable criteria for evaluating Natural Resource Value.

- Involving municipal input in the determination process to ensure local priorities and knowledge are considered.

7. Funding In Lieu of Replacement Land (XX.09):

We recommend considering the inclusion of a definition for “Legislature” as used in XX.09(1)(b) and in XX.09(3).

In conclusion, the MMLA commends the efforts to safeguard the Commonwealth’s natural resources through these draft Regulations. We believe that with the suggested adjustments, the Regulations will better support municipalities in balancing development needs with environmental preservation. We look forward to continued collaboration in refining these Regulations and are available for further discussion on any of the points raised.

Thank you for considering our comments.

Sincerely,

Jillian N. Jagling

Jillian N. Jagling, Executive Board Member and Chair of Legislative Committee
Massachusetts Municipal Lawyers Association (jjagling@westgrouplaw.com)

Gendron, Michael (EEA)

From: [REDACTED]
Sent: Wednesday, January 22, 2025 3:29 PM
To: Gendron, Michael (EEA)
Subject: Letter in reference to 301 CMR 52 concerning Article 97

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

January 22, 2025

Dear Michael Gendron of the Executive Office of Energy and Environmental Affairs:

I am writing in response to our Commonwealth's proposal via the Executive Office of Energy and Environmental Affairs (EEA) to change the wording of Article 97 as described in draft 301 CMR XX.00 "Disposition of Change in Use of Article 97 Interests" because the proposal defies the original intent of Article 97 of the Amendments to the Massachusetts Constitution to establish "a right to a clean environment including its natural, scenic, historical, and aesthetic qualities for the citizens of the Commonwealth." In essence the proposed changes usher in the strong possibility that "protected open space" and public land that provides natural, scenic, historical and aesthetic value to the citizens of the Commonwealth will be sacrificed for a trendy or imagined greater good. A specific example of an open space and a public land area that is currently at risk of being repurposed and ruined is located in Falmouth Heights on Cape Cod. If the proposal is passed, Falmouth residents specifically and Commonwealth citizens at large will be denied their rights articulated in Article 97 because the shoreline, avenues and Worcester Court Park will be disrupted and permanently altered while repurposing them for the financial benefit of foreign corporations and private developers who will be allowed to lay industrial grade electric cables to accommodate SouthCoast Wind's offshore wind turbines. This repurposing of "protected land" will be accompanied by numerous negative consequences that will impact the sea and land and will not conserve "the natural resources" Article 97 was scribed and passed by the Commonwealth to protect not endanger open space.

Something SouthCoast Wind developers apparently do not know is that Falmouth Heights is a densely populated residential area with two small parking lots for beach goers. The streets are busy and narrow and many are one-way; the town exercised good sense to build them one lane wide and alternate their direction to and from the beach road. Falmouth Heights was developed as a resort town around 1870 by some Worcester businessmen. The Worcester architect and master planner chose to include

plans for several hundred small houses on 50 X 75 foot lots placed around "open spaces and parks." The plan is still visible today (albeit no longer are all the houses small) as the neighborhood is densely populated and there are avenues and parks so residents can recreate themselves. There is little to no area for parking large construction trucks and industrial supplies anywhere adjacent to the sites SouthCoast Wind proposes to disrupt and alter permanently. As for the residents' safety, if construction were to happen, their safety would certainly be at risk during construction due to the narrow roads and dense population. After, who knows; once the natural, scenic and aesthetic qualities of the Heights are ruined, the history of the Heights might wither and the currently densely populated coastal town will cease to be as we know it today.

There seems to be some irony here as to why the Commonwealth and SouthCoast Wind may have chosen to consider the Falmouth Heights' shoreline site considering that "it is a clean environment including its natural, scenic, historical, and aesthetic qualities" and it is shared with the citizens of the Commonwealth. This area that could be repurposed is not privately owned. In 1901 Mrs. Elvira Goodwin held title to the park land, avenues and open space in Falmouth Heights and because she wanted to ensure they remained undeveloped, she bequeathed them to the town with the stipulation that they remain as first intended for the enjoyment and pleasure of the residents of Falmouth Heights. If Elvira were still with us, what a wonderful addition she could be to your EEA office because she would more than likely fight not to have Article 97 altered in any way. As an owner of a little bungalow in the Heights, three generations of my family to date have fallen in love with the Heights. A couple of my neighbors boast of five generations. It seems tragic that those who represent us at the state level do not recognize the natural, scenic, historical, and aesthetic qualities that define Falmouth Heights and therefore are willing to sacrifice an "open space" that for over 100 years has provided citizens of the Commonwealth healthy air and ocean water, as well as an open space where residents and others can recreate or refresh themselves.

A little bit more history: The Queen of the Narragansett Native Americans regularly summered in Falmouth Heights in the early 15th century and John Francis "Honey Fitz" Fitzgerald, President John F. Kennedy's grandfather, and his family summered in the Heights at the beginning of the 20th century. "Honey Fitz" served as mayor of Boston and served three terms in the US Congress.

Perhaps it is time that you visit our densely populated seashore neighborhood and bring others who are looking to amend Article 97 to see if it is in the best interest of the Citizens of the Commonwealth and the residents of Falmouth Heights? We welcome you to walk along our beach and visit our narrow streets. Perhaps you too might conclude that it is time that SouthCoast Wind find an industrial site for its industrial, commercial electric wind turbine cable project?

Please let us know if you are interested in visiting Falmouth Heights; we welcome you and would be eager to walk with you.

Sincerely yours,
Carol Ziemian
12 Amherst Avenue
Falmouth, MA 02540
Cell: (██████████)

Gendron, Michael (EEA)

From: Donald Flynn <dflynn@millburyma.gov>
Sent: Wednesday, January 22, 2025 3:33 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 310 CMR 52.00: Change in Use or Disposition of Article 97 Interests (aka Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*.

I am the Agent for the Town of Millbury Conservation Commission, and I offer the following comments to the draft regulations. Article 97, although difficult to navigate has very important protections and should be modified ONLY after extensive considerations. Town negotiated in good faith with developers to both provide relief to zoning requirements to create open space/passive recreational areas without completely undermining the tax base relied upon for municipal services. Inadequate consideration will create incentives for Open Space Subdivisions to remove these protections. Also:

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the

Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Donald R. Flynn, Agent
Millbury Conservation Commission
Millbury Town Hall
127 Elm Street
Millbury, MA 01527

508-865-5411 (X 1001)



HANOVER COMMUNITY DEVELOPMENT AND MUNICIPAL INSPECTIONS CONSERVATION COMMISSION OFFICE

TOWN HALL, 550 HANOVER STREET, HANOVER, MA 02339

HOME

CONSERVATION, OPEN SPACE: (781) 826-6505

FAX

CONSERVATION: (781) 826-5950

CONSERVATION AGENT E-MAIL

CONSERVATION@HANOVER-MA.GOV

January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. This letter comes to you from the 12 residents of the Town of Hanover who currently hold positions on the Conservation Commission and Open Space Committee and we offer the following comments to the draft regulations:

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses.

Page 1 of 2

CONSERVATION COMMISSION MEMBERS:

BRIAN MCLOONE, CHAIRMAN LISA SATTERWHITE, VICE CHAIRMAN
ROBERT SENNETT, HEARING OFFICER, JAMES VAILLE & MAHENDRA PATEL,
COMMISSIONERS
DAVID SAWIN & GEORGE JOUKOV, ASSOCIATE COMMISSIONERS

In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of our comments.

Sincerely, *(signatures received electronically)*

Brian McLoone, Hanover Conservation Commission Chairman

Lisa Satterwhite, Hanover Conservation Commission Vice Chairman

Harold Thomas and Mary Dunn, Co-Chairpersons, Hanover Open Space Committee

CONSERVATION COMMISSION MEMBERS:

BRIAN MCLOONE, CHAIRMAN LISA SATTERWHITE, VICE CHAIRMAN
ROBERT SENNETT, HEARING OFFICER, JAMES VAILLE & MAHENDRA PATEL,
COMMISSIONERS
DAVID SAWIN & GEORGE JOUKOV, ASSOCIATE COMMISSIONERS

Gendron, Michael (EEA)

From: Donna LaRoche [REDACTED]
Sent: Wednesday, January 22, 2025 3:44 PM
To: Gendron, Michael (EEA)
Subject: FHMNA Letter - Thank you for reading.

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

I am writing to express my strong opposition to the proposed changes to Massachusetts State Constitution Article 97 as outlined in the draft regulation 301 CMR XX.00. I am deeply concerned that these changes would significantly weaken the protections afforded to the people of the Commonwealth under Article 97, which safeguard clean air, clean water, and natural resources, while ensuring environmental preservation and local community input.

My specific concerns are as follows:

Erosion of Environmental Protections:

- Article 97 was enacted to protect the public's right to clean air and water, and to preserve the natural, scenic, and historic resources of the Commonwealth. The proposed changes prioritize expedited permitting for energy projects over these vital protections. This would set a dangerous precedent, allowing developers to bypass

safeguards that ensure environmental and community well-being.

Diminished Local Input and Oversight:

- By streamlining permitting processes under a centralized state authority, such as the Energy Facility Siting Board (EFSB), the proposed changes would significantly reduce the influence of local governments and communities in the decision-making process. This undermines the voices of the residents who are most directly affected by these projects.

Impacts on Falmouth and Similar Communities:

- As a resident concerned about the potential designation of Falmouth as a cable

landing site for the SouthCoast Wind project, I am alarmed by the implications of weakening Article 97 protections. Our community's natural resources and quality of life should not be sacrificed for the convenience of developers.

Lack of Public Awareness:

- Many residents remain unaware of the proposed changes and their long-term implications. The limited outreach and initial notice regarding the December 2024 public hearing suggest a lack of transparency in the process. Extending the comment period and holding additional hearings is a step in the

right direction, but more effort is needed to ensure widespread public engagement.

Balancing Clean Energy Goals with Environmental Integrity:

- While I support clean energy initiatives, I firmly believe they must not come at the expense of fundamental environmental protections. The proposed changes shift the balance too far in favor of expedience, threatening the very resources that clean energy projects aim to preserve.

I urge the Executive Office of Energy and Environmental Affairs (EEA) to reject these proposed changes and preserve the integrity of Article 97. Protecting our natural resources and ensuring fair and transparent processes should remain a top priority as we pursue a sustainable energy future.

Thank you for considering my concerns. I would appreciate confirmation that my comments have been received and recorded.

Sincerely,

Donna LaRoche



January 22, 2025

Michael Gendron
Open Space Act Coordinator
Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: 301 CMR 52 – Article 97 draft proposal

Dear Michael,

I write in response to the proposed amendments to Article 97 through 301 CMR 52. Western Massachusetts, and more specifically Berkshire County, contains significant Article 97 acreage. Any changes to Article 97 have the potential to dramatically impact the region.

Berkshire Regional Planning Commission was only recently made aware of this proposal. From the perspective of the agency and constituents that have reached out in recent days, the public comment period should be extended further as awareness of this proposal increases. An extension of the comment period would provide time to further review the proposal and provide substantive comments.

If the public comment period is not extended, I wish to share two primary concerns based on our initial review of the proposed regulations.

- 1) Definition of “climate change mitigation” – The definition for “Natural Resource Value” on page 2 of the proposal includes the term “climate change mitigation”. Given the state’s initiatives to create greater buildup of commercial scale renewable energy facilities, we are concerned with the scope of this definition. The definition must contain greater specificity about the term “climate change mitigation.” BRPC strongly discourages this definition to include renewable energy development on Article 97 lands.
- 2) Authority of the Secretary of the Executive Office of Energy and Environmental Affairs – The draft regulations appear to provide a significant increase into the authority of the Secretary, especially related to their discretion in making determinations regarding land replacement and in-lieu payment requirements. There should be a more inclusive review and approval process.

Thank you for your time and consideration related to the above comments.

Sincerely,

Thomas Matuszko
Executive Director

Board of Directors

President
Jaime Bartak, AICP
President-Elect
Steven Horn
Secretary
Blake Lukis
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Matthew Pearson
Past President
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Kimberly Abraham
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January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments on Proposed Regulation 301 CMR 52.00 – Disposition or Change in Use of Article 97 Interests
Via email: Michael.gendron2@mass.gov

To Whom It May Concern:

The Massachusetts Water Works Association (MWWA) appreciates the opportunity to provide feedback on the proposed regulation 301 CMR 52.00 – Disposition or Change in Use of Article 97 Interests, which seeks to clarify the process for the disposition of Article 97 lands. As a non-profit organization representing Public Water Systems across the Commonwealth, MWWA advocates for the protection of water sources and public health. Our members manage thousands of acres of land to ensure the sustainability of these vital resources.

Public Water Systems may face issues that may touch on the Disposition or Change in Use of Article 97 Interests. For example, Public Water Systems may hold land for resource protection or for potential future water supply purposes. While these lands might not have been acquired specifically for Article 97 purposes, it is possible there could be questions raised about compliance with Article 97 as the Public Water System assesses and potentially modifies its holdings. Similarly, Public Water Systems may need to perform maintenance on their infrastructure that may have a short-term impact within a natural resource area. As written, the proposed regulations place a considerable administrative burden on the Public Water System in the ordinary conduct of its affairs, which are not directly related to the core concern of preserving and maintaining open space. To the extent the proposed regulations can incorporate a reduction in the financial burdens Public Water Systems might face as they address system concerns, perform maintenance, or manage natural resources, such measures would provide a benefit to the public water supply community.

Given these considerations, MWWA suggests that the proposed regulations need to provide a process that can mitigate the requirement to comply with the entire regulatory structure of Article 97 for routine events for Public Water Systems that do not impact or involve Article 97 Interests. MWWA requests that EEA add “whether a project proposed by a Public Water System constitutes an Article 97 action” to be one of the enumerated categories in Section 3(2). MWWA also suggests that the pre-submission consultation provision in Section 3 include a formal written response from the Secretary to confirm a finding that a project does not affect an Article 97 Interest. Providing a formal written finding from the Secretary would be helpful for the Public Water System to communicate to its constituents and the general public that the actions it is undertaking do not have any Article 97 implications.

MWWA commends the proposed regulation in Section 10(1)(b), which includes a waiver provision for the *“transfer or change in use of an Article 97 Interest of insignificant natural resource and recreation value that is less than 2,500 square feet in area and serves a significant public interest.”* However, we respectfully request that a similar waiver be added for work related to the operation of Public Water Systems (or sewer systems), regardless of the size of the land impacted. Public Water Systems may need to perform routine or emergency infrastructure work within Article 97 lands, which could trigger what might be considered a “change of use.” Although some land disturbance may occur during construction, the land is typically restored to its original condition afterward. An example of such work includes underground utility repairs, such as pipe maintenance. These activities are essential for maintaining the integrity of Public Water Systems and sewer systems and should not require an extensive review or alternatives analysis.

In addition to providing a waiver for Public Water Systems (or sewer system), MWWA also request clarification on the waiver process in Section 10. Based on the text of the proposed regulations, a Public Water System would need to comply with the requirements in Section 4, including the Alternatives Analysis in Section 4(2). While the provision of a waiver would be a benefit to the Public Water Systems, reducing the administrative burden to secure such a waiver is appropriate. The regulations should be amended to allow a party to secure a waiver without conducting an Alternatives Analysis first.

Thank you for considering our comments. We would be happy to meet with the EEA to discuss any questions or concerns you may have.

Sincerely,



Jennifer Pederson
Executive Director

Gendron, Michael (EEA)

From: William Clarke [REDACTED]
Sent: Wednesday, January 22, 2025 4:03 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Regarding the proposed changes, I am in favor of them. I am very much a supporter of open space - I am both a contributor and a volunteer to The 300 Committee, Falmouth's land bank - but important projects for renewable energy and affordable housing are often delayed or denied on the grounds of environmental protection. Many times the objections are more related to "NIMBYism" than a genuine concern for the environment. I believe that is the real reason for Mark Cool's outspoken opposition to the bill. He is well known as an opponent of wind energy in any form but this is the first time that I have heard him express concern for the environment.

Thank you,
William Clarke
28 Longview Road
North Falmouth
Sent from my iPhone



TOWN OF BARNSTABLE

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January 22, 2025

Via Electronic Mail to Michael.gendron2@mass.gov

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114

Re: Written comments on proposed EEA regulations, 301 CMR 52.00

Dear Mr. Gendron:

I write on behalf of the Town of Barnstable (“Town”) to submit written comments to the Executive Office of Energy and Environmental Affairs (“EEA”) regarding the proposed regulations, 301 CMR 52.00, which would implement the so-called Public Lands Preservation Act (a/k/a Open Space Act) codified at G.L. c. 3, § 5A. The Town appreciates the opportunity to attend the public hearings, testify and comment on the proposed regulations.

Before commenting on the proposed regulations, we respectfully suggest that EEA consider the notification process for future rulemakings. The Town did not hear of the proposed rulemaking directly from EEA. When we learned of the scheduled December 17, 2024 public hearing, we could not identify a press release from EEA or any other information concerning the proposed regulations other than the draft regulations included among various guidance documents that were located on a web page three levels down from EEA’s homepage. Even today, the EEA webpage notifying the public of the public hearing and how to submit comments on the proposed regulation does not appear linked to the EEA “Article 97 & An Act Preserving Open Space in the Commonwealth (M.G.L. c. 3, § 5A)” webpage.¹ It is only the draft regulations that can be found there. Instead, we needed to turn to Google to find the unlinked EEA webpage to confirm the updated January 22 comment deadline.² We found the public hearings to be professional and well run. However, given the importance of these regulations, we think a more robust notification process would have been appropriate for these regulations and for any future proposed regulations to better inform cities and towns and their residents, so that they may

¹ <https://www.mass.gov/info-details/article-97-an-act-preserving-open-space-in-the-commonwealth-mgl-c-3-ss-5a>

² <https://www.mass.gov/event/december-17-2024-notice-of-public-hearing-opportunity-to-submit-comments-12-17-2024>

effectively participate in any public hearing and the process for commenting on a proposed rulemaking.

As part of the Town's written comments, attached please find suggested edits to the proposed regulations shown in redline format. Companion to these suggested edits, the Town offers the following comments on specific sections of the proposed regulations:

Section 2.

We proposed an edit to the definition of Proponent to clarify and confirm that the term includes any private entity and also proposed removing duplicative language concerning public entities that appears already in the definition of Public Entity. The proposed edits to the definition of Public Entity are intended to confirm that the term includes any potential non-federal public entity. The proposed edit to the definition of Replacement Land would make explicit that the term includes a conservation restriction with the benefit of section 32 of Chapter 184 of the General Laws. We used the word "benefit" because that nomenclature is used in other sections of Chapter 184, such as sections 23 and 26.

Sections 3 and 4.

Section 3 of the draft regulations addresses pre-submission consultation to ensure that such consultation is required to take place with the public entity that holds the Article 97 Interest. Section 4 addresses specific requirements that the proponent must take, such as notification, conducting the alternatives analysis and mitigating the Article 97 Action with replacement land or in lieu funding. The draft regulations specify that these actions only need to occur prior to taking an Article 97 Action. However, that seems far too late in the process. As you know, and as enshrined in the State Constitution, the Article 97 Action cannot be taken until the Legislature has authorized such action through legislation receiving a two-thirds roll-call vote of both branches of the Legislature. Accordingly, pre-submission consultation and requirements under sections 3 and 4 should take place before any bill is filed with the Legislature, and we proposed edits that address that concern. That way, the Legislature can be informed by the consultation that occurred with EEA and the public entity that owns or controls the Article 97 Interest, including whether the public entity supports the proposed Article 97 Action and whether it believes the bill should move forward. Likewise, the Legislature will be able to address the alternatives analysis and the replacement land or in lieu funding in the bill that would authorize the Article 97 Action.

Section 5.

Section 5 requires notification to the public and the Secretary of the proposed Article 97 Action. However, notification to the public entity that owns or controls the Article 97 Interest is not specifically required. This oversight needs to be corrected. Section 5 seems to be written as if the proponent and public entity are one and the same, and very often that is not the case. A public entity that owns or controls the involved Article 97 Interest, such as the Town, needs to be informed and consulted throughout the process. If a Town's Article 97 Interest is part of a

proposal for an Article 97 Action, the Town, as the owner of that property, more than any other involved party, must be at the table for discussions and decisions involving its land.

