

**Gendron, Michael (EEA)**

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**From:** Steven Shapiro <[REDACTED]>  
**Sent:** Monday, March 10, 2025 8:36 AM  
**To:** Gendron, Michael (EEA)  
**Subject:** 301CMR52

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.

We urge you to continue protecting the integrity of our parks and public open spaces. No changes.  
Sent from my iPhone

## Gendron, Michael (EEA)

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**From:** Carol O'Neil <[REDACTED]>  
**Sent:** Monday, March 10, 2025 8:22 AM  
**To:** Gendron, Michael (EEA)  
**Subject:** PRESERVE ARTICLE 97 PLEASE

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Please for the sake of all humanity and wildlife please, please preserve article 97.

***Thank you,***  
***Peter and Carol O'Neil***  
***433 Main Street Unit 5***  
***Medfield, MA 02052***

and  
16 Lake Leaman Rd  
Falmouth, MA 02540

**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)*

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## Gendron, Michael (EEA)

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**From:** ROBERT and JOAN GONFRADE <[REDACTED]>  
**Sent:** Thursday, March 6, 2025 5:00 PM  
**To:** Gendron, Michael (EEA)  
**Subject:** Re: Article 97 Public 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.

Hello Michael,  
Here are my thoughts for the open comment period:

I am hoping you will stop or modify the proposed Article 97 changes.

Chapter 274 An Act Preserving Open Space in the Commonwealth:

I agree with allowing/ defining the exchange of land if absolutely necessary (i.e. For a new school etc.).

Currently Chapter 274 only allows a "**Public Entity**" to propose the changes. My concern is the changes proposed to Article 97 add a "**Proponent**" to propose those changes. The definitions of both are:

**Proponent** is defined as:

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.

**Public Entity** is defined as:

### AN ACT PRESERVING OPEN SPACE IN THE COMMONWEALTH

SECTION 1. [Chapter 3 of the General Laws](#) is hereby amended by inserting after section 5 the following section:-

Section 5A. (a) In order to use for another purpose or otherwise dispose of land, an easement or other real property interest subject to Article XCVII of the Amendments to the Constitution of the Commonwealth, a public entity, which for the purposes of this section shall include the commonwealth, any agency, authority, board, bureau, commission, committee, council, county, department, division, institution, municipality, officer, quasi-public agency, public instrumentality or any subdivision thereof

My concern is with the addition of Proponent "**any individual, partnership, trust, firm, corporation, association**". This says to me that an individual or developer could propose changes to the use of protected land directly to the state for approval. I am very concerned with this change.

Just clarifying the process is one thing. Redefining who can take protected land is another. In addition, I personally think if there is to be a change to Town owned protected land, it should have to be approved by 2/3 vote at Town Meeting as well as a unanimous vote of the Conservation Commission before being sent to the State for approval. I think this weakens our protections. The protection of land deemed worthy of protection by a community's values and history should only be alterable by the community itself.

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 **only** be initiated at the town level by the ConComm and Town Meeting. Private entities (Proponents) should **NOT** be able to initiate changes to protected lands. This should not pass as written.

Respectfully,

Joan Gonfrade

1 Shore Road

Ashland

Member of the Ashland Historical Commission, writing as an individual citizen.





## **Town of Ashland, Office of Conservation**

**DATE:** March 25, 2025

**Subject:**

Comments Regarding Draft Open Space regulations 310 CMR 52.00 Revised March 25, 2025

**Addressed To:**

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

Dear Michael Gendron,

The Ashland Conservation Commission (The Commission) has received the request of the EEA for further comment on the proposed regulations for the Open Space Act and provide the below amended comment letter, with amendments being number 5 through 7.

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

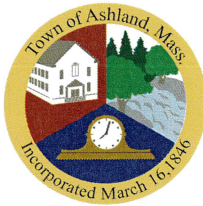
The regulations allow for the receipt of payment in lieu of the Replacement Land. This section states funding must occur within 3 years of the Article 97 Action and the funding must be used to acquire Replacement Land in a Comparable Location and be dedicated for Article 97 purposes.

1. The regulations should be revised 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?



## Town of Ashland, Office of Conservation

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 purchased 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 the same 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.



## **Town of Ashland, Office of Conservation**

5. Chapter 274 of the Acts of 2022, known as An Act Preserving Open Space in the Commonwealth, refers only to the action of a public entity for the purposes of disposing of or changing the use of land subject to Article 97, which is defined within the Act as including the “commonwealth, any agency, authority, board, bureau, commission, committee, council, county, department, division, institution, municipality, officer, quasi-public agency, public instrumentality or any subdivision thereof...”. The proposed regulations state that a proponent can take this same action, and includes within the definition of proponent, “any individual, partnership, trust, firm, corporation, association...” which is not clarified to be public entities. This should be clarified to make clear that private entities must be acting in partnership with a public entity, or otherwise clarify the process for private entities initiating such action.
6. Current policy for Article 97 requires a unanimous vote of the local Conservation Commission and the Parks and Recreation Commission (if applicable), as well as a 2/3<sup>rd</sup> vote at Town Meeting in support of the release or change of use in land subject to Article 97. The regulations should specify which Board of Commission within a municipality is responsible for holding the public hearings regarding the proposed action. The process outlined in the regulations should further be amended to outline any necessary local votes of the Conservation Commission or other Boards or Commissions, as well as the notification process for each.
7. Notification to the public should include legal ads posted within the newspaper, consistent with other standard notifications for public hearing processes under the Open Meeting Law, as well as notification to abutters of the land being acted upon, particularly in Environmental Justice neighborhoods, as abutters will be the most affected by such actions.