Subsection 1 of section 5, as proposed, would have the public entity, such as the Town, host and make available the proponent's public notice and alternatives analysis. The regulations do not describe other options for notice, other than posting on the public entity's website. The Town believes this is entirely inappropriate, particularly when the Town is not the proponent or does not support the proposed Article 97 Action. Further, the public would be far better served with a single location for searching and inspecting all project information, rather than having the information fragmented among hundreds of state, regional and local websites. The Town believes this would be accomplished best by EEA establishing a single portal on its website for access and review by the public of the most current project information. The Town's proposed redline would address these concerns.

Section 6.

Among the requirements in section 6 for the alternatives analysis, the proponent, if not the public entity with care and control of the land, would need to summarize the proponent's discussions with the public entity. The Town believes the proponent also should be required to share their proposed submission, including the summary and alternatives analysis, with the public entity for its review prior to submission to the Secretary, so that the public entity can choose whether to provide comment before submission to the Secretary. Further, the public entity's position on the alternatives analysis, in addition to its position on the Article 97 Action, should be included in the proponent's submission.

Subsection 3, as proposed, would require the proponent to include within the alternatives analysis parcels that are owned by the public entity. For a proposed Article 97 Action involving municipal land, the Town believes that this requirement would be appropriate only if the Town is the proponent. If the Town is not the proponent, then the proponent should not be presumptuous and include the Town's property for consideration as replacement land where either the Town has not agreed to its property being a candidate for the proponent's mitigation or if the Town opposes the proponent's project. The Town also proposed an edit to the "affirmative vote" requirement where, for a municipality, the required vote must come from the local legislative body.

Section 7.

In our redline we propose two technical edits in subsection 2(d), one of which recommends using the word "benefit" for the same reason as covered in our comment above in section 2.

We also proposed several edits to subsection 3. We have no concern with an appraisal prepared by the Division of Capital Asset Management and Maintenance being considered presumptively valid for state-owned property, but that should not be the case for municipal property. Further, when it comes to municipal property, the Town's consent should be required for the preparation

of an appraisal involving its land. It would be inappropriate for an appraiser to access Town property without the Town's consent or to prepare an appraisal without consulting the Town.

Subsection 4 of section 7 proposes that certain easements, including some subsurface easements, would be deemed to affect zero acres and not require replacement land. We believe this proposal is not permitted under the statute. Whether a temporary or subsurface easement should be the subject of a replacement land requirement seems to be fair game for a policy discussion. But that is a decision for the Legislature, and implementing the proposal would require the Legislature to amend the statute. The statute requires either replacement land or in lieu funding where the Secretary makes specific findings and files those with the Legislature. The statute makes no exception other than in G.L. c. 3, § 5(a), where the Secretary is allowed to waive or modify the replacement land requirement in 2 specific instances:

First, where the disposition involves only the transfer of legal control between public entities and does not involve any other change of use; or

Second, where the transfer is of a parcel that is of insignificant natural resource and recreation value and is less than 2,500 square feet in area and the transfer serves a significant public interest.

The waiver of replacement land, as proposed, is inconsistent with the statute because it goes beyond these two exceptions and does not limit transfers involving a private entity to only those that are less than 2,500 square feet in area and serve a significant public interest. The Town did not propose any redline that fully corresponds with these comments but instead inserted a proposed subsection 4(e) that would at least make the section consistent with the statute.

Section 9.

Subsections 1 and 2 of section 9 seem to assume that the proponent and the public entity are the same. As noted above, that often is not the case. If a proponent plans on proposing in lieu funding, the public entity that holds the Article 97 Interest, if not the proponent, should be the gatekeeper of the in lieu funding request to the Secretary. If the public entity does not support the project or will not agree to meeting the conditions for in lieu funding, the proponent should not be permitted to propose in lieu funding to EEA. Likewise, the proponent, if not the public entity, should not be speaking for the public entity regarding the account in which the public entity will deposit funds or how those funds will be used by the public entity. The proposed redline edits address these concerns.

In subsection 3, the proposed regulation requires that the alternatives analysis be the subject of a public notice and comment. We agree with that proposal; however, the regulations do not address who is responsible for public notice and comment. We do not believe it would be appropriate if only the proponent is responsible for that process, especially if the proponent is not a public entity. The Town proposes to address this concern by affirmatively stating a minimum requirement that EEA subject the alternatives analysis to public notice and comment.

In subsection 4, we agree that the in lieu funding should not be less than 110% of the fair market value or value in use. The Town believes that entire sum should be spent on replacement land. However, a public entity will have due diligence costs associated with acquiring the replacement, including a title examination, an appraisal and, in some cases, a survey and/or an environmental site assessment. These costs should not be deducted from the in lieu funding, nor should the public entity be expected to cover these costs from the public treasury. Accordingly, the Town proposes in its redline that the proponent also provide to the public entity the actual or reasonably anticipated due diligence costs.

Finally, the Town believes that the regulations should have specific timelines for action by EEA. As currently drafted, the regulations contain no timeframes in which actions must be taken. Seeking the Legislature's approval of an Article 97 Action involves a significant investment of time and resources. The Town would not pursue such action unless it involved an important public project and was thoroughly considered by Town departments and the Town legislative body.

Municipalities need certainty in the process so that proper planning, permitting, local appropriations, contracting and expenditures may timely occur. It is important for a municipality to understand the timing of the process under the regulations and, after that has occurred, when a Home Rule petition may be filed with the Legislature to authorize the Article 97 Action. Likewise, if in-lieu funding is involved, the Town will need dependable timing under the regulations in connection with securing replacement land. The local legislative body must approve any replacement land transaction and appropriate the involved funding from the account in which the in lieu funding is held. These local actions take time. Further, sellers of replacement land will most likely seek assurances on a closing deadline. The Town believes timeframes in the regulations are needed to avoid the challenges with open-ended uncertainty in land protection transactions. Accordingly, in subsection 4(c), the Town proposes in its redline a requirement that the Secretary make a determination and provide a final decision on the proposed replacement land within 30 days from receipt of a reasonably complete request from the public entity. Absent certainty under the regulations, it will be a daunting task for municipalities to successfully close replacement land transactions.

Section 10.

Regarding the waiver process, the Town proposes the same edits here that it proposed for section 5 with the proponent providing a copy to the public entity at the same time it files its request for a waiver with the Secretary, and that EEA post the request on its website.

Finally, separate from specific comments on the draft regulation, we note that there was much comment during the first public hearing regarding the need for enforcement and consequences for a lack of compliance with the regulations. Several commenters stressed the need for a municipality to be held accountable for any noncompliance with an Article 97 Action in their city or town. We believe compliance is important for all public entities, not just municipalities. And, it is worth mentioning again that often the municipality is not the proponent. Fairness requires that the municipality should only be responsible for a lack of compliance where the municipality is either the proponent or has accepted and not properly expended in lieu funding.

Apart from that, the municipality should not be responsible for the proponent's failure to comply with the regulations.

The Town appreciates the opportunity to comment on the draft regulations and looks forward to EEA's response to this and the other public comment it has received.

Sincerely,



Thomas J. LaRosa
First Assistant Town Attorney

cc: Mark S. Ells, Town Manager
Karen L. Nober, Town Attorney

Attachment

301 CMR XX.00: Change in Use or Disposition of Article 97 Interests

Section

- XX.01: Purpose and Applicability
- XX.02: Definitions
- XX.03: Pre-submission Consultation
- XX.04: Requirements
- XX.05: Notification
- XX.06: Alternatives Analysis
- XX.07: Replacement Land
- XX.08: Determination of Natural Resource Value
- XX.09: Funding In Lieu of Replacement Land
- XX.10: Waiver or Modification
- XX.11: Severability

XX.01: Purpose and Applicability

1. Purpose. Article 97 of the Amendments to the Massachusetts Constitution provides that any Article 97 Action must be approved by a two-thirds, roll call vote of each branch of the General Court. The General Court enacted requirements for Article 97 legislation in An Act Preserving Open Space in the Commonwealth, Chapter 274 of the Acts of 2022, M.G.L. c. 3, § 5A, which authorized the Secretary to issue regulations to implement the Act. 301 CMR XX.00 provides for administration and implementation of the Act by the Secretary and establishes a process and requirements for Public Entities and Proponents to satisfy the requirements of M.G.L. c. 3, § 5A.
2. Applicability. 301 CMR XX.00 is applicable to a Public Entity seeking legislative authorization for a Disposition or change in use of an Article 97 Interest subject to M.G.L. c. 3, § 5A and to Proponents seeking such authorization for an Article 97 Interest held by a Public Entity.

XX.02: Definitions.

The following words shall have the following meanings in 301 CMR XX.00 unless the content clearly indicates otherwise.

Alternatives Analysis means an analysis meeting the requirements of 301 CMR XX.06.

Article 97 means Article XCVII of the Amendments to the Constitution of the Commonwealth.

Article 97 Action means a Disposition or a change in use, of an Article 97 Interest subject to M.G.L. c. 3, § 5A and requiring legislative approval pursuant to Article 97.

1. The following are Article 97 Actions:
 - a. transfer or conveyance of an Article 97 Interest;
 - b. change in physical or legal control of ~~land~~an Article 97 Interest, including care, custody and control, of an Article 97 Interest; or
 - c. change in use of land subject to Article 97.
2. An Article 97 Action does not include the issuance of a revocable permit or license of limited duration, provided that no interest in land is transferred to the permittee or licensee and the permit or license does not authorize a change in use or change in physical or legal control of the land.

Article 97 Interest means fee ownership, an easement, conservation restriction, agricultural preservation restriction or another ~~real property~~ interest in land that is held by a ~~p~~Public eEntity and is subject to Article 97.

Comparable Location means in the same geographic area, including where reasonably feasible, in the same census block or municipality, and serving substantially the same population as the land that is subject to the Article 97 Action.

Disposition means any conveyance, sale, lease, alienation, transfer, assignment, settlement, delivery, or other change in physical or legal control.

Environmental Justice Population has the meaning provided in M.G.L. c. 30, § 62.

In Lieu Funding means funding provided to acquire Replacement Land to mitigate for an Article 97 Action pursuant to 301 CMR XX.09.

Natural Resource Value means the benefit that land provides to the public for Article 97 purposes, including but not limited to clean air and water, agriculture, climate change mitigation, wildlife habitat, and recreation.

Proponent means the Public Entity or ~~party~~ person proposing an Article 97 Action. A proponent ~~may shall~~ include any individual, partnership, trust, firm, corporation, association ~~and any other private entity, commission, district, department, board, municipality, public or quasi-public agency or authority~~.

Public Entity means the Commonwealth, any agency, body politic and corporate, political subdivision, authority, board, bureau, commission, committee, council, county, department, division, institution, municipality, officer, quasi-public agency, public instrumentality or any subdivision thereof.

Replacement Land means a fee interest in land, an easement, a conservation restriction with the benefit of section 32 of Chapter 184 of the General Laws, or another real

property interest within the scope of Article 97 that is not already subject to Article 97 and is proposed to be taken for, acquired for, or dedicated to such purposes in perpetuity, and improved as necessary to provide for comparable use, as mitigation for an Article 97 Action.

Secretary means the Secretary of Energy and Environmental Affairs.

Value in Use means a method of valuation where the value of a property interest is established assuming a specific use, including, but not limited to, a method of valuation where the value of a property interest is increased by the intended use in relation to its surroundings by requiring an appraiser to consider a property's value not standing alone, but in the context of the land in question, the use to which the Proponent plans to put the Article 97 property, and the degree of advantage to the party benefiting from the Article 97 Action.

XX.03: Pre-submission consultation

1. Prior to the filing of any bill with the Legislature to authorize an Article 97 Action, a Proponent other than the ~~p~~ublic ~~e~~ntity holding the Article 97 Interest, shall consult that ~~p~~ublic ~~e~~ntity.
2. Prior to the filing of any bill with the Legislature to authorize~~taking any Article 97 Action~~, any Proponent may consult with the Secretary on any issues where clarification may be needed, including but not limited to:
 - a. whether land is subject to Article 97 and 301 CMR XX.00;
 - b. whether a proposed project constitutes an Article 97 Action;
 - c. whether the Proponent's proposal ~~has avoided~~ and ~~minimized~~ a proposed Article 97 Action;
 - d. whether the Alternatives Analysis is adequate;
 - e. whether the Replacement Land provides at least equivalent Natural Resource Value as the Article 97 Interest and otherwise meets the requirements of 301 CMR XX.07(2);
 - f. qualification of a proposed project for a Waiver or Modification pursuant to 301 CMR XX.10 or Report of Finding by the Secretary pursuant to 301 CMR XX.09; or
 - g. if the Proponent is a municipality, the adequacy of draft municipal authorization or legislation.

XX.04: Requirements

Prior to taking the filing of any bill with the Legislature to authorize an Article 97 Action, the Proponent shall:

1. Notify the public, the holder of the Article 97 Interest, if not the ~~p~~roponent, and the Secretary pursuant to 301 CMR XX.05;

2. Conduct an Alternatives Analysis as required by 301 CMR XX.06, submit the Alternatives Analysis to the Secretary and to the Public Entity that holds the Article 97 Interest, if not the Proponent, and make it public; and
3. Unless otherwise authorized by a waiver or modification by the Secretary pursuant to 301 CMR XX.10, mitigate the Article 97 Action by:
 - a. identifying Replacement Land pursuant to 301 CMR XX.07 and taking, acquiring or dedicating that Replacement Land to Article 97 purposes so that it is protected in perpetuity as an Article 97 Interest; or
 - b. providing In Lieu Funding instead of Replacement Land pursuant to 301 CMR XX.09.

XX.05: Notification

The Proponent of an Article 97 Action shall notify the public, the Public Entity that holds the Article 97 Interest, and the Secretary of the proposed Article 97 Action. This notification shall include:

1. posting notice and the Alternatives Analysis prepared pursuant to 301 CMR XX.06 on the website of the Executive Office of Energy and Environmental Affairs and any additional notification as reasonably determined by the Secretary ~~the Public Entity with care and control of an Article 97 Interest subject to the Article 97 Action or by other appropriate means, or posting on the website of the Public Entity a link to such public notice and Alternatives Analysis~~;
2. for any Article 97 Action for which the Proponent is proposing to provide In Lieu Funding, providing the public with a public comment period of at least 21 days in which the public has an opportunity to review and comment to the Secretary, with a copy to the Public Entity that holds the Article 97 Interest, if not the Proponent, on the proposed Article 97 Action and Alternatives Analysis; and
3. submission to the Secretary, in such form as the Secretary may require, with a copy to the Public Entity that holds the Article 97 Interest, if not the Proponent, of:
 - a. the Alternatives Analysis prepared pursuant to 302 CMR XX.06;
 - b. ~~a description of~~ the public notice and comment opportunities provided as required by M.G.L. c. 3, § 5A and the comments and response thereto, if not included in the Alternatives Analysis;
 - c. any supporting materials necessary or appropriate for evaluation of the proposed Article 97 Action and Replacement Land; and

- d. any additional materials as the Secretary may require.

XX.06: Alternatives Analysis

1. A Proponent shall consider all other options to avoid and minimize an Article 97 Action. If, following such consideration, the Proponent determines that no feasible or substantially equivalent alternative exists, it shall create an Alternatives Analysis documenting its consideration of alternatives to avoid and minimize the Article 97 Action.
2. Contents of Alternatives Analysis. The Alternatives Analysis shall be in writing, shall be commensurate with the type and size of the proposed Article 97 Action, and shall, at a minimum:
 - a. explain the proposed Article 97 Action and identify the public purpose that the Article 97 Action will serve;
 - b. identify each alternative to the Article 97 Action that was considered and describe why each alternative not selected is not feasible or substantially equivalent to the proposed Article 97 Action. Cost differences between land owned by the Public Entity and equivalent private land shall not be the sole basis for infeasibility;
 - c. describe all efforts to avoid or minimize the impacts of the proposed Article 97 Action, including by minimizing the land area, type, and degree of alteration required for the proposal; and
 - d. include a sufficient description of the Article 97 Interest and proposed Replacement Land, including the acreage, location, and boundaries of the land or interest in land;
 - e. if applicable, contain information sufficient to support a finding by the Secretary pursuant to 301 CMR XX.09 or to evaluate a request for waiver or modification pursuant to 301 CMR XX.10;
 - f. if the Proponent is not the Public Entity with care and control of the Article 97 Interest, the Proponent shall provide a draft of the Alternative Analysis to the Public Entity for review and comment prior to filing with the Secretary, and such Alternatives Analysis shall summarize the Proponent's discussions with the Public Entity and include~~provide~~ written documentation of the Public Entity's stated position on the proposed Article 97 Action and the Alternatives Analysis, and an affirmative vote by the Public Entity, if applicable, and, if a municipality, is made by the local legislative body.

3. Alternatives. Alternatives to the proposed Article 97 Action shall include parcels that:

- a. are owned by the Public Entity if the Proponent, the Proponent, or another public or private owner;
- b. are appropriate for the intended use;
- c. are reasonably available for acquisition or use at the time the Public Entity or Proponent first considered the Article 97 Action; and
- d. are within the appropriate market area for private Proponents, state and/or regional entities, or are within the appropriate city or town for municipal Proponents.

XX.07 Replacement Land

- 1. A Proponent shall identify Replacement Land to mitigate the impact of an Article 97 Action, except as otherwise provided in 301 CMR XX.09 or 301 CMR XX.10.
- 2. The Replacement Land shall be:
 - a. in a Comparable Location to the Article 97 Interest;
 - b. of equal or greater Natural Resource Value as the Article 97 Interest, as determined by the Secretary pursuant to 301 CMR XX.08;
 - c. of equal or greater acreage as the Article 97 Interest, as determined by a survey, or if a survey is not available, by another method that sufficiently delineates the boundaries of the affected parcels to enable accurate and reliable determination of acreage;
 - d. not already subject to Article 97 or a perpetual restriction ~~eonsistent~~ with the benefit of G.L. c. 184, ~~§§ 31-323~~, or required or presently offered to be protected as a condition of any permit or other approval;
 - e. consistent with the requirements of any state or federal programs applicable to the impacted Art. 97 Interest;
 - f. not contrary to an enforceable restriction or enforceable condition of a gift to the Public Entity;
 - g. of equal or greater monetary value as the Article 97 Interest, as determined pursuant to 301 CMR XX.07(3); and
 - h. dedicated to the same Article 97 purpose as the Article 97 Interest, and improved to provide equivalent use as that provided by the Article 97 Interest, unless dedication to another Article 97 purpose is determined by the Public Entity to provide a greater public benefit and the Secretary concurs in a Determination of Natural Resource Value pursuant to 301 CMR XX.08.

3. Monetary Value. The monetary value of the Article 97 Interest and the Replacement Land shall be the fair market value or Value in Use as if said interest was not restricted by Article 97, whichever is greater, as determined by an appraisal. The appraisal shall include a determination of both fair market value and Value in Use. An appraisal ~~conducted~~prepared for the Proponent in accordance with the EEA Appraisal Guidelines, commissioned by the Division of Capital Asset Management and Maintenance for state-owned property, or conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) shall presumptively be valid for the purposes of 301 CMR XX.00, provided the Public Entity that holds the Article 97 Interest has consented to the preparation of the appraisal and has been consulted in the appraisal process under Yellow Book or the Uniform Standards of Professional Appraisal Practice.
4. Certain Easements. A temporary easement, subsurface or air rights easement, or other non-fee simple interest in land that is an Article 97 Interest will be deemed to affect zero acres and therefore not require Replacement Land, provided that:
 - a. any anticipated disturbance of the surface will be temporary; and
 - b. the land surface will be returned to conditions and function existing prior to disturbance, or better, within 24 months of the initial impact to land subject to Article 97; and
 - c. the Proponent provides monetary value in an amount equal or greater to the value of the easement, as determined pursuant to 301 CMR XX.07(3); and
 - d. all other applicable requirements of 301 CMR XX.07(2) are met; and
 - e. (i) the disposition involves only the transfer of legal control between public entities and does not involve any other change, including, but not limited to, a change allowing the land to be used for another purpose; or (ii) the Secretary finds the transfer is of insignificant natural resource and recreation value and is less than 2,500 square feet in area and the transfer serves a significant public interest.

XX.08: Determination of Natural Resource Value

1. Upon receipt of an Alternatives Analysis proposing Replacement Land or request by a ~~Public Entity~~Proponent proposing Replacement Land to comply with 301 CMR XX.09(4)(c), the Secretary shall make a Determination of Natural Resource Value.
2. A Determination of Natural Resource Value will ~~consider~~address with a detailed explanation:

- a. whether the Replacement Land advances substantially the same Article 97 purposes and uses as the Article 97 Interest impacted by the proposed Article 97 Action; and
 - b. whether the Replacement Land meets the requirements of 301 CMR XX.07(2) and is of equal or greater Natural Resource Value as the impacted Article 97 Interest.
3. In making a Determination, the Secretary may consider any information that may be useful in making such Determination and may require the Proponent to submit additional information.
4. Prior to making the Determination, the Secretary shall request that the Public Entity, if not the Proponent, state its position on the Determination, and the Secretary shall give due consideration to the position of the Public Entity.
45. The Secretary reserves the sole discretion to determine whether the Replacement Land is of equal or greater Natural Resource Value than the impacted Article 97 Interest.

XX.09 Funding in Lieu of Replacement Land

1. Notwithstanding 301 CMR XX.07, the Proponent of an Article 97 Action may provide funding in lieu of Replacement Land, or a combination of In Lieu Funding and Replacement Land, if:
 - a. the Proponent, with the approval of the Public Entity, if not the Proponent, requests a finding by the Secretary pursuant to 301 CMR XX.09(2);
 - b. the Secretary has reported to the legislature a finding pursuant to 301 CMR XX.09(3) that In Lieu Funding is justified; and
 - c. the Public Entity represents in writing to the Secretary that it will meets the conditions set forth in 301 CMR XX.09(4).
2. Request for In Lieu Funding. A Proponent Public Entity may request that the Secretary make a finding that it is appropriate to provide In Lieu Funding instead of or in addition to Replacement Land to mitigate for ~~an~~ proposed Article 97 Action. Such a request shall be made on the form required by the Secretary and shall:
 - a. include an Alternatives Analysis that, in addition to the contents required by 301 CMR XX.06(2), demonstrates that:
 - i. the proposed Article 97 Action serves a significant public interest;

- ii. it is not feasible to contemporaneously provide Replacement Land;
 - iii. public comment on the Alternatives Analysis was sought and a response provided to comments received; and
 - iv. the Article 97 Action will not have an adverse impact on an Environmental Justice Population;
- b. provide a map showing the location of the Article 97 Interest and surrounding area using the EEA Environmental Justice Maps Viewer.
- c. if the Proponent is a Public Entity, specify the account into which funds will be deposited if the request to provide In Lieu Funding is approved;
- d. if the Proponent is a Public Entity, describe the Public Entity's plan to utilize the In Lieu Funding to obtain Replacement Land within 3 years of the Article 97 Action;
- e. include a certification by the Public Entity that the Public Entity will comply with the conditions set forth in 301 CMRXX.09(4) and 301 CMR XX.09(6); and
- f. include such other information or materials as the Secretary may require.

3. Report of Finding by Secretary. Upon a request by a Public Entity pursuant to 301 CMR XX.09(2), the Secretary may report to the Legislature a finding that In Lieu Funding is justified if, in the sole discretion of the Secretary:

- a. the proposed Article 97 Action serves a significant public interest;
- b. the proposed Article 97 Action will have no adverse impact on an Environmental Justice Population;
- c. the Alternatives Analysis has been submitted to the Secretary and subjected to public notice and comment, including by the Secretary, and the Alternatives Analysis demonstrates that all other options to avoid or minimize the Article 97 Action have been explored and no feasible or substantially equivalent alternative exists for reasons specifically stated; and
- d. it is not feasible to contemporaneously designate Replacement Land that satisfies the requirements of 301 CMR XX.07.

4. Conditions. A Public Entity receiving In Lieu Funding, alone or in combination with providing Replacement Land, shall:

- a. accept not less than 110% of the fair market value or Value in Use, whichever is greater, of the portion of the Article 97 Interest not mitigated by the provision of Replacement Land, as determined by the Secretary after an independent appraisal conducted pursuant to 301 CMR XX.09(5).

plus the actual or reasonably anticipated due diligence costs of the Public Entity, including the cost of title examinations, appraisals, surveys and environmental site assessments.

b. hold the In Lieu Funding:

i. if a Municipality:

1. in the municipality's Community Preservation Fund and dedicated solely for the acquisition of land or interests in land for Article 97 purposes; or
2. in another already-established municipal account for land preservation purposes; or
3. if the municipality lacks such a fund, in a segregated account and dedicated solely for the acquisition of land or interests in land for Article 97 purposes; or

- ii. if the Commonwealth, in a fund for acquisition of land or interests in land for Article 97 purposes; or
- iii. if neither a Municipality nor the Commonwealth, in a segregated account and dedicated solely for the acquisition of land or interests in land for Article 97 purposes; and

c. within 3 years of the Article 97 Action, use the In Lieu Funding to acquire Replacement Land in a Comparable Location and dedicate the Replacement Land in perpetuity for Article 97 purposes. The Public Entity taking or acquiring or dedicating Replacement Land ~~acquired~~ with In Lieu Funding shall satisfy the requirements of 301CMR XX.07(2), provided the Secretary will make any determination under 301 CMR XX.08 and provide a final decision on the Replacement Land within 30 days from delivery of a reasonably complete request from the Public Entity. Failure to make such determination within such 30-day period shall result in constructive approval of the request.

5. Appraisal. The amount of In Lieu Funding shall be based on the fair market value or Value in Use, whichever is greater, of the Article 97 Interest, as if said interest was not restricted by Article 97, as determined by an appraisal. The appraisal shall include a determination of both fair market value and Value in Use. An appraisal conducted in accordance with the EEA Appraisal Guidelines, commissioned by the Division of Capital Asset Management and Maintenance for state-owned property, or conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) shall presumptively be valid, provided the Public Entity that holds the Article 97 Interest has consented to the preparation of the appraisal and has been consulted in the appraisal process under Yellow Book or Uniform Standards of Professional Appraisal Practice.

6. **Reporting.** Any Public Entity that receives In Lieu Funding instead of or in combination with Replacement Land shall report to the Secretary annually, by November 1 each year, on the use of such In Lieu Funding until all such funding has been fully expended for the acquisition of Replacement Land and such land has been dedicated to Article 97 purposes. The report shall include:
 - a. the amount of In Lieu Funding received and the date of the Article 97 Action;
 - b. the account into which the In Lieu Funding was deposited;
 - c. whether the In Lieu Funding was expended to acquire replacement land and, if so, a description of the land that was acquired, including:
 - i. the deed, order of taking, or other legal instrument by which the Replacement Land was acquired and the instrument by which it was dedicated to Article 97 purposes;
 - ii. the basis for the determination that the Replacement Land is in a Comparable Location as the Article 97 Interest;
 - iii. the Secretary's Determination of Natural Resource Value pursuant to 301 CMR XX.08;
 - iv. the Survey or other mechanism demonstrating the acreage as required by 301 CMR XX.07.4.; and
 - v. the appraisal meeting the requirements of 301 CMR XX.09(5); and
 - d. the remaining balance of In Lieu Funding.

XX.10: Waiver or Modification

1. The Secretary may waive or modify the Replacement Land requirements of 301 CMR XX.04(3)(a) and 301 CMR XX.07 upon request by a Proponent where:
 - a. the proposed Article 97 Action involves solely the transfer of legal control of an Article 97 Interest from one Public Entity to another Public Entity and no other change, including, but not limited to, a change allowing the land to be used for another purpose; or
 - b. the transfer or change in use of an Article 97 Interest of insignificant natural resource and recreation value that is less than 2,500 square feet in area and the transfer serves a significant public interest.
2. **Process.** To request a waiver or modification, the Proponent shall request such waiver or modification, in writing, in the form and providing the information required by the Secretary, with a copy to the Public Entity that holds the Article 97 Interest, if not the Proponent, and shall notify the public of such request for

waiver or modification by posting the request on the website of the Executive Office of Energy and Environmental Affairs and providing any additional notification as may be reasonably determined by the Secretary ~~Public Entity with care and control of the Article 97 Interest subject to the Article 97 Action or by other appropriate means~~. The Secretary may request additional information from the Proponent. The Secretary may waive or modify a requirement of 301 CMR XX.04(3)(a) or 301 CMR XX.07 upon a determination that such waiver or modification meets the requirements of 301 CMR XX.10(1) and is in the public interest.

3. Determinations by Secretary. The Secretary reserves sole discretion to determine whether to waive or modify any requirement pursuant to Section XX.10.

XX.11: Severability

The provisions of 301 CMR XX.00 are severable. If any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity will be severed and will not affect the remainder of 301 CMR XX.00 or any application thereof that can be given effect without the invalid provision or application.

REGULATORY AUTHORITY

301 CMR XX.00: M.G.L. c. 3, § 5A; Acts 2022 c. 274, § 2

Gendron, Michael (EEA)

From: Amy Janovsky [REDACTED]
Sent: Wednesday, January 22, 2025 4:07 PM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025
Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114
Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Andover, MA, and I am deeply committed to land conservation, having worked for the Mass Land Trust Coalition for three years, some time ago. I currently serve as a Trustee and I lead land stewardship and restoration efforts for AVIS, Andover's Land Trust.

I offer the following comments to the draft regulations, based on the thoughtful review efforts of the Mass. Association of Conservation Commissioners (MACC).

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at

least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Amy Janovsky
6 Snowberry Road, Andover, MA 01810

Gendron, Michael (EEA)

From: Susan D. Chapnick [REDACTED]
Sent: Wednesday, January 22, 2025 4:16 PM
To: Gendron, Michael (EEA)
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Arlington, MA, the Vice-Chair of the Arlington Conservation Commission, and an Environmental Chemist and owner of a small women-owned consulting firm focusing on environmental assessments and cleanup in the Commonwealth and beyond.

I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP). I do applaud the inclusion of climate change mitigation as a natural resource value; I would suggest adding "climate change resilience" as well.
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Susan D. Chapnick, M.S.
2 Farmer Cir
Arlington, MA 02474

Vice-Chair, Arlington Conservation Commission
[REDACTED]

President & Principal Scientist. NEH, Inc.
www.neh-inc.com

Gendron, Michael (EEA)

From: Walter Morrison [REDACTED]
Sent: Wednesday, January 22, 2025 4:22 PM
To: Gendron, Michael (EEA)
Subject: Thoughts on 301CMR52

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Michael: Please forward the following thoughts to Rebecca Tepper at the office of Energy and Environmental Affairs. I am a long-term resident and former business owner (retired) here in Plymouth, Ma. I currently serve as vice chairman for the Plymouth Conservation Commission and the following are my own personal thoughts on Article 97. Geologically speaking Plymouth should be considered Cape Cod for we sit upon glacial till that houses our sole source aquifer of fresh water. The bar needs to be kept high to preserve what open spaces we have in this town for our future. Before we compromise land in conservation, we need to keep it protected from short term interest gains to value the long term. The 2/3 vote required to move land out of conservation must be preserved to ensure long term viability of living in this town. Keeping a long-term comment period is a must for thoughtful research. To quote my father "act in haste and repent at your leisure". Best regards Walter E. Morrison III 9 Bloody Pond Rd. Plymouth, Ma.



January 22, 2025

Executive Office of Energy and Environmental Affairs
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Proposed Regulations *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests (Open Space Act)*

Dear Mr. Gendron,

Thank you very much for the proposal of updates as I know these processes are cumbersome and takes a lot of work and effort to pull together. Dually, I would also like to thank you for the opportunity to respond to the Executive Office of Energy & Environmental Affairs (EEA) on the proposed regulation updates, *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests*. In meeting with other local public Easton entities, we have come to a consensus that the following points should be considered:

- The Public Entity should be a partner and collaborating on the disposition throughout the entire process
- The requirement by the Public Entity to declare the proposed land for disposition as surplus to Article 97 Interests and needs and a unanimous vote should be included in the Regulations.
- Countless municipalities and other conservation organizations worked for many years to get the No Net Loss Policy codified in this law. But the omission of the declaration of surplus need and the lack of Public Entity vote is disappointing.
- Land owned and managed or otherwise restricted by non-profit conservation organizations should be specifically removed from consideration of Replacement Land. Non-profit land is already public open space and typically protected from conversions through the non-profits' charters

- The In Lieu Funding section needs clarification. Firstly, the Public Entity should state whether they agree with this action or not. This section shifts the responsibility of finding Replacement Land to the Public Entity who may not be asking for the disposition. This will take considerable time, resources, funding and staff time, if there is staff, to accomplish all these tasks. This is overly burdensome. The Regulations do not provide any relief for a Public Entity to say if they have the resources to undertake this. Secondly, it appears that the Proponent requests the Secretary make a finding about appropriateness of In Lieu Funding but then it is the Public Entity that requests the Secretary move the matter to the Legislature, whether they agree the action is appropriate or not. Thirdly, the Proponent is providing the Public Entity plan on how to use the funding as a submittal requirement, without any requirement for consultation with the Public Entity. The requirements of this plan are not listed but the plan would presumably be 1. Find suitable land and 2. Acquire the land. Requiring the Public Entity write a plan for this action is unnecessary.
- Reporting requirements are overly burdensome. How is a Public Entity ensured that there won't be more scrutiny on the Public Entity left with finding Replacement Land for the Proponent, compared to the review of the Proponent's Alternatives Analysis in finding the Replacement Land?

Sincerely,

Jennifer Smith
NRT of Easton
Executive Director
jenn@nrtoeaston.org

Gendron, Michael (EEA)

From: Nancy Rufo <rufo@duxbury-ma.gov>
Sent: Wednesday, January 22, 2025 4:23 PM
To: Gendron, Michael (EEA)
Cc: Nancy Rufo
Subject: 301 CMR 52 Public Comments

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January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests. I am the Conservation Administrator and resident of the Town of Duxbury, and I offer the following comments on the draft regulations.

Purpose. Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this section, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high standard for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.

Notifications. Notification should be made at both the local and statewide levels on platforms that provide regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition, include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a participant in this process and be able to collaborate on the disposition throughout the entire process.

Documentation of Surplus Vote by Public Entity. There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote by the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required to

Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission), the regulations should require at least a 2/3 vote of that in addition to the 2/3 vote of the governing body, such as a City Council, Selectboard or Town Meeting.

Public Comment Period. A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

Natural Resource Values. The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation (OSRP).

In Lieu Funding. In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funds should be increased to 150% of the fair market value or Value in Use.

Enforcement. The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Nancy E. Rufo
Duxbury Conservation Administrator and Resident (81 Millbrook Way)

Nancy Rufo
Conservation Administrator
Duxbury Town Hall
878 Tremont Street
Duxbury, MA 02332
rufo@duxbury-ma.gov
781-934-1100 ext. 5470
****Please note my new email address****

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January 22, 2025

Via Electronic Mail

to Michael.gendron2@mass.gov, and Secretary.Tepper@mass.gov

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE: *301 CMR 52.00: Change in Use or Disposition of Article 97 Interests*

Dear Secretary Tepper:

Thank you for the opportunity to provide comments to the Executive Office of Energy and Environmental Affairs (EEA) on the proposed regulations, *301 CMR 52.00: Change in Use or Disposition of Article 97 Interests*.

The Massachusetts Association of Conservation Commissions (MACC) is a statewide non-profit organization that supports more than 2,500 volunteer conservation commissioners in their mission to preserve wetlands and open space. Each of the 351 cities and towns in Massachusetts has a conservation commission responsible for administering the state Wetlands Protection Act and municipal wetland bylaws and ordinances, as well as managing municipally owned conservation land. Our association protects Massachusetts' natural resources through our education and advocacy efforts, and we have been doing this work since 1961.

MACC, our environmental coalition partners, concerned citizen Phil Saunders, along with former Representative Ruth Balser, Senator Jamie Eldridge, and their staff, have worked hard over many years to help pass the bill that was formerly known as the Public Lands Protection Act (PLPA). We applaud the hard work by EEA staff to create the [Article 97 and the Act Preserving Open Space in the Commonwealth](#) website, the [Open Space Act Portal](#), the Frequently Asked Questions, the [Tracker](#), as well as these draft regulations. The websites provide the much-needed transparency for Article 97 dispositions, and the websites include the purpose of "Ensuring No Net Loss of Protected Open Space", something that should be included in the purpose of the regulations. MACC offers the following comments on the proposed Open Space Act regulations.

52.01: Purpose and Applicability

Comment 1. The Purpose should include the goal of no net loss of Article 97 lands. As written, the Purpose outlines the process for disposition of Article 97 lands requiring a two-thirds vote by the legislature. The regulations should open with a statement of the overarching purpose of this law – to protect, preserve and enhance open spaces protected under Article 97 by establishing strict standards for approving any conversion of such land to other uses, and ensuring no net loss of Article 97 lands when conversions cannot be avoided.

It is common that other environmental regulations include more detailed goals in their purpose sections. For example, in the Massachusetts Wetlands Protection Act regulations (310 CMR 10.00), the purpose section states:

310 CMR 10.01(2):

(2) Purpose. M.G.L. c. 131, § 40 sets forth a public review and decision-making process by which activities affecting Areas Subject to Protection under M.G.L. c. 131, § 40 are to be regulated in order to contribute to the following interests:

- protection of public and private water supply*
- protection of ground water supply*
- flood control*
- storm damage prevention*
- prevention of pollution*
- protection of land containing shellfish*
- protection of fisheries*
- protection of wildlife habitat*

The purpose of 310 CMR 10.00 is to define and clarify that process by establishing standard definitions and uniform procedures by which conservation commissions and the Department may carry out their responsibilities under M.G.L. c. 131, § 40. Applicants and issuing authorities shall use forms provided by the Department to implement 310 CMR 10.00.

310 CMR 10.00 is intended solely for use in administering M.G.L. c. 131, § 40; nothing contained in 310 CMR 10.00 should be construed as preempting or precluding more stringent protection of wetlands or other natural resource areas by local by-law, ordinance or regulation.

The Open Space Act regulations should clearly state the Commonwealth's intent that proponents will avoid conversion, if at all possible, minimize conversions that are deemed unavoidable, mitigate conversions with comparable replacement land, and as a last resort, mitigate with in-lieu funding that will be directed to non-contemporaneous protection of comparable replacement land.

Comment 2. The final Land Disposition Policy should be made available for public comment. We recognize that the new Land Disposition Policy is not available for review during the public comment period for the Open Space Act regulations. The February 19, 1998 **EOEA Article 97 Land Disposition Policy** clearly states the no net loss of Article 97 lands policy:

It is the policy of EOEA and its agencies to protect, preserve and enhance all open space areas covered by Article 97 of the Article of Amendment to the Constitution of the Commonwealth of Massachusetts...

The goal of this policy is to ensure no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions.

We urge EEA to provide a draft policy for public comments, before considering putting it on the EEA website. We hope the policy continues to clearly state that it is EEA's goal to protect, preserve, and enhance all open spaces covered by Article 97 of the Amendment to the Constitution of the Commonwealth of Massachusetts, and to ensure a no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions.

52.02 Definitions

Proponent means the Public Entity or party proposing an Article 97 Action. A proponent may include any individual, partnership, trust, firm, corporation, association, commission, district, department, board, municipality, public or quasi-public agency or authority.

Comment 3. Proponent definition. The definition of *Proponent* includes individuals, partnerships, and corporations. But the law only allows public entities to propose Article 97 dispositions; it says nothing about individuals or corporations proposing such projects. As written, the draft regulations provide a process for individuals, partnerships and corporations to work with EEA, and minimally, with the Public Entities. We recommend EEA review the process and incorporate the Public Entities throughout the disposition process rather than the emphasis on private entities. Private parties should not be proposing Article 97 dispositions.

Section 52.03: Pre-submission Consultation

Comment 4. Public Entity should be part of the pre-submittal process. We are concerned that, as currently drafted, the phrase “pre-submittal consultation” might occur without the involvement of the Public Entity holding Article 97 Interest. This is a concern throughout, where the Proponent could be conducting an alternatives analysis, identifying replacement land, issuing public notices, offering in-lieu funding, etc. and providing all of this to the Secretary without any involvement of the holder of the Article 97 land.

52.04: Requirements

Comment 5. Coordination with the Public Entity. This section states that requirements must be met “prior to taking an Article 97 Action.” The regulations should require that the proponent comply with all requirements before the landowning entity takes any vote to authorize the disposition. This will ensure that those responsible for taking such votes have the benefit of all relevant materials before a decision is made about the property.

Comment 6. Alternatives Analysis. The Proponent should provide the Alternatives Analysis to the Public Entity who is the holder of Article 97 interest, as well as to the Secretary and the public.

Comment 7. Vote for surplus land by the entity controlling the Article 97 land being evaluated for disposition.

We recommend a requirement for that a vote by the Public Entity documenting that the land is surplus to their needs. The regulations should specify at what point in the process this is to occur and that a minimum of a two-thirds vote is required. From our perspective, MACC would like to see a unanimous vote requirement, as was outlined in the 1998 policy, but ***we urge EEA to require at least a two-thirds vote.*** For something as important as changing the use of protected open space, a simple majority is ***not*** appropriate.

52.05: Notification

Comment 8. Notifications. Since every proposed change of use for Article 97 lands requires filing an Environmental Notification Form (ENF), the regulations should remind proponents of this requirement, and that proponents must follow the notice requirements for all ENFs. At a

minimum, this requires posting in the *Environmental Monitor*. We also believe that it is appropriate for said proponents to provide notice to community-based organizations and tribal organizations in accordance with the MEPA Public Involvement Protocol, should be required.

In addition, we recommend that the regulations require posting the public notice to the Open Space Act Tracker on EEA's website, to be supplemented by additional material as they become available. The proponent should be required to post a physical notice in highly visible locations on the subject parcel or parcels. For something as important as changing the use of protected open space, simply posting on the public entity's website is insufficient.

Comment 9. 30-Day Public Comment Periods. Sections 5.1 and 5.2 should have minimum public comment periods extended from 21 days to 30 days, and these comment periods should be required for all Article 97 conversions, not just for those proposing In-Lieu Funding.

52.06: Alternatives Analysis

Comment 10. Voting.

Section 52.06(2)(f) reads "...an affirmative vote by the Public Entity, if applicable." What is the quantum of vote that is required and when would a vote NOT be applicable? This should be clarified. The vote should occur only after the alternatives analysis is completed to the satisfaction of the Public Entity and identification of replacement land or mutual agreement on in lieu funding is reached. Conservation Commissions will need to vote at a public meeting. For state lands, in addition to approval by the Commissioner of the Department of Conservation and Recreation (DCR) or Department of Fish and Game, a vote of the DCR Stewardship Council or Fish and Wildlife Board should be required in the regulations. That is already required currently by those agencies and that practice must continue.

Comment 11. Appeals Process for Appraisals. Is there an appeals process if the Public Entity believes the Alternatives Analysis is insufficient or does not have complete information? There should be a process for resolution of disputes regarding the appraisal value (and at other steps in the disposition process). Appraisals should be valid for one year and updated as needed.

Comment 12. Section 6.2.b. Alternatives considered. Rather than saying that "Cost differences between land owned by the Public Entity and equivalent private land shall not be the sole basis for infeasibility," this section should say that such differences "shall not be the primary basis for infeasibility." For Article 97 and the Open Space Act to have real meaning, public entities cannot be allowed to convert land simply because it is most economically expedient to do so.

Comment 13. Section 6.2.f. (Documentation of affirmative vote by Public Entity (and wherever votes are mentioned)): A higher standard than a simple majority vote needs to be required, in keeping with the two-thirds legislative vote required by Article 97 itself and the significance of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission), **the regulations should require at least a two-thirds vote of that entity** in addition to the two-thirds vote of the governing body, such as a City Council, Select Board, or Town Meeting.

52.07: Replacement Land

Comment 14. Communication with the Public Entity. The Secretary should provide an opportunity for the Public Entity and the holder of the replacement land to weigh in on the

acceptability of proposed replacement land (especially if they will be the ones managing it) and to provide information on the relative Natural Resource Values. The Public Entity is likely to have more information on this than the Proponent.

Comment 15. Section 7.3. Appraisal Standards. All appraisals submitted in support of a proposed change in the use of Article 97 land should meet EEA, DCAM, or Yellow Book appraisal standards. Self-serving appraisals that are not done to recognized standards will not advance the purpose of the Open Space Act.

Comment 16. Section 7.4. Certain Easements. As written, the proposed language indicates that no replacement land is required for easements that meet the enumerated conditions, implying all such cases are automatically deemed cash-in-lieu transactions. If that is the case, it must be stated plainly. An additional proviso should be added to Section 7.4.c. to require that the appraisal consider the value of loss-of-use resulting from temporary disturbance to the property, as well as the value of any Article 97 uses of the property that are foreclosed by the easement. Further, if the intention is that all such transactions be deemed cash-in-lieu transactions, it does not make sense to include the language in Section 7.4.d, which references requirements for replacement land. Instead, Section 7.4.d should require such transactions to meet the terms of Sections 9.4, 9.5, and 9.6, which pertain to requirements of cash-in-lieu transactions.

52.08: Determination of Natural Resource Value

Comment 17. Additional details are recommended concerning Natural Resource Values. We recommend additional details about the methodology for determination of Natural Resource Values, either in this section or added to future guidance documents.

52.09: Funding in Lieu of Replacement Land

Comment 18. Section 9.3.c. Report of Finding by Secretary. This section should reference the required minimum comment period defined in Section 5.2, which we request should be changed from 21 to 30 days. In addition, proponents should be required to submit all public comments received by the Secretary; the Finding should state that the Secretary has reviewed those comments, and the comments should be made available to the public as part of the Tracker on EEA's website.

Comment 19. In Lieu Funding. The In Lieu Funding, as an alternative to replacement land, should be the exception, rather than the easily chosen alternative. The amount of 110% of the fair market value or value in use is not adequate. Costs include not only the land purchase price, but they also include surveying costs, funding appraisals, title searches, new site plans, time to negotiate with a landowner and significant staff time to complete the negotiations, as well as title insurance, recording fees. In addition, land values in Massachusetts will change significantly in 3 years. We suggest increasing this requirement to 150%.

52.10: Waiver of Modification

Comment 20. Checks and balances. The regulations should have a process for appeals or input by the Public Entity and the public. What will happen if the holder of the Article 97 Interest does not agree with the Waiver or Modification, and then the waiver is granted by EEA? There should be some appeal process or ability of the Legislature to override an extreme decision.

Comment 21. Enforcement. The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. The regulations need to state consequences for noncompliance with this law and regulations, for the Proponent and the Public Entity. Potential enforcement could include invoking the EEA's civil enforcement, suspension of permits issued by EEA, and ineligibility for state assistance programs until the non-compliance is corrected to the Secretary's and Public Entity's satisfaction. Enforcement should be against the entity that is causing the disposition, not the Public Entity that is losing Article 97 land at no initiative of its own.

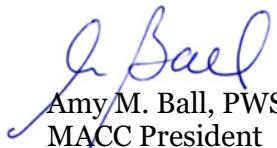
Thank you for your hard work to create the EEA Open Space Act portal, and for these regulations. We appreciate the opportunity to provide you with our comments. We wish you the best in finding the balance between process and environmental protection.

Please contact MACC if you need additional information, or if we can assist with this process in the future.

Sincerely,



Dorothy A. McGlincy
Executive Director
dorothy.mcglincy@maccweb.org



Amy M. Ball, PWS
MACC President

cc: Michael Gendron, Open Space Act Coordinator
Stephanie Cooper, Undersecretary for the Environment
Kurt Gaertner, Assistant Secretary for Environmental Policy
Former Representative Ruth B. Balser
Senator Jamie Eldridge



January 22, 2025

Executive Office of Energy and Environmental Affairs (EEA)
Attn: Michael Gendron
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: 301 CMR 52, draft regulations on the Open Space Act

Via Email: Michael.gendron2@mass.gov

Dear Mr. Gendron:

On behalf of Mass Audubon, I offer the following comments on the draft regulations at 301 CMR 52.00, implementing Chapter 274 of the Acts of 2022, *An Act Preserving Open Space in the Commonwealth (OSA)*. This law and the regulations are intended to clarify the procedures and requirements for reviewing proposed dispositions or changes in use¹ of permanently conserved lands protected under Article 97 of the State Constitution. We appreciate EEA's work on implementing this law, including the webpage with information, tools and the project tracker. The following comments suggest refinements to the regulations to ensure the full intent of Article 97 and the OSA are fully upheld and that the procedures are clear, rigorous and transparent.

Lands protected under Article 97 are protected "in perpetuity." This is a core principle that is vital to ensuring that lands gifted or acquired in the public interest for their inherent values are not converted to myriad other uses. Mass Audubon has worked for decades to uphold Article 97 and strongly supported the passage of the OSA, as well as previous versions known as the Public Land Protection Act (PLPA). The intention of passing this law was to codify the EEA No Net Loss of Article 97 Lands policy and clarify procedures for dispositions that are necessary for another significant public interest, only when no alternative is available and replacement land of equal value (both monetary and natural resource) is provided. Article 97 protections are more important than ever, as the state works to meet its climate, biodiversity, and equity goals for land including protecting 30% of the state by 2030.

Summary Comments:

Article 97 dispositions should be rare and subject to rigorous and transparent review.

- Only Public Entities should be allowed to propose an Article 97 disposition, as stated in the law.

¹ For brevity, "dispositions or changes in use" is referred to simply as "dispositions" throughout the remainder of this letter.

- All dispositions should be required to demonstrate a purpose and need serving a significant public interest. The alternatives analysis must be rigorous.
- The Public Entity that currently owns and manages the Article 97 land must have a central role throughout this process.
- The public must be well informed and provided with meaningful opportunities for input.
- Throughout the regulations, more specificity should be provided, including the method for notifying the affected entity and the public, content of the information provided including alternatives analysis and proposed replacement land, time period for accepting public comment, and disclosure of any changes as the consultation process proceeds.
- Information should be available through a centralized, publicly available portal (preferably the Environmental Monitor), rather than only scattered across the websites of different state agencies and municipalities for different projects.
- Dispositions should be reviewed through the Massachusetts Environmental Policy Act (MEPA) process, with few exceptions for projects qualifying for waivers or modifications.
- Use of In-Lieu Funding instead of Replacement Land should be restricted to narrow exceptions where there is a compelling public interest requiring immediate action.
- The burden of obtaining Replacement Land should remain on the project Proponent rather than being transferred to the Public Entity that is losing Article 97 at no initiative of its own. This is of particular concern for municipalities.
- The Public Entity that owns the lands being disposed must vote in agreement that the disposition is in the public interest, that the alternatives analysis was adequate, and that the replacement land is appropriate. That vote and the MEPA process must be concluded before EEA issues its final determination. The necessary legislation should only be filed after all these steps are completed.

With this overall framing above in mind, we offer the following suggestions for refinement of the draft regulations before they are finalized.

XX.01 Purpose and Applicability

The draft purpose section includes that the regulations provide the process and requirements for Public Entities and Proponents to satisfy the requirements of the law. This statement should include that the purpose includes protection and No Net Loss of Article 97 lands, through review of alternatives to avoid and minimize dispositions and provision of replacement land for unavoidable dispositions. It should also state that the process provides for the public to review and comment on proposed dispositions.

The Applicability subsection says that the regulations are applicable to a Public Entity and to Proponents seeking legislative authorization for a disposition of land held in Article 97 by a Public Entity. However, as drafted, much of the process established in these regulations is between the project Proponent and EEA. In most instances, a third party, different than the landowner Public Entity, with a purpose other than land conservation, is seeking the authorization. In this section and throughout the regulations, it needs to be clear that the Public Entity currently responsible for the land is involved in each step in the process including the alternatives analysis, evaluation of potential replacement lands, and communications with EEA. The burden and costs of developing the necessary information and analysis and providing compensation for unavoidable impacts should be on the Proponent. The landowner Public Entity must have a strong role in evaluating that information and providing feedback to the proponent and EEA on its adequacy.

This law is applicable only to dispositions proposed by a Public Entity. The definition of Proponent should be modified to be consistent with the law. Parties who are not Public Entities should not be allowed to propose a disposition – see comments under Definitions.

XX.02 Definitions

A definition of “Feasible or Substantially Equivalent Alternative” is needed. This should include analysis of alternatives to avoid and minimize impacts. The natural resource and monetary value of the disposed land and replacement or compensation should be factors in the alternatives analysis.

Proponent: The law provides a process only for public entities to propose Article 97 dispositions. The definition of Proponent in the draft regulations includes individuals, partnerships, and corporations. Regulations must be consistent with the law. All references to private parties or entities should be deleted from the definition of Proponent and throughout the regulations.

Public Interest Purpose: There should be a definition of public interests that draws boundaries around the rationale for when Article 97 dispositions may be considered. These dispositions should be limited to situations where a significant public interest related to public health, safety or welfare is involved and there is no feasible alternative or substantially equivalent alternative. Proponents should not be allowed to enter this process where the only interest they are advancing is a private use or a use benefiting only a narrow subset of the public. This remains true even when the definition of Proponent is corrected to limit eligibility to Public Entities per the requirement of the law.

XX.03 Consultation

The draft regulations should be revised to clarify the important role and participation of the Public Entity currently controlling the Article 97 land throughout the process, from pre-submission consultation, through project need and alternatives analysis, to compensation. A vote of the entity currently controlling the land should be required.

In instances of municipal conservation lands, the former EEA No Net Loss policy required a unanimous vote of the conservation commission that the land was surplus to the needs for which it was acquired. While this may be too high a bar in instances where there is a truly compelling competing public interest at stake, there should still be a requirement for a majority (preferably super-majority) vote. This vote should affirm that the conversion is necessary for a significant public interest, that no viable alternative exists, and that compensation has been agreed to, based on both the natural resources values of the land affected and the cost of replacing those functions and values. For Article 97 lands held by a state agency (e.g. Department of Conservation and Recreation (DCR) or MassWildlife), a vote of the applicable oversight body (DCR Stewardship Council or MassWildlife Board) should be required in addition to certification of that approval by Commissioner (or for regional entities like regional water authorities, their board and top official).

This vote should come at the end of the consultation process among the project Proponent Public Entity, the land conservation Public Entity, and EEA. It should occur after public comment is received, after MEPA review is concluded, and before legislation is filed to allow the disposition.

XX.04 Requirements

This section outlines basic requirements for notification, alternatives analysis and authorization or waiver by EEA. It should be revised to include the Public Entity currently responsible for the land in all of the steps in the review.

MEPA: The Massachusetts Environmental Policy Act (MEPA), MGL c.30 §§ 61-62L, requires all agencies to review and use all practicable means and measures to minimize damage to the environment. This applies to all agency actions including projects undertaken or financed by state agencies as well as permits and Article 97 land dispositions. The MEPA regulations at 301 CMR 11.00 require submission of an Environmental Notification Form (ENF) for any disposition of Article 97 land “unless the Secretary waives or modifies the replacement land requirement pursuant to M.G.L. c. 3, § 5A [OSA] and its implementing regulations.” Under subsection XX.10 of the proposed OSA regulations, such waivers or modifications are only allowed for transfers of legal control of land between two Public Entities, with no change in use or purpose, or dispositions of lands less than 2,500 s.f. that are of insignificant natural resource and recreation value. All other Article 97 dispositions should be reviewed through the MEPA process.

The OSA regulations should dovetail with the MEPA review as a transparent mechanism for review of all the required information, alternatives analysis and proposed replacement land or compensation. The MEPA review also provides the opportunity for public comment and the proponent’s and Public Entity’s response to comments. The MEPA review should be conducted prior to a final EEA decision on the project.

XX.05 Notification

The draft regulations only propose public notification for projects involving in-lieu funding rather than direct replacement of land. This should be revised to require notification for all proposed Article 97 dispositions, as early as possible in the process and definitely before EEA or the Public Entity landowner makes a decision and before legislation is filed.

The draft requires posting of the notification on the website of the Public Entity that currently controls the land. All of these notices should be posted in a centralized location in addition. We recommend the use of the Environmental Monitor. This would also coordinate with associated MEPA filings including compliance with the Environmental Justice (EJ) notification and review requirements for projects affecting EJ communities.

Postings should simultaneously be provided on the website of the Public Entity that is currently responsible for the land the EEA OSA page where all Article 97 projects are listed. All of the required information including the project description, public interest purpose and need, alternatives analysis, and proposed replacement land should be made available for public review and comment. The draft regulations only provide for public review for projects involving in lieu funding. This should be revised to provide public review for all projects. The comment period should be specified in the regulations and should be longer than the proposed 21 days. Ideally, the MEPA review process will be utilized, and that process specifies public comment periods and requirements for responses to comments and potential additional review.

XX.06 Alternatives Analysis

The alternatives analysis is one of the most crucial pieces of the entire Article 97 disposition process. The analysis should include a clear statement of the purpose and significant public interest need for the project, the minimum parameters necessary to meet that need, and rigorous evaluation of non-Article 97 lands in the community or service area of the proposed project. Cost must not be the only or primary factor in determining that alternative sites are not feasible. The alternatives analysis for replacement land should be equally rigorous.

XX.07 Replacement Land

The draft regulations include requirements that the replacement land be in a comparable location, of equal or greater natural resource value, acreage, and monetary value. These are good provisions. EEA should also develop standard guidance on how to conduct the analysis of replacement land. Further clarification should also require that the replacement land be equivalent in terms of public accessibility for properties currently open to public use with trails or recreational facilities.

Subsection 4. Certain Easements: The draft regulations would exempt temporary easements and subsurface or air rights easements from the requirement to provide replacement land, deeming these to affect zero acres. This is too broadly written and could allow substantial projects with long term impacts to be constructed. For example, placement of electric, gas, communications, water, or sewer lines beneath a parcel of parkland has long term implications for the use of the land, even if the area is currently grassed or paved over. These projects may affect future recreational improvements or the restoration of a turfed landscaped area to a natural habitat with succession to forested conditions. Air rights may allow projects that impact the natural and recreational values and uses of the land even if the land surface is not altered. There is also no requirement in the draft regulations that public access not be affected by these projects. Any exemptions to full Article 97 review and compensation should be narrowly crafted, essential to public interests, and limited in scope of the area impacted.

XX.08 Determination of Natural Resource Value

This section is brief, leaving details to EEA's discretion. We recommend that EEA develop a standard methodology and guidance. The Natural Resource Site Evaluation tool on EEA's website should be supplemented with guidance. An on-site field observation with EEA staff and the Public Entity currently responsible for the land should be required in most instances.

XX.09 Funding in Lieu of Replacement Land

This provision would allow, at the sole discretion of EEA, the use of monetary payments in situations where replacement land is not feasible contemporaneously with the land disposition. There are several concerns with this provision as drafted.

- The scope and method for reviewing potential replacement land is not detailed in XX.07. This is needed to ensure rigor and consistency in this analysis. EEA should develop a guidance document in addition to the regulations on this.
- There is no requirement for consideration of input from the Public Entity currently controlling the property.

- The burden for finding and acquiring replacement land is transferred to the Public Entity disposing of the land, even though they did not initiate this disposition. This is particularly burdensome for municipalities. The Public Entity must then track these funds separately, report annually to EEA, and utilize the money within three years.
- If replacement land could not be identified prior to the disposition, how will the Public Entity that lost the land be better positioned to identify the replacement than the Proponent who caused the disposition? This is of particular concern for municipalities, especially EJ communities and communities with limited capacity. Losses of even small green spaces in urban communities can have disproportionate neighborhood impacts that cannot be compensated by land acquisition elsewhere.
- The proposed funding amount of not less than 110% fair market value or value in use, whichever is greater, is likely not sufficient in many instances to offset the actual costs to the Public Entity. Costs and burdens include municipal staff and volunteer time, research, discussions with landowners, due diligence and actual acquisition costs. Escalating land prices also make it only more difficult to find replacement land after the disposition has occurred.
- Municipalities that fail to expend these funds to obtain the replacement land within three years may lose eligibility for open space protection and recreation grants. This would be an unfair shifting of burden from the Proponent who initiated the land disposition to the conservation commission, who through no action of their own, lost some Article 97 land to another entity and/or use.

The provisions for use of in-lieu funding should be tightened up considerably. This option should only be available in rare instances where there is a compelling public interest at stake requiring immediate action. The proponent should generally be held to a high standard for finding and working with the Public Entity to acquire replacement land in advance of the disposition. This is an important disincentive to conversion of Article 97 lands to other uses.

XX.10 Waiver or Modification

This section allows the Secretary to waive or modify the Replacement Land requirements for two reasons: 1) transfer of legal control from one Public Entity to another with no change in use and 2) dispositions involving land less than 2,500 s.f. that is of insignificant natural resource or recreation value and the transfer serves a significant public interest.

As noted above, all Article 97 dispositions should demonstrate that they are necessary for a significant public interest and that no feasible alternative is available.

Transfers between Public Entities should be required to impose permanent protection of the Article 97 interest. A mere statement that there will not be a change in use or purpose is insufficient if the transfer is to an agency or local or regional authority that does not generally have Article 97 protection for lands under its authority. In such cases, the Article 97 protection needs to be permanently attached to the deed, perhaps through a Conservation Restriction.

A definition and standards are needed for determining if a parcel has insignificant natural resource or recreation value. Input from the Public Entity that owns the land should be obtained and considered along with information about the features and conditions of the parcel. Multiple bites at the apple should not be allowed through repetitive dispositions of multiple parcels under 2,500 s.f. to the same entity.

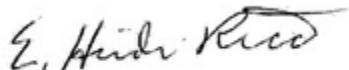
Enforcement

The regulations should have enforcement provisions imposed on entities that fail to fully comply with the requirements of this law and regulations. Enforcement should be imposed on the Public Entity that initiated the disposition, not the Public Entity that was required to dispose of land or interests in land at no initiative of its own. Enforcement should be structured to provide strong incentives to comply with the law and regulations, e.g. disqualification from grants or other EEA approvals until the noncompliance is rectified.

Conclusion

Mass Audubon appreciates EEA's efforts to address Article 97 dispositions pursuant to the OSA, both by drafting these regulations and through the web information and tools that have been developed. We recognize that there are often difficult competing public interests at stake in these projects. We hope that the above comments are useful to EEA as it works to finalize these regulations and implement strong, clear, and transparent processes around these difficult decisions.

Regards,



E. Heidi Ricci
Director of Policy and Advocacy

Cc: Kurt Gaertner, Assistant Secretary for Environmental Policy

January 22, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

I appreciate the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Hull, Massachusetts. I am also an environmental and conservation professional, with experience as a Land Trust Executive Director in New England and a technical advisor to another Land and Water Trust. I am a graduate of the University of Massachusetts - Amherst in Natural Resource Conservation Studies, hold a MS in Forestry, and professional certifications in wetlands, ecological restoration, and environmental collaboration and conflict resolution. Based on my 35 years of experiences in land-use; my interest in listening to the voices all affected by land-use decisions; and my respect to *generous* landowners, who donated lands specifically for conservation purposes, I would like to offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to **ensure no net loss** of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the **local** and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

Furthermore others should be formally informed:

- *Abutting landowners* should be notified that the land will be removed from conservation and used for another purpose. Many people intentionally purchase homes that abut conservation land. When the conservation use is lost, there can be personal and economic loss in the land value and when the conserved land are covered with impervious surfaces, it will likely increase drainage onto their property; another economic loss.

- *Land donors and/or their survivors* should be formally informed. Land donation to conservation is a personal decision by a landowner. It is deliberate and usually results in monetary forfeit by the donor. Laws that facilitate improperly vetted swap of conservation land can have undesirable consequences when confidence is lost by the most important participant in land conservation: *the future prospective land donor*.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Patti Connaughton-Burns

Patricia M. Burns
 155 Nantasket Ave #402
 Hull, MA 02045

Gendron, Michael (EEA)

From: Neva Tolopko [REDACTED]
Sent: Wednesday, January 22, 2025 4:38 PM
To: Gendron, Michael (EEA)
Subject: RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of South Hadley, MA and former Conservation Commission Member. I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and state level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The

Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a Select Board or Town Meeting.
- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
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Thank you for your time and consideration of my comments.

Sincerely,

Neva Tolopko

28 San Souci Dr,

South Hadley, Ma 01075

Gendron, Michael (EEA)

From: Toni Uliana <tuliana@monson-ma.gov>
Sent: Wednesday, January 22, 2025 4:39 PM
To: Gendron, Michael (EEA)
Cc: Toni Uliana; [REDACTED]
Subject: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

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January 22, 2025
Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a lifelong resident of Monson and work for the Town of Monson, and I offer the following comments to the draft regulations on behalf of myself and the Monson Conservation Commission.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Toni M. Uliana
14 Wales Rd Apt. 2
Monson, MA 01057

Toni Uliana
Conservation Agent
Town of Monson
(413) 688-0022
tuliana@monson-ma.gov

Monson Conservation Commission



January 22, 2025

Michael Gendron
Executive Office of Energy & Environmental Affairs
100 Cambridge St., Suite 900
Boston, MA 02114

(Delivered electronically)

Dear Mr. Gendron,

On behalf of the cities and towns of Massachusetts, I write today to provide a municipal perspective on *301 CMR 52.00: Disposition or Change in Use of Article 97 Interests*. These proposed new regulations, authorized by Chapter 274 of the Acts of 2022, would affect the dedicated work done by municipal staff, conservation agents, and others responsible for reviewing dispositions or changes of use for land held by public entities. We deeply appreciate the opportunity to weigh in on this important topic, and encourage the Executive Office of Energy & Environmental Affairs (EEA) to strongly consider other comments submitted by municipal staff, conservation officials, and planners.

In reviewing the proposed regulations, we identified several opportunities where further clarification and emphasis could strengthen the role of municipalities in the review and consultation process for Article 97 Actions.

First, we encourage the revisions to include stronger engagement with municipalities prior to proposing Article 97 Actions, as well as throughout the process. A proponent should be required to share the Alternatives Analysis with the impacted municipality. Further, notification requirements should not only require notification to the Secretary of Energy & Environmental Affairs and the public, but also the municipal government holding the impacted land, if applicable. Ensuring that municipalities impacted by Article 97 Actions receive the same communications as the EEA will help ensure that meaningful feedback is collected throughout the process, rather than when the disposition or change in use is well underway.

Additionally, we recommend including in the regulations a requirement for the Public Entity to take an affirmative vote on Article 97 Actions, in line with previous guidance. Documentation of that vote should similarly be incorporated into the process and detailed in the regulations and supporting documents provided by the EEA. To not include this integral element in final

regulations would do a disservice to the municipal staff and officials who faithfully serve as stewards of their community's environment and have a vested interest in decisions impacting local lands. Municipal leaders already work closely with EEA to protect natural resources across the Commonwealth. To omit this requirement – which municipalities have dutifully followed for decades – would greatly diminish the role of local legislative bodies and commissions on such decisions.

In the work ahead, we encourage the EEA to communicate and engage directly with municipal governments to ensure that local leaders and involved parties better understand the changes put forward by these regulatory efforts. We stand ready to assist in these efforts as best we can, knowing that municipalities across the Commonwealth are eager for strong, clear guidance on Article 97 dispositions and changes of use.

We appreciate the opportunity to submit comments regarding 301 CMR 52.00. If you have any questions or desire further information, please do not hesitate to have your office contact me or MMA Legislative Analyst Josie Ahlberg at jahlberg@mma.org at any time.

Sincerely,



Adam Chapdelaine
Executive Director & CEO

Gendron, Michael (EEA)

From: David Buzanoski [REDACTED]
Sent: Wednesday, January 22, 2025 4:43 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52 : Disposition or Change in Use of Article 97 Interests

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

To: Michael Gendron

Re: 301 CMR 52 : Disposition or Change in Use of Article 97 Interest.

I write in regard to the proposed changes to the above mentioned Article 97. My name is David Buzanoski, and I am the President of the Falmouth Heights - Maravista Neighborhood Association in Falmouth, Massachusetts. I represent nearly 500 members who are opposed to any significant changes to Article 97 provisions which would diminish the rights and protections afforded members of the Commonwealth.

Citizens of the Commonwealth have a state constitutional right to a clean environment as first established under an amendment adopted in 1918.

Then in 1972 Massachusetts voters overwhelmingly approved a ballot question establishing Article 97 right to clean environment including its natural, scenic, historical, and aesthetic qualities for the citizens of the Commonwealth. It also declared the conservation of natural resources a public purpose and provided that any land, an easement , or interest in real property protected by Article 97 shall not be used for another purpose or disposed of without two-thirds roll call vote of both houses of the Legislature. Clearly demonstrating the critical importance of cheques and balances of such a significant change. It wasn't until 2022 that the Public Land Preservation Act was enacted strengthening and codifying the state's goal of "No Net Loss".

The preservation and protection of Article 97 parcels should not be taken lightly, and any disposal or change of should limited, and only after extensive consideration and public input. Any changes to Article 97 parcels should not be at the whim of an incumbent administration to the detriment of the public and future generations.

The current administration has already seen fit to pass Senate Bill No. 2967 "An Act Promoting a Clean Energy Grid , Advancing Equity and Protecting Ratepayers" signed into law in November 2024. Which seeks to expedite siting and permitting of clean energy, and to streamline permitting from the Energy Facility Siting Board (EFSB) to a single permit, and reducing the time factor for proper and extensive deliberation of same.

Now, recognizing that citizen's rights and protections under Article 97 may stand in the way of the latest energy or green

deal 'du jour', the administration is endeavoring to change the laws to make it easier for third party corporate entities to gain access to Article 97 parcels. This is absolutely contrary to the intent of this Article. Under no circumstances are Article 97 parcels meant to be a holding ground for the next commercial venture to come along.

Two further egregious aspects of the proposed changes:

1. I believe that too much authority and discretion is being placed in the hands of the Secretary of Energy and Environmental Affairs. Not to mention the potential conflict of interest in the same person also being the Chairperson of the Energy Facility Siting Board.

2. The proposed concept "Subsurface or Air Right Easement" are deemed not to affect any of the Article 97 parcel acreage, and not require replacement.

The concept of underground usage not affecting the parcel, is a ridiculous, especially when considering for example a 1200MW ultra high voltage cable as opposed to a water drainage pipe.

Lastly, I, and I presume the public in general, are particularly disappointed with the Public Hearing Notices as provided for the December 17, and January 16 virtual meetings. I personally missed the first meeting apparently because I don't subscribe to the paper in which it was posted in. When I was able to attend the second meeting I was disappointed that no (zero) time was allocated to even discuss the proposed changes or the need for same.

The scheduled time of day, i.e. 1pm, was not particularly convenient for working people. Then, the virtual meeting moderator informed those attending that questions submitted would be answered, however none would be answered while on the zoom meeting. And furthermore informed that no transcript of the meeting would be made available.

With proper notice I contend that the meetings would have been better attended.

In conclusion, I feel the proposed changes to Article 97 should be dropped completely, or at least modified so as not to negatively impact the rights and protections of citizens of the Commonwealth.

I would hope that our legislators would have common sense and act appropriately on this very transparent effort on behalf the administration to change Article 97.

Respectfully,
David Buzanoski, President
Falmouth Heights - Maravista Neighborhood Association.
Falmouth, MA

p.s. I would appreciate a confirmation of receipt of this email, thank you in advance.

Gendron, Michael (EEA)

From: Glen Ayers [REDACTED]
Sent: Wednesday, January 22, 2025 4:47 PM
To: Gendron, Michael (EEA)
Subject: Comments on 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear EEA,

I am commenting on the proposed draft regulations implementing the Open Space Act. I attended the hearing held on Jan 16, 2025 at 1:00 pm. These written comments supplement the comments that I made during the hearing, which was recorded.

I will start with general comments and then finish with some specific problems with the proposed regulations that will need to be corrected before they can be legally adopted and used.

1. The public involvement process for these draft regulations was deeply flawed, lacked a meaningful public outreach and notification process, and the level of public input was therefore inadequate and insufficient. A reasonable effort was not made to alert the public, especially those members of the public who are known to be extremely interested in Article 97 lands. This failure on the part of EEA will result in regulations that lack legitimacy, unless the process is corrected.
2. The draft regulations are poorly written and crafted, indicating a lack of understanding of regulatory frameworks and especially a misunderstanding of the actual purpose of regulations. These regulations are not usable in their current form and need to be rewritten by someone, or a group of people, who actually know what they are doing. These draft reg should be rejected, as they are not compatible with the intent and purpose of the enabling legislation which they purport to implement.
3. The draft regs represent what is commonly considered to be a regulatory overreach in that the language contained provides a level of discretion that practically makes the purpose of the regulations meaningless. These regulations are essentially a gigantic loophole to allow the Secretary to circumvent the State Constitution through instilling all authority upon a single person to decide the fate of all Article 97 lands. The specific section XX.04(3), which allows "Waiver or Modification" by the Secretary, is a gigantic loophole which undermines the entire purpose of a regulatory scheme. By granting the Secretary unlimited unilateral powers to waive or modify critical parts of these regulations, such a "Land Replacement" or funding in lieu of replacement, which is essentially privatization of protected public lands, these regulations represent a violation of public trust doctrine, and a violation of the state constitution. This is nothing short of legalized theft by regulatory fiat.
4. The draft regs also grant excessive and dangerous discretion to the Secretary in sections XX.07, XX.09, and XX.10, which grant such sole authority to the Secretary resulting in a violation of the spirit and intent of the Article 97 protections. The level of discretion granted to the Secretary is so broad and expansive

that the fundamental purpose of public land protection is undermined to an extent that is frightening. These sections need to be rewritten so that they actually function as regulations instead of an immense discretionary loophole subject to abuse by special interests or political operators. The regulations, as written, are fatally flawed.

5. These regulations are incomplete and unusable because they lack a legitimate mechanism to appeal bad decisions. Secretaries come and go. Some are better than others, as we have seen in the past. Some have been scoundrels and cheats, others have resigned or have been replaced due to scandal and improprieties. A Secretary's bad decision, especially related to public trust lands, must be subject to appeal, following standard rules of adjudicatory practice and procedure. There does not appear to be any mechanism contained in these proposed regulations that allow bad decisions to be appealed. These regulations must comply with Chapter 30A, sec 10 and provide a legitimate appeal process that follows published procedures such as those found in 801CMR1.00 or 310 CMR1.00, or whatever appropriate rules and regulations have been promulgated by the agencies involved in the Article 97 lands in question. Failure to provide a standard appeal process results in regulations that lack legitimacy. This failure must be fixed and is a significant enough flaw that the revised regulations should be subject to further public review before approval.

In closing, the draft regulations are currently not in a condition that should be subject to public comment. They are so bad that they should be withdrawn and completely rewritten, then presented to the public through a robust public involvement process. What is happening now, by proposing such poorly crafted and written regulations, is a blatant violation of the public trust. This defect must be corrected. To do otherwise can only indicate that the Administration is intentionally attempting to undermine the State Constitution, Article 97 land protections, and the will of the people in the Commonwealth. Please take this opportunity to do the right things, for the land, and the critters, and the people.

Many are watching this process in light of the upcoming regulatory rulemaking process for energy siting and permitting under the new climate law. If these 301CMR 52 regulations are an indication of the flawed and sloppy work that will likewise be done by the EEA and DOER, then the Administration and the Legislature will face a backlash of unprecedented proportions. You really need to fix this. Public confidence is at stake.

Sincerely,

Glen Ayers, RS
254 Davis Street, Greenfield, MA 01301



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32 Brown Road
Shirley, MA 01464
22 January 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Attn: Michael Gendron: Michael.gendron2@mass.gov

Re: Comments on Proposed Regulations 301 CMR 52, *Change in Use or Disposition of Article 97 Interests (Open Space Act)*

Dear Secretary Tepper,

Thank you for the opportunity to comment on the proposed regulations 301 CMR 52, implementing the MA Public Lands Preservation Act, or MA Open Space Act, MGL Ch 3 Sect 5A. Please include the following comments on proposed regulations under 301 CMR 52 into the record. My comments focus primarily on Actions involving proposed **changes in use** of land subject to protection under Article 97 (herein referred to as “Article 97 lands”), with only limited focus on changes in public ownership.

As a resident of the Town of Shirley, and as a conservation professional formerly on the scientific staff of Massachusetts Audubon Society and subsequently an associate of the Harvard Forest, I have been involved in land conservation in Massachusetts since 1983. My professional expertise is in water resources and their protection, and I have also participated in a variety of zoning efforts and direct land-conservation projects within Shirley, the broader Nashua River watershed, and elsewhere in New England.

The proposed regulations represent a good start toward ensuring that the critical values represented by Article 97 lands will not be lost. Article 97 lands provide irreplaceable benefits to the citizens of the Commonwealth, as well as to Massachusetts’ businesses and industries, cities and towns, and state government. Establishing explicit criteria for approval of proposed changes in land use in Article 97 lands can help ensure that these natural resources, and the benefits they provide, will persist and, ideally, increase over time. The draft regulations’ requirements for alternatives analyses and public input can contribute to the stated goal of No Net Loss of Article 97 Interests.

While helpful, I find that the requirements proposed by the draft regulations are inadequately stringent to accomplish the stated goal. The burden of proof, level of alternatives analysis, and financial mandates are insufficient to prevent many conversions of Article 97 to non-conservation uses, resulting in substantial short- and long-term losses sustained by the public in terms of clean air, water supply quantity and quality, wildlife habitat, recreational opportunities, and spiritual values that can only be provided by natural areas.

Below are specific comments relative to the content of the proposed regulations. I first address two apparent omissions in the regulations:

1. Clarification of how and when private entities may propose land-use-change Actions on public Article 97 lands, and
2. Procedures for decisions on proposed land use changes for Article 97 lands that are subject to land-use restrictions held by public entities, but are owned by other public entities or by private individuals.

Following these comments are observations about provisions that appear to parallel those of the Commonwealth's No Net Loss of Wetlands policy, and that seem likely to result in comparable failure to protect the public interest in long-term protection of open space. Last are additional comments on specific language within the proposed regulations.

Non-Public Entities as Proponents of Change of Use for Article 97 land

The first sentence in part (a) of the Massachusetts Open Space Act, MGL Ch. 3 Sect. 5A, specifies actions that must be taken by a **public entity** "in order to use for another purpose or otherwise dispose of" Article 97 land. Continuing in part (a)(B)(iii), the Act provides that, at the request of a **public entity** seeking to change the use or otherwise dispose of Article 97 land, the secretary of EEA may waive the replacement land requirement under certain conditions. In (b)(2), the Act provides conditions governing the use by a **public entity** of *in lieu* funding instead of replacing Article 97 land. **Nowhere** does the Act provide for a party other than a **public entity** proposing actions that would involve the loss of Article 97 interests.

Despite the language in the Act, the proposed regulations provide for proponents of land-use change on Article 97 lands to include "any individual, partnership, trust, firm, corporation, association, commission, district, department board, municipality, public or quasi-public agency or authority (**Sect 02, Definitions, Proponent**). Only the last four are "**public entities**," all the other listed possible proponents are private entities. In the case of private property subject to a restriction held by a public entity, a project proponent might well be a private individual or business, but I do not believe that the Act intended, nor that the implementing Regulations should provide, for non-public entities to propose changing land use to non-conservation purposes on public Article 97 land.

Providing an opportunity for for-profit companies and individuals to proposed land-use change for public Article 97 lands seems to be a foolhardy and dangerous precedent, especially in the absence of a legislative mandate. When a profit motive is involved, achieving an objective assessment of the viability of alternatives to use of Article 97 land may be difficult. In the draft regulations' **Sect. 06. 3**, the requirement that alternatives to a proposed Article 97 action must be "within the appropriate market area for private Proponents, state and/or regional entities" clearly indicates a market focus that does not necessarily have anything to do with natural resource values listed by and serving the public under Article 97. We have already seen many instances of municipal conservation lands being sacrificed for schools, playing fields, roadway improvements, and other important public purposes, often without adequate compensation in terms of replacement conservation land. The possibility of commercial development of Article 97 conservation properties is of great concern, especially considering the Commonwealth's strong pressures (and genuine need) for housing. Housing and commercial facilities do not need to be built on open space, whereas the natural resource values provided by Article 97 lands cannot be replicated by developed land parcels.

I urge that the definition of "Proponent" be modified to clarify when and where changes in public Article 97 interests may be proposed by parties other than the **public entities** who hold the Article 97 interest. Perhaps specific language relating to private proponents of land-use changes on private land subject to a restriction held by a **public entity** (see below), or an explicit prohibition of commercial development proposals on Article 97 land, would help clarify this issue.

Deed Restrictions held by Public Entities

Many public entities hold an interest in conservation land in the form of a **conservation restriction, agricultural preservation restriction, or other land use restriction** that serves as an easement or limitation on land uses by the landowner. The restricted lands are subject to Article 97, and changes in land use in violation of these restrictions require the same legislative action as change in use of land

owned by public entities. Public entities holding such restrictions include, but are not limited to, the MA Dept. of Agricultural Resources, MA Fish and Wildlife, municipal conservation commissions, and water districts. Regulatory language needs to be added, including a definition of land-use restrictions held by public entities, and clarification, under the requirements for alternatives analysis, public comment, and criteria for approval by the Secretary, of the mechanism for evaluating and approving changes in use of private Article 97 land subject to such a restriction held by a public entity.

No Net Loss Approach

The stated goal of Chapter 5 section 3A, the Open Space Act, is **No Net Loss** of Article 97 land. This mirrors the concept of **No Net Loss of Wetlands**, which has been widely adopted as policy in Massachusetts and throughout much of the United States, and **which has failed dramatically** to maintain existing wetland acreage, let alone lead to any net gains. At a NEIWPCC-sponsored meeting of staff from state and federal wetlands agencies in the New England and Middle Atlantic states last fall, representatives of one state after another reported on their most recent wetlands inventories with a consistent finding of **net losses of tens of thousands of acres** of vegetated wetlands since the last survey made five or ten years earlier. The proposed process for Article 97 actions appears to me to have **many of the same limitations** that have led to failure of wetlands protection in the last few decades.

It is critical that, in the context of No Net Loss of Article 97 Land, Massachusetts will learn from the failures of wetlands protection, and promulgate regulations that will in fact ensure No Net Loss of the constitutionally guaranteed right of citizens of the Commonwealth to the benefits provided by open spaces.

To achieve this goal, the proposed regulations should ensure that

- (1) **No citizens of the Commonwealth will be deprived of existing constitutionally guaranteed benefits of open space and natural resources provided by Article 97 conservation land, and therefore**
- (2) **Article 97 land may not be converted to non-conservation uses, unless it can be replaced by land of equal or greater conservation value in close proximity to the Article 97 land that is to be lost, and serving the same population as the original property.**

The draft regulations do not mandate that approval of the loss of Article 97 land be contingent on the permanent protection of comparable land in the same geographic area, serving the same population of residents. Therefore, they do not guarantee to all Massachusetts residents the right to the benefits of open space and natural resources afforded by Article 97 of the Constitution. And, they do not ensure No Net Loss of Article 97 lands.

For there truly to be No Net Loss of conservation land and its natural resource values, EEA needs to set a **highly rigorous standard** that (1) requires quantitative assessment of the natural resources and social values of both the Chapter 97 land involved and the land proposed to replace it, and (2) ensures that there will indeed be no overall loss of natural resources values or societal benefits from the proposed Action. There should be **clear conditions defining when the Secretary should not approve a proposal** for Change of use of Article 97 land

True Costs of Acquisition of Article 97 Land Interest (Fee ownership or Restriction)

There are many financial and opportunity costs involved in the process of acquiring Article 97 Interests in conservation land and the valuable resources they protect. Such acquisitions commonly involve significant investment of time by volunteers and local officials, and often by state and/or federal

employees committed to protection of natural resources for societal benefit. There are usually substantial financial costs in public funds and, often, to non-profit conservation organizations.

Further, when setting land aside for conservation protection under Article 97, many private property owners have transferred their development rights at significant financial cost to themselves, instead of maximizing the profit to be made from a parcel of land, because they believed deeply in the concept of protecting natural resources values in perpetuity, to the long-term benefit of society at large.

If Article 97 protections are to be removed from a protected land parcel, the analysis of the cost to society and determination of financial compensation should consider the above direct and indirect costs of the original acquisition of the Article 97 interest.

Sect. 04 Requirements

This section is clear and concise.

Sect. 04.1 Public notification, and solicitation of comments (if a municipal project, perhaps at a public meeting or hearing at the municipality), should take place at the beginning of the process, before resources are expended on Alternatives Analysis (Sect. 04.2) and other necessary actions.

Sect. 04.3. I recommend that this be split into two sections. As presented, it appears that replacement and in lieu funding are equal options, but to have a greater likelihood of meeting the No Net Loss goal, the latter should be a last resort, and only permitted when the project is of significant public importance, the nature of the resource being altered is of limited natural resource value (ex. the proposed loss of part of a paved beach parking lot for sewer infrastructure in Barnstable), and no appropriate alternatives are available. Sect. 04.3 should present replacement land as the desired alternative for projects of important public value for which no other alternative sites are available. Then a new Sect. 04.4 could present the in lieu funding option, but it should make it clear that this is not a simple alternative, and that it will only be permitted under very specific and rigorous conditions. (Please see further comment on in lieu funding below, under Sects. 06, 07, and 09.)

Sect 05. Notification and Public Comment

In Sect. 05.1, along with posting notice on appropriate websites, require posting at the office of the City or Town Clerk, on any notice boards generally used to post information of potential public interest in the municipality, and in a newspaper of local circulation if the public entity regularly posts information in such. Posting on the websites of a municipal Conservation Commission, Recreation Commission, and/or Open Space Committee, if pertinent, could also be valuable.

Add language requiring submission of an Environmental Notification Form in accordance with CMR 11.03(i), and provide for local posting about the filing, as above, and for public comment during this period. If public comments and EEA review result in a requirement for a full EIR, include public comments on the EIR as part of the input used in making a decision on the proposed change in use of Article 97 land.

Sect .05.2, Public comments should be solicited and considered for any proposed change in use of Article 97 land, including when replacement land is proposed and not just when approval for in lieu funding is sought.

21 days does not appear to be long enough for the public to review materials, especially when a full Alternatives Analysis is part of the review materials. 30 days might be more appropriate.

Sect .05.3 The proponent's submission to the secretary should include the public comments and the proponent's responses to the comments.

Sect 06 Alternatives Analysis

Sect. 06.2(a) – importance of “public purpose” requirement – how does this fit with private proponents, as discussed above?

Sect. 06.2(b) Cost differences should not be a **primary** basis for infeasibility; remove the word “sole”

Sect. 06.2(d) Description of the Article 97 interest should include discussion of the public benefits provided, as well as natural resource values

Add a requirement that the proponent's Alternative Analysis include their responses to the public comments, including to the public assessment of the alternatives and of the Article 97 values

Sect. 06.2(f) As discussed above, the Regulations need to clarify under what conditions a Private Proponent may propose change of use to Article 97 land. If the Proponent is a private entity and not the public entity holding the Article 97 interest, the public entity should explain why the proposal is being made by a private entity, and why and how the public will benefit from the proposed change.

Sect. 06.3(d) Please see earlier comments about “market area” and private proponents of Article 97 actions on page 2.

Sects. 07 and 08 Natural Resource Value and Replacement for Article 97 Land

Sect. 07.1 In many Massachusetts cities and towns, there is no undeveloped land available that provides natural resources and social values that are comparable to those in existing Article 97 lands. This is especially likely when the Article 97 land is large, of high natural resource value, and the provider of important social benefits. In such cases, the proposed Article 97 Action should not be permitted, unless there are powerful compelling reasons why only the Article 97 land can serve the public purposes provided by the proposed change in use, and those reasons are more powerful than the importance of the Article 97 land.

Sect. 07.2 (b) In addition to its Natural Resource Value, the assessment should require that the replacement land provide an equal or greater benefit from those natural resources for the public supported by the Article 97 land where the Action is proposed.

Sect. 07.2(h) does mandate that replacement land provide for replication of function and access. This could be worded a bit more strongly, given that other sections do not emphasize retention of specific functions and loss of access to local residents – this is especially important for projects at the municipal level, but also for projects on state or other non-municipal public lands.

Sect 08.2 I suggest adding a part c. requiring assessment of whether the Replacement Land provides natural resources and/or recreational benefits to essentially the same population of residents as the impacted Article 97 interest.

The specific values that an Article 97 property provides for its local community, and the availability of comparable land within ready access of the existing users, both need to be given highest consideration in deciding whether proposed changes in land use should be approved. The extent to which local residents

and users of the parcel have access to cars or public transport, and/or are able to receive the benefits provided by clean air and the opportunity to watch wildlife, needs to be factored into the evaluation of other locations that might serve as “replacements” for the parcel if a change in land use is approved.

Article 97 lands span a wide range of lands and public values. They include relatively tiny parks in urban areas, heavily used playing fields in small towns, large forested parcels representing a significant acreage of watershed and wildlife habitat, strips of greenway adjacent to waterways, patchworks of smaller parcels that collectively represent significant conservation acreage, and land specifically recognized for its value for agriculture or forestry. The specific uses, and the users, of a given Article 97 property must factor in substantively in any consideration of a change in land use.

Some Article 97 properties have limited traditional conservation value but are irreplaceable as playgrounds, nature-observation areas, community gardens, and open spaces in densely developed communities, and including many Environmental Justice neighborhoods. The proposed Regulations do a good job of addressing the need of EJ neighborhoods, in theory – but in many cases, the Census Blocks used to define EJ neighborhoods are too large to allow EJ classification for small pockets of residents that meet low-income or other identifiers of EJ communities under state law.

Some Article 97 lands protect water supplies for the local municipality, or for a distant metropolitan area. Some limit property damage from flooding, buffer surface waters from overland runoff, provide sufficient space for wildlife to flourish and maintain healthy populations, and/or represent areas where people can spend time in nature.

Again, the role of an Article 97 parcel within its community, and the availability of other comparable parcels within a readily accessible distance from the current users, should be of high concern in considering whether to approve a change-of-use proposal.

Sect 09 Funding in Lieu of Replacement Land

This condition, although provided for in the Act, seems guaranteed to fail in many situations. To me, it is analogous to the mitigation banking idea for wetlands, a concept that has been effective in some states, but elsewhere has contributed to the extensive losses of wetlands in recent decades. In a situation such as the Barnstable parking lot alterations for sewer infrastructure, cited above, in lieu funding seems an appropriate option. In many cases, however, if the proposed Article 97 action is on land of high conservation value, and if there is indeed no available replacement land available when a proposal for a change in Article 97 interest on a public land parcel is proposed, it is unlikely that a suitable parcel will become available within the three-year window set by the Regulations. For Article 97 lands of high natural resources and societal value, in lieu funding as an alternative to land-use change should be an alternative of last resort, preferably behind denial of the proposed Action. EEA might want to consider strong language to this effect.

Sect. 09.2 If no alternative land has been found during the alternatives analysis, a request for in lieu funding is not reasonable if the Article 97 land is of high quality, given the unlikelihood that replacement land will become available, and the long time typically involved in land acquisition projects.

Sect. 09.3(c,d) The Secretary should establish clear, and rigorous criteria for determining that “all other options” have been explored, and that no viable option for Replacement land is available. The proponent should document the efforts devoted to determining that no options exist.

Sect. 09.4(a) the lower limit should 150% of value, not 110%, given the potential three-year waiting period and the rapid changes in land values that have been underway.

Sect. 09.4(c) What happens if no replacement land has been acquired after three years? What incentives are there for proponents to follow through once they have carried out their Article 97 Action? What disincentives for not following through? This section needs some teeth built into it.

Sect. 09.6(c) There should be no action permitted involving loss of Article 97 interests until the money has been deposited.

Sect 10 Waivers and Modifications

Sect 10.1(b) – how is the insignificance of Article 97 functions and values determined? What are the criteria and where are they to be found?

Sect 10.2,3 The Process should include opportunities for public comment, and the proponents should respond to those comments, and the Secretary should include the comments in the decision whether to issue a waiver or modification.

Thank you again for the opportunity to comment. I hope you find some of these comments helpful, and I look forward to seeing the final regulations.

Sincerely,

Elizabeth A. Colburn

Gendron, Michael (EEA)

From: TSmithDesign1 [REDACTED]
Sent: Wednesday, January 22, 2025 4:54 PM
To: Gendron, Michael (EEA)
Subject: Comment 301 CMR 52

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Dear Mr. Gendron,

The new Article 97 land disposition policy appears, on its surface, to provide greater protection of Article 97 lands. It does not. Essentially, everything in it is discretionary with the Secretary of EEA having more discretion than under the original land disposition policy. Under the former policy, appraisals were mandated. This new policy does not add any stronger guarantees that the proponent will be required to conduct appraisals. In fact, in 2020, the EEA Secretary ignored the fact that the City of Gloucester did not conduct the EEA's required appraisals of the East Gloucester Elementary School site to show proof that the site was of equal or greater fair market value compared to the Mattos Playground that Gloucester wished to take over for a new school site. The citizens brought this to the attention of the EEA Secretary and the Secretary went ahead and issued the Certificate anyway. No appraisals, no proof of equal or greater fair market value. No problem. So what does this new policy contain to prevent discretionary abuses by an EEA Secretary?

The new policy allows proponents of Article 97 conversions to convert up to 2,500 sf without having to replace the land. 2,500 sf of a 5 acre Article 97 park or playground isn't much, but 2,500 sf of a 1/4 acre park or playground is a great deal. This policy is not fair and it encourages the whittling away of park land for non-public open space purposes. Bad idea. And how many times can a proponent convert 2,500 sf of a park? If the answer is 'multiple times', then this policy could be devastating to Article 97 lands.

The original Article 97 Land Disposition Policy had sharper teeth. The problem is that its requirements were ignored.

Sincerely,
Thomas P. Smith
211 Apremont Hwy.
Holyoke, MA 01040

Michael.gendron2@mass.gov

301 CMR 52

January 22, 2025
Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114
Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, **301 CMR 52.00**: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of Wellfleet and I offer the following comments to the draft regulations.

The Healey administration has proposed regulations for the use of public lands protected under Article 97 of the Amendments to the Constitution of the Commonwealth.¹ The regulations radically change the interpretation and applications of Article 97 and the proposed regulations should NOT be changed as described in the comments below.

Article 97 was adopted by Massachusetts voters in 1972. It states:

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.²

Historically, the Article has been interpreted to prohibit commercial development on open space acquired through public funding or private donations for parks, woodlands, and wildlands, and to protect those lands for the public's quiet use and enjoyment. (Timber harvesting is allowed in woodlands.)

The Article applies to land acquired as protected open space by towns, cities, counties, the state government, and subdivisions of these governments.

¹ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#)

² <https://malegislature.gov/Laws/Constitution>

Occasionally, a community has needed, for example, to convert park land to another purpose and so, to permit a change in use or disposition of the land, M.G.L. Chapter 3, Section 5A was enacted.³ In support of this law, the Article 97 Land Disposition Policy was adopted in 1998.⁴

The Policy stipulates that to take land out of Article 97 protection requires “exceptional circumstances.”⁵ It does not permit a disposition that will destroy or threaten a unique or significant resource such as a significant habitat or place of public recreation.⁶ A replacement parcel of equal or greater value must be acquired to ensure that “the constitutional rights of the citizens of Massachusetts are protected and enhanced.”⁷

A determination of exceptional circumstances is subject to multiple requirements, all of which must be met,⁸ including that the disposition of a parcel cannot be contrary to the express wishes of the person who donated or sold the parcel to the public entity.⁹ Policymakers recognized that this was essential for maintaining public trust in the disposition process.

For dispositions initiated by a municipality, a two-thirds vote of town meeting or city council, and a unanimous vote of the local Conservation Commission are both required.¹⁰

According to the state’s website, a new draft of the Policy is forthcoming.¹¹

In 2022, Beacon Hill adopted legislation to allow communities to set aside funding in lieu of replacing a parcel contemporaneously to the disposition process.¹² This acknowledged the reality that a parcel of equal or greater value couldn’t always be acquired immediately. This was only allowed, though, for transfers between public entities.¹³

All that will change now with the Healey administration’s draft regulations.¹⁴ The public benefits provided to the public under Article 97 have now been amended to include “climate change mitigation.”¹⁵ This means that industrial-scale solar installations and wind turbines, along with

³ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter3/Section5A>

⁴ EOEA Article 97 Land Disposition Policy, February 19, 1998, <https://www.mass.gov/files/dcsarticle97.pdf>

⁵ EOEA Article 97 Land Disposition Policy, February 19, 1998, <https://www.mass.gov/files/dcsarticle97.pdf>, II

⁶ EOEA Article 97 Land Disposition Policy, February 19, 1998, <https://www.mass.gov/files/dcsarticle97.pdf>, II.2

⁷ EOEA Article 97 Land Disposition Policy, February 19, 1998, <https://www.mass.gov/files/dcsarticle97.pdf>, II.3

⁸ EOEA Article 97 Land Disposition Policy, February 19, 1998, <https://www.mass.gov/files/dcsarticle97.pdf>, II

⁹ EOEA Article 97 Land Disposition Policy, February 19, 1998, <https://www.mass.gov/files/dcsarticle97.pdf>, II.6

¹⁰ EOEA Article 97 Land Disposition Policy, February 19, 1998, <https://www.mass.gov/files/dcsarticle97.pdf>, IV.1, 2, and 3

¹¹ [Article 97 & An Act Preserving Open Space in the Commonwealth \(M.G.L. c. 3, § 5A\) | Mass.gov](#)

¹² [Session Law - Acts of 2022 Chapter 274](#)

¹³ [Session Law - Acts of 2022 Chapter 274](#), Section 5A(a)(iii)(A)

¹⁴ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#)

¹⁵ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.02 Definitions. Natural Resource Value

transmission lines, are now defined as a purpose allowable on lands that the public believed for generations were protected from development.

Furthermore, the proposed regulations now explicitly allow corporations, partnerships, trusts, and individuals to propose conversion of Article 97 public lands for climate change mitigation purposes. Specifically, such a private entity is defined as a Proponent proposing an Article 97 Action.¹⁶ An Article 97 Action includes a “change in physical or legal control of land, including care, custody and control, of an Article 97 Interest.”¹⁷ An Article 97 Interest “means fee ownership, an easement, or another real property interest in land that is held by a public entity and is subject to Article 97.”¹⁸

Now, in a major change, a private Proponent can offer In Lieu Funding instead of finding Replacement Land.¹⁹ The funding must be 110% of the land’s value.²⁰ This is a profitable deal for the private companies because land in MA has a low value relative to land that has higher value. And companies can simply treat the cost as another tax-deductible project expense.

Even worse, a private proponent can “take” replacement land for Article 97 purposes. Specifically, the language is: ...”taking, acquiring or dedicating that Replacement Land to Article 97 purposes...”²¹ The common usage of “take” means take by eminent domain. Needless to say, Article 97 is not functionally protective of the replacement land since it, too, can be recycled for renewable energy development.²²

Notably, subsurface and air rights easements on Article 97 land, such as those used for pipelines and transmission lines, “will be deemed to affect zero acres and therefore not require Replacement Land.”²³

And in a completely new provision, the Secretary of Energy & Environment has the sole discretion to waive for the private entity any provision of the Land Replacement requirement,²⁴ to waive any restrictions set on gifts of land to the public entity,²⁵ and to permit an in-lieu payment instead of replacing the land.²⁶

The Massachusetts Constitution confers to the legislature the power of eminent domain:

¹⁶ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.02 Definitions. Proponent

¹⁷ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.02 Definitions. Article 97 Action

¹⁸ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.02 Definitions. Article 97 Interest

¹⁹ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.04(3)(b) (p. 4)

²⁰ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.09(4)(a) (p. 9)

²¹ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.04(3)(a) (p. 4)

²² [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.02 Definitions. Natural Resource Value

²³ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.07.4 (p. 7)

²⁴ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.10, Secretary may waive XX.04(3)(a) and XX.07

²⁵ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), See XX.07(2)(f) (p. 6)

²⁶ [301 CMR XX.00: Disposition or Change in Use of Article 97 Interests](#), XX.09.3 (p. 8)

...the general court [i.e. the state legislature] shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.”²⁷

As long as the power of eminent domain was confined to acquiring land for the quiet enjoyment of the public and the protection of natural, scenic, historic, and esthetic qualities that enhance their environment, few people found reason to object.

Now that the Healey administration is poised to add the catch-all term of “climate change mitigation” to the meaning of Article 97, to allow private corporations to take land by eminent domain -- and recognizing that the legislature has over the past few years adopted very aggressive mandates for climate change mitigation, including net zero by 2050 – it is a fact that, if the regulations are adopted, all public and private lands will now be open either by vote of the legislature or through waivers from the Secretary of Energy and Environment to acquisition by private entities for development of industrial solar, wind, and transmission facilities.

- **Furthermore, leaving the “Alternatives Analysis” to a Proponent of an Article 97 disposition results in self-serving excuse-making for why only a certain parcel of public land is suitable for change of use.** This has been seen in my county as part of a Draft Environmental Impact Review prepared by a developer for MEPA, wherein a number of reasons given for rejecting alternate sites actually describe the targeted parcel (EEA#16611). Alternatives should be equally assessed by either the public entity with the Article 97 interest and/or a disinterested and impartial third party, especially if the proponent has substantial financial interest.
- **Public Comment Period. Under XX.05 concerning notification of a Proponent’s request for disposition, item 2 indicates that the public would be allowed 21 days to review and comment on the proposed action as well as the submitted Alternatives Analysis.** This is not acceptable. This language is in line with recent actions taken to rush through approvals related to siting and permitting of wind and solar energy. At the very least, this should be changed to a minimum 60 day period of time for study, comment, hearings, and other possible actions should be. Public comment period of not less than 60 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Sub-service and air rights projects** -- most of which will be transmission lines of one kind or another....or transmission cables for wind turbines under the surface of the land should be subject to the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable and not be excluded.

I therefore object to the following in italics:

Section 7.4.

Certain Easements. A temporary easement, subsurface or air rights easement, or other non-fee simple interest in land that is an Article 97 Interest will be deemed to affect zero acres and therefore not require Replacement Land, provided that:

a.

²⁷ <https://malegislature.gov/Laws/Constitution>

any anticipated disturbance of the surface will be temporary;

b.

the land surface will be returned to conditions and function existing prior to disturbance, or better, within 24 months of the initial impact to land subject to Article 97;

c.

the Proponent provides monetary value in an amount equal or greater to the value of the easement, as determined pursuant to 301 CMR XX.07(3); and

d.

all other applicable requirements of 301 CMR XX.07(2) are met.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use. Also see above when land in an area of MA is undervalued from other more expensive land in other areas of MA
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences

for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

- Furthermore, I oppose the **political catch-phrases “a greater public benefit” and “serves a significant public interest” are qualifiers found in the draft as part of the determination processes.** See example in italics below:

Sections XX.07: Replacement Land, XX.08: Determination of Natural Resource Value, XX.09: Funding In Lieu of Replacement Land and XX.10: Waiver or Modification all seemingly give sole determination discretion to the Secretary of Energy and Environmental Affairs.

If this is an accurate interpretation, Town Meeting’s authority to deny any wind energy company request to use Article 97 protected land for cable landing could be usurped. This process would be egregious to both the host community’s best interests and constitutionally prohibited under the current Massachusetts Protected Land Act.

The fundamental point of land protection is that Article 97 land would remain intact and safe from becoming a housing development, crop-field, or a below surface extractive use (i.e. mining/drilling/cabling) without the consent of the community to which the parcel is located.

Another example is: The public entity of the Town of Wellfleet has jurisdictional authority over determined Article 97 land. A change of disposition or use of Article 97 interest is proposed by a potential developer. A petition through Wellfleet Town Meeting for the change of disposition or use of Article 97 interest is unsuccessful and then denied.

We understand the Secretary of Energy and Environmental Affairs cannot overrule the Town of Wellfleet (public entity) no matter the “greater public benefit” or “service to a significant public interest”.

If a public entity, such as any municipality can be overruled by Secretary of Energy and Environmental Affairs powers described in the proposed new regulations, I OPPOSE the new regulations implementing the Act Preserving Open Space in the Commonwealth (M.G.L. c. 3, § 5A)

Thank you for your time and consideration of my comments.
Sincerely,

Lilli-Ann Green
Wellfleet Assembly Delegate
PO Box 963
Wellfleet, MA

Gendron, Michael (EEA)

From: Eleanor Axelrod [REDACTED]
Sent: Wednesday, January 22, 2025 4:56 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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RE: Comments on Proposed Regulations, **301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. I am a resident of **Wakefield MA** and I offer the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Eleanor Axelrod

19 Sheffield Rd

Wakefield MA 01880

Sent from my iPhone

January 22, 2025

By email: Michael.gendron2@mass.gov

Michael Gendron
Open Space Act Coordinator & Conservation Restriction Reviewer
Massachusetts Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Subject: 301 CMR 52.00; Proposed Open Space Act Regulations, Disposition or Change in Use of Article 97 Interests

Mr. Gendron:

The Executive Office of Energy and Environmental Affairs (“EEA”) has proposed new regulations authorized by Chapter 274 of the Acts of 2022, *An Act to Preserve Open Space in the Commonwealth*. The procedures and requirements for proposals to change the use or dispose of land or interests in land subject to Article 97 of the Amendments to the Constitution are important for the efficient development of clean energy infrastructure in the Commonwealth. RENEW Northeast (“RENEW”)¹ appreciates the opportunity to submit these comments on the proposed regulations.

I. Conservation Commission Concurrence Vote

A current component of the 1998 Article 97 Land Disposition Policy requires a unanimous vote of a municipal Conservation Commission to approve the disposal of Article 97 land. The draft regulations do not address whether these new regulations will fully supersede that 1998 policy. RENEW strongly recommends a change to the draft regulation superseding the 1998 policy to include a more reasonable threshold of a simple majority or 2/3rds vote by a municipal Conservation Commission.

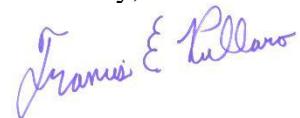
¹ The comments expressed herein represent the views of RENEW and not necessarily those of any particular member of RENEW. RENEW Northeast (www.renewne.org) unites environmental advocates with developers and operators of the region’s largest clean energy projects to coordinate their ideas and resources with the goal of increasing environmentally sustainable power generation in New England from the region’s abundant renewable energy resources.

II. Support for Exemptions for Replacement Land Involving Certain Easements

RENEW strongly supports section XX.07, especially the clearly articulated differentiation for subsurface and air easements. Subsurface and air easements to support clean energy power lines traversing under or above Article 97 protected land should not require replacement land as they will result in temporary impacts, provide a significant public interest for meeting the Commonwealth's climate requirements and electricity demand, and are unlikely to diminish the recreational and natural resource value of the land.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Francis E. Pullaro". The signature is fluid and cursive, with "Francis" on the left and "E. Pullaro" on the right.

Francis Pullaro
President

Gendron, Michael (EEA)

From: Eleanor Tillinghast [REDACTED]
Sent: Wednesday, January 22, 2025 4:59 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

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Green Berkshires, Inc. submits these comments to go on the record that we are strongly opposed to the plan by the Healey administration to redefine the meaning and scope of Article 97. Climate change mitigation should not be added to the natural resource values of places protected in Massachusetts by Article 97. Industrial renewable energy facilities should not be allowed on lands that were acquired through private donations and public funding for the quiet enjoyment and use by the public. Public forests and fields should absolutely be off limits to the buildout of industrial solar and wind facilities.

Furthermore, we are appalled that, under this regulation, with the permission of the EOEEA Secretary, private corporations can take private property by eminent domain to replace Article 97 land conveyed to them for the purpose of renewable energy development.

Corporations should not be allowed to pay in-lieu funding in order to acquire public property. Land in the western part of the state is cheap compared to the eastern part, and developers will gravitate to acquisitions in the west, and treat the cost as a very manageable tax-deductible business expense. Our Article 97 lands should not be treated so cheaply and as so disposable.

And it is short-sighted to allow the EOEEA Secretary to disregard the intent of citizens who donated land to be protected under Article 97. Who will donate land to the state knowing it could immediately be the site of vast industrial solar installations or wind turbine facilities?

A report produced at the end of Governor Baker's tenure stated that after all available roofs and parking-lot canopies within the state are covered with solar panels, we will still need 60,000 to 120,000 acres of ground-mounted solar panels. And this report was written when offshore wind was still a viable likelihood. Now, during the Trump administration, Governor Healey and her staff are likely to rely even more on Article 97 lands to meet the climate change mitigation mandates. This is a sad turn of events for Massachusetts.

Respectfully submitted, Eleanor Tillinghast, Green Berkshires, Inc.

Gendron, Michael (EEA)

From: Susan Rabesa [REDACTED]
Sent: Wednesday, January 22, 2025 5:05 PM
To: Gendron, Michael (EEA)
Subject: Article 97

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

I am writing to express my strong opposition to the proposed changes to Massachusetts State Constitution Article 97 as outlined in the draft regulation 301 CMR XX.00. I am deeply concerned that these changes would significantly weaken the protections afforded to the people of the Commonwealth under Article 97, which safeguard clean air, clean water, and natural resources, while ensuring environmental preservation and local community input.

My specific concerns are as follows:

Erosion of Environmental Protections:

- Article 97 was enacted to protect the public's right to clean air and water, and to preserve the natural, scenic, and historic resources of the Commonwealth. The proposed changes prioritize expedited permitting for energy projects over these vital protections. This would set a dangerous precedent, allowing developers to bypass

safeguards that ensure environmental and community well-being.

Diminished Local Input and Oversight:

- By streamlining permitting processes under a centralized state authority, such as the Energy Facility Siting Board (EFSB), the proposed changes would significantly reduce the influence of local governments and communities in the decision-making process. This undermines the voices of the residents who are most directly affected by these projects.

Impacts on Falmouth and Similar Communities:

- As a resident concerned about the potential designation of Falmouth as a cable

landing site for the SouthCoast Wind project, I am alarmed by the implications of weakening Article 97 protections. Our community's natural resources and quality of life should not be sacrificed for the convenience of developers.

Lack of Public Awareness:

- Many residents remain unaware of the proposed changes and their long-term implications. The limited outreach and initial notice regarding the December 2024 public hearing suggest a lack of transparency in the process. Extending the comment period and holding additional hearings is a step in the

right direction, but more effort is needed to ensure widespread public engagement.

Balancing Clean Energy Goals with Environmental Integrity:

- While I support clean energy initiatives, I firmly believe they must not come at the expense of fundamental environmental protections. The proposed changes shift the balance too far in favor of expedience, threatening the very resources that clean energy projects aim to preserve.

I urge the Executive Office of Energy and Environmental Affairs (EEA) to reject these proposed changes and preserve the integrity of Article 97. Protecting our natural resources and ensuring fair and transparent processes should remain a top priority as we pursue a sustainable energy future.

Thank you for considering my concerns.

Sincerely,

Susan Rabesa

13 Lake Leaman Road

Falmouth, MA 02540

Clifford Carroll
135 Minton Lane
West Barnstable, MA, 02668

January 21, 2025

Mr. Michael Gendron
Open Space Act Coordinator & CR Reviewer
Executive Office of Energy and Environmental Affairs (EOEEA)
100 Cambridge Street, Suite 900
Boston, MA 02114
Subject: 301 CMR 52.00: Disposition or Change in Use of Article 97 Interests – Public Comment
on Proposed Regulations

Dear Mr. Gendron,

Thank you for the opportunity to comment.

I will keep my points brief as I am sure you are receiving an extremely high volume of documents much greater in details.

It would appear from the proposed language contained in this Article that the true intent is as follows:

1. To not allow the public or local communities to have any say when it comes to the protections of the existing conservation lands so carefully assembled over the past decades.
2. This Act will prevent the Towns from having the ability to protect their recreational areas and more importantly the water supplies and well fields.
3. This Act will put Cape Cod's Sole Source Aquifer and only supply of drinking water at great risk for the purposes of building Electrical Transformer Substations filled with hundreds of thousands of gallons of dielectric transformer oil directly over well fields in areas surrounded by and above lands currently protected by Chapter 97.
4. In other words, this Act has been drafted by special interest groups pushing the wind industry while putting at risk the lives and health of the citizens of Massachusetts.

Respectfully
Clifford Carroll

Gendron, Michael (EEA)

From: Sally Underwood-Miller [REDACTED]
Sent: Wednesday, January 22, 2025 5:42 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR XX.52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Gendron,

I am writing to express **strong opposition** to the proposed changes to the Massachusetts State Constitution Article 97 outlined in the draft regulation 301 CMR XX.52. Any proposal that weakens the protection of residents under Article 97 should not be undertaken.

Residents of the Commonwealth benefit from land protected under Article 97, that include the fundamental necessities of clean air, clean water, and natural resources while ensuring environmental preservation and **local community input into how protections are maintained.**

If MA is to continue to maintain national leadership status and maintain our critical natural resources, the Healey administration cannot afford to enact regulations without due process.

The Environmental Monitor may be available, but is no longer widely distributed. Press releases and notifications to appropriate boards and commissions are necessary for hearings on paramount environmental importance, yet we rarely receive them.

The Executive Office of Energy and Environmental Affairs (EEA) should withdraw the proposed regulations due to a lack of notice, among other reasons. Conservation Commissions (upon which I have served for @30 years) along with other boards and community organizations in the majority of the 351 communities in MA that the proposals may impact should be polled for their input.

Towns in western Mass are already reeling from the authoritarian energy legislation that removes some local control in the decision-making process. The new Article 97 regulations have not been adequately vetted by the residents who will be impacted by potentially weakening an important Constitutional guarantee. Farmland, forests and open spaces are not recoverable!

Instead, do as New Jersey has done and cover parking lots and other impervious and otherwise disturbed surfaces with solar panels. This serves the multiple goals of cooling the warming effects of blacktop, providing shade for cars, and using these otherwise ugly spaces in a productive way to reduce our energy use. Large retail malls are usually centrally located,

and often have the infrastructure to convert relatively easily. Why destroy land that in its essence already contributes to carbon sequestration when far alternatives are available?

Charlotte Underwood-Miller, Secretary/Member
Stockbridge Conservation Commission

I don't want to protect the environment. I want to live in a world where the environment doesn't need protect

Gendron, Michael (EEA)

From: Deborah August [REDACTED]
Sent: Wednesday, January 22, 2025 10:20 PM
To: Gendron, Michael (EEA)
Subject: 301 CMR 52

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

January 22, 2025

Rebecca Tepper, Secretary

Executive Office of Energy and Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Dear Secretary Tepper:

Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests. I am a resident of [add your TOWN/CITY] and I offer the following comments to the draft regulations.

Purpose. Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.

Notifications. Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

Documentation of Surplus Vote by Public Entity. There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3

legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

Public Comment Period. A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing In Lieu Funding.

Natural Resource Values. The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).

In Lieu Funding. In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.

Enforcement. The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,

Deborah August

[Yahoo Mail: Search, Organize, Conquer](#)

DOVER CONSERVATION COMMISSION

5 Springdale Avenue, Dover, MA 02030

January 22, 2025

Secretary Rebecca Tepper

Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

SENT BY EMAIL

RE: **Proposed Regulations 301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests (Open Space Act)**

Dear Secretary Tepper,

The Dover Conservation Commission appreciates this opportunity to provide comments to the Executive Office of Energy & Environmental Affairs (EEA) on the proposed regulation updates, *301 CMR 52.00: Disposition or Change in Use or Disposition of Article 97 Interests* (regulations authorized by *An Act Preserving Open Space in the Commonwealth, M.G.L. c. 3, § 5A*).

Conservation Commissions, municipal staff and conservation organizations play a critical role in making sure open space protected under Article 97 is not converted for other uses or, if necessary, making sure a conversion is done within the required guidelines to protect natural resource values. Conservation Commissions and municipal staff are the ‘boots on the ground’ partners reminding or informing our professional counterparts about Article 97 and the steps that are required to comply in order to ensure Article 97 requirements are not ignored.

As municipal leaders and long-time partners in land preservation, the Dover Conservation Commission applauds EEA and the Legislature for passing this important Legislation. **We believe that it is critical that the implementing regulations be clear and respect the key role that municipalities play in the disposition process.**

Key Summary Points to Consider:

- The Public Entity facing disposition of Article 97 land should be a partner and collaborate throughout the entire process.
- The Regulations should include the requirement that the Public Entity declare the proposed land for disposition as surplus to Article 97 Interests with a unanimous vote.
- Notification should be widely disseminated at both the local and statewide level. It should include platforms that provide a regular email notification, include physical posting the notification at the land proposed for disposition and include date(s) and time(s) of a site public inspection(s) of the land proposed for disposition as well as the Replacement Land.
- The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- The In Lieu Funding option should be only available *after* the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed, funding increased to 150% of the fair market value or Value in Use, and improved coordination with the Public Entity to determine available staffing and resources to complete the Action.
- There needs to be more clarification of definitions, in the difference between Waivers and Certain Easements sections, and the logistical improvements to the process.

We offer the following more detailed comments of the proposed regulations with suggested edits:

- 1) Please add language from the No Net Loss Policy's need to declare land as surplus to Art 97 needs.

With Climate Action Plan and EEA's noted discussions on increasing the pace of conservation to achieve 30% by 2030 and 50% by 2050, EEA should include regulatory language that emphasizes to proponents that *disposition should be a last resort*.

The regulations should include a written sequencing of avoiding, minimizing, mitigating with replacement, and only then, mitigating the with the 'in lieu funding' option.

- 2) Two important items, the surplus declaration and the involvement of the Public Entity, must be added to the Regulations.

Countless municipalities and other conservation organizations worked for many years to get the No Net Loss Policy codified in this Act. The omission of the declaration of surplus need and the lack of Public Entity vote is disappointing. That said, I do acknowledge EEA's significant efforts and improvements to transparency through the website and all the resources and tools that have been added including the new tracker tool.

XX.0

- 3) Please add a Preamble section that includes more information on the No Net Loss purpose, clarification of types of lands that qualify as Art 97, and examples of Art 97 interests and actions that qualify as "conversion" or "disposition."

XX.02 Definitions

- 4) Please add definitions for Change in Control, Feasible or substantially equivalent alternatives, Public Interest, Recreation Value, License of Limited Duration, Market Area and Surplus to Article 97 Interests.

XX.03 Pre-submission Consultation

- 5) Please add language to include collaboration with the Public Entity holding the Art 97 Interest, throughout the entire process. The 1998 No Net Loss Policy required a unanimous favorable vote of the Public Entity holding the Art 97 Interest. The should include a significant vote (unanimous) of the Public Entity holding the Art 97 Interest to declare the surplus needs and to support the proposed replacement land, or in lieu fee, if applicable.

XX.05 Notification

- 6) Please add a requirement for the public notifications to posted in a centralized location on EEA Website but also post it in the Environmental Monitor. The notification should include the date(s) and time(s) of a public site inspection. The Environmental Monitor already has a robust email notification component. EEA should add a regular email notification to those subscribing to it. Limiting notice to a municipal website would reduce equitable notice for out-of-town residents who might be using the land proposed for disposition or conversion. Notification should be in both a local and a statewide, centralized platform.
- 7) Please add posting of the notice at the proposed disposition property and with the date(s) and time(s) of a public site inspection with the Proponent, Secretary and Public Entity.
- 8) Public comment should be available for the disposition proposal, not just the In Lieu Funding option. Please provide at least a 30-day comment period.

XX.06 Alternatives Analysis

- 9) The Alternatives Analysis should be required to include:

- a) descriptions of how the disposition does not detract from EEA missions, plans, policies and mandates and those of its departments or divisions;

- b) whether state or federal funding was received in the initial acquisition of the property proposed for disposal;
- c) description of existing Article 97 Interests and Natural Resource Values
- d) description of how the disposition is not contrary to an approved municipal Open Space and Recreation Plan (OSRP);
- e) how the disposition is not contrary to the wishes of the person who donated or sold the land to the Public Entity;
- f) the vote of the Public Entity on whether the land to be disposed is surplus to Article 97 Interests and needs, the appropriateness of the Replacement Land and the unanimous Public Entity vote for the project.

XX.07 Replacement Land

- 10) The proposed Regulations appear to focus more on the Replacement Land XX.08 and In Lieu Funding options more than adequately describing the Natural Resource Values, the actual Article 97 purpose. I suggest that the Natural Resource Values section come before Replacement Land and In Lieu Funding sections to emphasize the Natural Resource Value importance.
- 11) Land owned and managed or otherwise restricted by non-profit conservation organizations should be specifically removed from consideration of Replacement Land. Non-profit land is already public open space and typically protected from conversion through the non-profit's' charters.
- 12) Monetary Value listed in the appraisal should be valid for one year, requiring updates if Replacement Land or In Lieu Funding takes longer than one year This is similar to LAND and LWCF grant requirements. Appraisals should be provided to all parties and there should be a mechanism for disputing an appraisal. It should be made clear that easements also require appraisals.
- 13) The Certain Easements section might be better as a standalone section since it implies activities may be exempt and not require requesting an opinion of the Secretary or Public Entity. What is the difference in getting a Waiver and the Certain Easements sections? Please clarify.
- 14) The Dover Conservation Commission disagrees with sections of the proposed Regulations that refer to the Secretary's "sole discretion." The disposition of the Public Entity's land should be a collaborative effort to ensure the no net loss of Article 97 lands as well as efficient use of time, resources, and finances.

XX.08 Natural Resource Values

- 15) Please add significantly more details to the Natural Resource Values section.
 - a) An public inspection of the land to be Disposed and the Replacement land should be required. Natural Resource Values can not be described by aerial photography and mapping alone. While they are great tools, they miss the local knowledge component.
 - b) the role the proposed Article 97 disposition land plays in meeting the Interests in Article 97,
 - c) whether the proposed Article 97 disposition land provides a unique or significant resource,
 - d) whether the land is described within the Open Space and Recreation Plan (OSRP)
- 17) A site inspection should also be required of the Replacement Land by all parties.

XX.09 Funding in Lieu of Replacement Land

18) The In Lieu Funding section needs clarification.

- a) Firstly, the Public Entity should not have the responsibility of finding Replacement Land unless the Public Entity is asking for the disposition (the Proponent).

This will take considerable time, resources, funding and staff time, to accomplish all of these tasks. This is overly burdensome and the Regulations do not provide any relief for a Public Entity if they are not the Proponent..

- b) Secondly, it appears that the Proponent requests the Secretary make a finding about appropriateness of In Lieu Funding but then it is the Public Entity that requests the Secretary move the matter to the Legislature, whether they agree the action is appropriate or not.
- c) Thirdly, the Proponent is providing the Public Entity with a plan on how to use the funding as a submittal requirement, without any requirement for consultation with the Public Entity. In addition, the requirements of this plan are not listed.

19) Please remove the option to disperse the funding to the Community Preservation Committee (CPC). More specificity, the In Lieu Funding should be dispersed to the Public Entity of the Art 97 Interest. In some cases, there may be no CPC, as in the case of Doversince the Town has not adopted the CPA. Also, in a Town that has a CPC, CPC funding would need to be approved at Town Meeting, also an unnecessary delay and burden to a replacement transaction. To avoid delays and competing interests or accidental misappropriation of funds, the in lieu funding would be better held and used by the Public Entity holding the Art 97 Interest.

20) In Lieu Funding of not less than 110% of the fair market value or value in use, is not adequate. Please increase this to 150%.

Securing Replacement Land includes more than just the land purchase. It includes funding appraisals, title searches, new survey plans, time to negotiate with a landowner and significant staff time to complete the negotiations, title insurance and recording fees purchase, and the follow up reporting. In addition, land value in eastern MA will change significantly in 3 years. If it takes 3 years to find suitable Replacement Land, the land value will have increased. At 110%, the In Lieu Funding would not yield comparable acreage or Natural Resource Values.

21) Reporting requirements are overly burdensome. How is a Public Entity assured that there will not be more scrutiny on the Public Entity who is left with finding Replacement Land than the Proponent, was in the review of the Proponent's Alternatives Analysis in finding the Replacement Land?

22) Reporting requirements would better fit with Public Entity schedules with a due date of December 31st.

23) After the reporting is submitted, what happens to the Public Entity if the Secretary determines the Replacement Land is not comparable? Consultation with the Public Entity and Secretary should be included prior to making the Replacement Land offer to a landowner.

XX.10 Waiver or Modification

24) Under Waivers, the Public Entity should agree that a waiver is appropriate and that the transfer from one Public Entity to another is done "*with no other change in use*". The Secretary and Public Entity should collaborate on this determination.

For example, a local park under Conservation control transferred to the Recreation Department could continue to be managed as a park. However, if the park is later changed to a ballfield then there would be a change in use

and Natural Resource Values may not have been protected. Similarly, if Conservation land is transferred to a Water Department but then the Water Dept puts a new well or treatment facility on it, there would be a change in use and Natural Resource Values would not have been protected.

25) Please identify the standards used to determine that Natural Resource or Recreation Values are “insignificant” in order to grant a Waiver.

Additional concerns

26) What is the enforcement mechanism or consequences of not meeting these Regulations? The consequences of noncompliance should be determined and known to all entities.

27) We request that EEA provide robust training on the Regulations once they are final, including how to use the EEA’s Natural Resource Tool and creating the screening reports.

28) We request that EEA provide written responses to those who comment on the draft regulations, and meet with a stakeholder group, such as the Massachusetts Society of Municipal Conservation Professionals (MSMCP), to discuss received comments and then provide a written response to all commenters.

A draft final version should be available for public comment prior to adopting final regulations and include a public meeting session to discuss and answer questions rather than a public hearing where EEA just receives testimony.

EEA has made great strides in improving transparency of the Article 97 disposition process and the Dover Conservation Commission applauds your efforts for tackling this complicated and important issue. Your commitment to land protection is clear and we look forward to working collaboratively on our shared goals.

Sincerely,

Janet Hartke Bowser

Dover Conservation Agent

CC via email:

Governor Maura Healey, Maura.Healey@mass.gov

Representative Joshua Tarsky, Joshua.Tarsky@mahouse.gov

Senator Rebecca Rausch, Rebecca.Rausch@masenate.gov

Under Secretary Stephanie Cooper, Stephanie.Cooper3@mass.gov

Assistant Secretary Kurt Gaertner, kurt.Gaertner@mass.gov

Robb Johnson, Mass Land Trust Coalition, robb@massland.org

Dorothy McGlincy, MA Assoc. of Conservation Commissions dorothy.mcglincy@maccweb.org



Town of Hanson
Conservation Commission
542 Liberty Street
Hanson, Massachusetts 02341

January 23, 2025

Rebecca Tepper, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Sent via email to Michael.gendron2@mass.gov

RE: Comments on Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests (Open Space Act)

Dear Secretary Tepper:

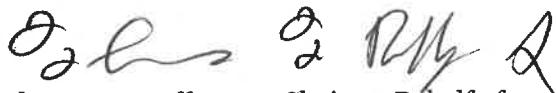
Thank you for the opportunity to comment on the draft regulations, 301 CMR 52.00, for the *Change in Use or Disposition of Article 97 Interests*. The Hanson Conservation Commission offers the following comments to the draft regulations.

- **Purpose.** Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.
- **Notifications.** Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.
- **Documentation of Surplus Vote by Public Entity.** There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

- **Public Comment Period.** A minimum public comment period of 21 days should be required for all Article 97 actions, not only those proposing in Lieu Funding.
- **Natural Resource Values.** The Natural Resource Values section should be more detailed and expanded to highlight its importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP).
- **In Lieu Funding.** In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use.
- **Enforcement.** The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Thank you for your time and consideration of my comments.

Sincerely,



Thomas J. Roffey, Jr., Chair on Behalf of
Town of Hanson Conservation Commission

January 22, 2025

Secretary Rebecca Tepper
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

By Electronic Submission to Michael.Gendron2@mass.gov

RE: Draft 301 CMR 52 Change in Use or Disposition of Article 97 Interests

Dear Secretary Tepper,

Thank you for the opportunity to provide feedback on the Executive Office of Energy and Environmental Affairs' (EEA) proposed new regulations, 301 CMR 52.00: *Disposition or Change in Use of Article 97 Interests*.

Prior to the adoption of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts (Article 97), hundreds of acres of park land were disposed of for public housing, churches, hospitals, institutions, universities, schools and private use. Article 97 establishes a right to a clean environment and its natural, scenic, historic, and aesthetic qualities, and declares the conservation of natural resources a public purpose.

In the years since its adoption, Article 97 has been a critical tool for ensuring no net loss of open space and protecting urban open space that is challenged by growth and development pressure. In 2022, the Massachusetts Legislature passed *An Act Preserving Open Space in the Commonwealth*, Chapter 274 of the Acts of 2022, also known as the *Public Lands Preservation Act* (PLPA), establishing requirements and a process for submitting petitions to the Legislature to authorize the use for another purpose or disposition of land subject to Article 97.

Understanding the urgent and escalating impacts of climate change, we are dedicated to playing an active role in safeguarding open space and protecting the natural resources within the City of Boston. These comments highlight the importance of robust municipal engagement, raise concerns about valuation of replacement land, and underscore the balance between preserving natural landscapes and adapting to the effects of climate change.

The City of Boston recognizes the importance of and appreciates EEA's adherence to the no net loss policy that underscores Article 97 and preserves open space in the Commonwealth. Therefore, we encourage EEA to consider enshrining the no net loss policy in the purpose section of the regulations.



City of Boston
Green Infrastructure



City of Boston
Parks and Recreation



City of Boston
Environment

EEA has made great strides in recent years to strengthen stakeholder engagement and include municipalities and the broader public in its decision-making processes. Despite these efforts, the draft regulations do not provide for adequate public participation in the disposition or change in use of Article 97 land with respect to replacement land. The regulations provide for simple notice to the public entity holding the Article 97 interest without requiring approval from the public entity. In this way, the regulations allow a proponent to circumvent local approval when proposing replacement land.

EEA should consider adding a provision to the regulations to require that a proponent receive approval from the relevant public entity before submitting materials to the Secretary of EEA (Secretary). The City of Boston also recommends expanding the definition of “comparable location” to consider land permeability and the proximity to Environmental Justice Populations. Further, the regulations should provide an opportunity for the public entity to provide comments to the Secretary on any proposed disposition of an Article 97 interest, specifically on the Secretary’s Determination of Natural Resource Value. If the Secretary makes a determination that is inconsistent with the relevant public entity’s filed comments, the comments should be appended to the Secretary’s findings to ensure they are included in the petition to the Legislature.

Additionally, the regulations should provide an opportunity for the relevant public entity to comment on any request by a proponent for a waiver pursuant to 301 CMR 52.10. Local municipalities have valuable insight on whether a transfer or change in use of an Article 97 interest is “of insignificant natural resource and recreation value” and whether it would serve a significant public interest, as required by 301 CMR 52.10(1)(b).

EEA has long recognized the importance of mitigating and adapting to the impacts of climate change, including increased severity and frequency of extreme weather events and flooding. In September 2023, EEA released the ResilientMass Plan, an updated State Hazard Mitigation and Climate Adaptation Plan to identify strategies to address risks to the human health and safety, communities, critical assets and infrastructure, natural resources, governance, and economy of the Commonwealth. EEA also administers the Massachusetts Municipal Vulnerability Preparedness (MVP) Program to support cities and towns in completing vulnerability assessments and implementing action-oriented resiliency plans.

The City of Boston recommends that the definition of “Natural Resource Value” explicitly include stormwater management. The Article 97 regulations should include a waiver for improvements to or expansion of ecosystem services via nature-based infrastructure designed to mitigate climate change impacts or manage stormwater. At a minimum, there should be a waiver process for projects that have received MVP grant funding to support resilience efforts.



City of Boston
Green Infrastructure



City of Boston
Parks and Recreation



City of Boston
Environment

Finally, the City of Boston encourages EEA to follow this regulatory rulemaking with an update to its policy and guidance documents to provide clarity to municipalities on the role local approval should play in this revised Article 97 process. The 1998 Article 97 Policy provided meaningful safeguards by requiring an active local approval process and in the public hearing on December 14, 2024, regarding these regulations, many people expressed concerns about losing this process. EEA should also provide further guidance and clarity on the mechanisms a municipality may use to preserve replacement land.

Thank you for your consideration of these comments. Please do not hesitate to contact me at 617-635-3850 or brian.swett@boston.gov if additional information or clarification is required.

Sincerely,



Climate Chief Officer Brian Swett
City of Boston, Environment, Energy & Open Space Cabinet
Office of Mayor Michelle Wu



City of Boston
Green Infrastructure



City of Boston
Parks and Recreation



City of Boston
Environment

Gendron, Michael (EEA)

From: Janet Sinclair [REDACTED]
Sent: Wednesday, January 22, 2025 5:02 PM
To: Gendron, Michael (EEA); Gaertner, Kurt (EEA)
Subject: very minor corrections CMR 52.00 comments

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

----- Forwarded Message -----

From: Janet Sinclair <jasinclair@verizon.net>
To: Michael.gendron2@mass.gov <michael.gendron2@mass.gov>; Gaertner Kurt (EEA) <kurt.gaertner@mass.gov>
Sent: Wednesday, January 22, 2025 at 04:54:51 PM EST
Subject: CMR 52.00 comments

To Massachusetts EEA,

Please accept my comments re: Proposed Regulations, 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests

The Alternative Analysis of *feasibility* and no substitution equivalency should not be left to the discretion of the proponent. This analysis should occur early in the process and involve early public engagement.

Waive of modification – Given the nature of Article 97 land, there are no insignificant aspects to any parcel of protected land. 2.500 square feet of development or disturbance, while seemingly insignificant, can be cause for damage to the integrity of any whole parcel. This *waiver* should be eliminated from the regulations.

Determinations by Secretary. The Secretary should not have sole discretion to determine whether to waive or modify any requirement pursuant to Section XX.10. There should be a public court appeal process.

Purpose. Section 1 of the regulations, (the Purpose & Applicability) should clearly state the purpose of this law, which is to protect, preserve, and enhance open spaces protected under Article 97 by establishing a high bar for any proponent proposing conversion of such lands to other uses, and to ensure no net loss of valuable open space when such conversions are unavoidable.

Notifications. Notification should be made at both the local and statewide level on platforms that provide a regular email notification (such as the Environmental Monitor), include posting the notification at the land proposed for disposition and include a site inspection of the land proposed for disposition and the Replacement Land, and requirement for a notice on the municipal website (perhaps on the Conservation Commission webpage or the Open Space Committee webpage). The Public Entity (often the municipality) should be a partner to this process and be able to collaborate on the disposition throughout the entire process.

The local notification should be as inclusive as in 51.07 and for every aspect of the public notification process described in the regulations, including the alternatives analysis section. Please add this language throughout.

51.07: Public Notice of Commonwealth's Intention to Purchase or Lease Real Property (1) To Public Officials. (a) The EEA Agency Head shall provide written notice of any such planned purchase or lease, including a statement of the present use and proposed uses of the subject property and the reason for the proposed action, to the Public Officials of each city or town in which the real property proposed to be purchased or leased is located at least 120 days prior to the purchase or lease of the real property by the Commonwealth. (b) The 120-day notice period can be reduced or waived by agreement of the Public Officials. (2) To Members of the Public. (a) EEA Agency Heads shall cause a public hearing to be held in the city or town in which such real property is located at least 60 days prior to the purchase of real property by the Commonwealth for the purposes of disclosing the conditions or reasons for the proposed purchase or lease. (b) In the event the public hearing is conducted by the Commissioner of DCAMM, notice of such public hearing shall be published in the Central Register at least 30 days prior to such hearing, and at least once each week for two consecutive weeks preceding the hearing, in newspapers with sufficient circulation to inform the people of the affected locality. The hearing shall be held in the locality in which the real property to be purchased is located.

Documentation of Surplus Vote by Public Entity. There should be a requirement that the Public Entity must declare the proposed land for disposition as surplus to Article 97 Interests. Standards for the required vote of the Public Entity with care and control of the subject parcel should be more clearly delineated. A higher standard than a simple majority vote should be required, in keeping with the 2/3 legislative vote required by Article 97 itself and the seriousness of converting parks and conservation land to other uses. In addition, in circumstances where the subject land is under the care and control of a subsidiary entity (such as a municipal conservation commission or parks commission) the regulations should require at least a 2/3 vote of that entity, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.

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In Lieu Funding. In lieu funding should be only available after the Proponent has demonstrated the Action has been avoided and minimized, with the funding held by the Public Entity whose land has been disposed. Funding should be increased to 150% of the fair market value or Value in Use. Those funds should require appropriate land replacement within three years.

Enforcement. The adoption and enforcement of strong regulations are essential to ensuring that municipalities and other public agencies do not treat Article 97 lands as a ready resource to site future facilities and infrastructure. A new section should be added to include consequences for non-compliance with the law/regulations, including invoking the Executive Office of Energy & Environmental Affairs' (EEA's) civil enforcement, suspending any permits issued by EEA until the failures are corrected to the Secretary's satisfaction and ineligibility for state assistance programs.

Sincerely yours,

Janet Sinclair
Shelburne Falls, MA



The Commonwealth of Massachusetts
MASSACHUSETTS SENATE

SENATOR JAMES B. ELDRIDGE
Middlesex and Worcester District

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JAMES.ELDRIDGE@MASENATE.GOV
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Chairperson
JOINT COMMITTEE ON THE JUDICIARY
&
Vice Chair
JOINT COMMITTEE ON ENVIRONMENT AND
NATURAL RESOURCES

DISTRICT OFFICE
225 MAIN STREET, ROOM 219A
MARLBOROUGH, MA 01752

Secretary Rebecca Tepper
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

January 22, 2025

Dear Secretary Tepper,

First, I'd like to thank you and your team for drafting the regulations proposed under 301 CMR 52:00, and express my gratitude regarding your willingness to provide a 30 day extension of the public comment period. I am eager to continue collaborating with your office as we work towards our shared goal of preserving lands that are protected under Article 97. As you work to revise these draft regulation, I hope you will consider the following suggestions regarding its language and impact:

Section one should incorporate the intent of protecting Article 97 land: This section emphasizes that each branch of the General Court will need to pass a two-thirds vote to protect land for its quality as a park or value as a source of natural resources, but the section should also strongly emphasize the intent of protection and preservation of Article 97 land.

Sections four and six should clarify requirements for public notice and alternatives analysis: Section four provides that prior to taking an Article 97 Action, the Proponent must "notify the public, the holder of the Article 97 Interest if not the Proponent, and the Secretary." We agree with the requirements set forth in this provision, but we believe the provision could be further strengthened with some clarifications regarding the timing and details of the public notice requirement. We also believe that section six could be similarly altered, specifically, Section 6(2)(f)'s affirmative vote requirement. Here, we recommend that the language clarify whether this vote will be passed by a majority or by a two-thirds majority.

Section five's Notification protocol is a good starting point, but will be stronger with broader standards: Section five's requirement that a proponent of an Article 97 Action must post a notice of their activities is a good provision. However, there are many people who might be affected by a given Article 97 Action, and we

think that section five can be strengthened by requiring additional consideration for notifying this population. We would suggest requiring that abutters be notified directly alongside the website posting.

Section seven should indicate that appraisals should meet state standards: We support section seven's current language surrounding required appraisals for replacement land. However, these requirements should also emphasize the importance of meeting state appraisal standards.

Section eight could be strengthened with the addition of an appeals division: Section eight is a powerful provision of 301 CMR 52:00, and we agree that the Secretary of the Energy and Environmental Affairs should be the sole authority in determining natural resource value. However, when an office assumes sole discretionary authority, this authority should be balanced by an appeals division.

Section nine should include provisions governing consequences for non-compliance, along with increased specificity: When public entities make requests for in-lieu funding, they will need guidance regarding the notice and comments that their request includes. We believe the regulations should include detailed standards for these aspects of the request, along with further guidance on cases where the EEA will need to be notified. Similarly, entities looking to the regulations for guidance will benefit from provisions outlining consequences for non-compliance, such as ineligibility for state assistance.

Thank you for your time and for considering these proposed updates to these draft regulations. I look forward to continuing to work with you and your team.

Sincerely,



Jamie Eldridge
State Senator
Middlesex and Worcester District