Sincerely,

Ashland Conservation Commission





BERKSHIRE ENVIRONMENTAL ACTION TEAM

20 Chapel St. Pittsfield, MA 01201 • [thebeatnews.org](http://thebeatnews.org)

(413) 464-9402 • [team@thebeatnews.org](mailto:team@thebeatnews.org)

Protecting the environment for wildlife in support of the natural world that sustains us all.

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March 26, 2025

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](mailto:Rebecca.L.Tepper@mass.gov)

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

Dear Secretary Tepper,

Berkshire Environmental Action Team (BEAT) appreciates this opportunity to provide feedback on the proposed 301 CMR 52.00: Change in Use or Disposition of Article 97 Interests. BEAT's mission is to work with our community to protect the environment for wildlife in support of the natural world that sustains us all.

BEAT is concerned that the proposed changes put too much power in the hands of one person, the Secretary of Energy and Environmental Affairs. We feel that it is critical to have strong outreach, especially in Environmental Justice neighborhoods, to be sure people living near or making use of Article 97 properties are aware of potential changes and have opportunity to share their local knowledge and opinion on any Article 97 land use changes.

We are very concerned that no Article 97 lands should be released for industrial energy use.

- **Solar** - The state should be promoting solar on every possible rooftop, parking lot, and brownfield. This approach tends to create local jobs for local solar contractors, as opposed to national or multi-national solar companies who prefer to build on undisturbed forest or farmland.
- **Fossil gas** - No expansion of fossil gas infrastructure should occur on Article 97 lands. As the northeast transitions off of fossil fuels, the state should require the fossil gas transmission companies to restore their easements, remove invasive species, and promote the return to a natural forested state.
- **Electric transmission** - There are many alternatives to expanding our electric transmission corridors through Article 97 lands including Grid Enhancing Technologies (GETs) to be able to transmit more electricity along existing or enhanced poles and wires, or switching to High Voltage Direct Current (HVDC) lines that could be located underground. Perhaps a better location for HVDC would be along our interstate highways as major transmission corridors throughout the country.



While we **support a two-thirds vote of both houses** to make changes to Article 97 land use changes, however in our experience this process has had little meaning. As far as we are aware, only once has a two-thirds vote not passed easily. That one time was when a coastal representative proposed releasing Berkshire land from Article 97. The communities in the Berkshires mobilized to stop this egregious release of Article 97 lands from protection. The local community must have strong input into any decision to release Article 97 lands from protection.

**No net loss** - there must be no net loss of natural resource value (e.g. wildlife habitat, carbon sequestration, wetlands) if a parcel of Article 97 land were to be released from protection, it must be replaced with another parcel of equal or greater natural resource value.

We appreciate the **alternative analysis** requirements and want to be sure this is a robust process. In our experience, during a fossil gas pipeline expansion, the company only did an "alternatives analysis" AFTER they chose their preferred alternative and then considered any other alternative less practical, even though they had less environmental impacts and fewer impacts on Native American artifacts. We believe an alternatives analysis should solicit information from the local community before developing the alternatives.

Thank you for considering our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jane Winn", with a stylized, cursive script.

Jane Winn, Executive Director



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Karen Mauney-Brodek, *President*

March 26, 2025

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Museum of Fine Arts, Boston

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](mailto:Rebecca.L.Tepper@mass.gov)

RE: Public Comment 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 comment on the 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'.

Any change to Article 97 is monumental and should be approached with careful consideration. Article 97 of the Massachusetts Constitution protects public parkland, ensuring that these spaces are preserved for public use and enjoyment. Any change in the use of such land can have lasting impacts on local communities, wildlife, and the public's access to recreational spaces of all kinds.

Given the significance of parkland and its role in the health and well-being of residents, it's essential that any proposed changes to Article 97 be thoroughly vetted through public engagement processes. This would include open hearings, community consultations, and a clear dissemination of information to ensure that all stakeholders, especially the general public, fully understand the implications of such changes.

It's crucial that people have a chance to weigh in on whether parkland should be repurposed for other uses, particularly as the land is a valuable and limited resource that can be vulnerable to changes in legislation or policy. Public input helps ensure that decisions align with the community's best interests and the long-term preservation of valuable public land.

Even the smallest of details can have an outsized impact. With a close look at the draft recommendations, please review the following suggestions for incorporation.

Thank you for your work and commitment to protecting public land in the Commonwealth.

<u>Draft Regulation</u>  <u>Section</u>	<u>Comment</u>	<u>Reason(s)</u>
xx.02 Definitions “Article 97 Action”	In the second line of “2.” after the word “duration,” and before the word “provided” insert the words “of one (1) year of less including all potential extensions”	The regulation should not open up the possibility of excluding licenses of limited duration without being clear, consistent with prior Attorney General opinions, that rights of more than one year duration in total, including extensions exercisable by the license holder or permit holder, are Article 97 Interests.
xx.03.2	The regulation should expressly require full public notice of and a reasonable, 45-day public comment period, prior to the Secretary providing any requested clarification if any Proponent has consulted with the Secretary.	Consultations with and advice from the Secretary or the office not shared with the public is inappropriate given the nature of the constitutional public stake in potential Article 97 Actions
xx.04 <u>Requirements</u>	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 <a href="https://www.mass.gov/doc/public-lands-preservation-act-frequently-asked-questions-august-2024/download">https://www.mass.gov/doc/public-lands-preservation-act-frequently-asked-questions-august-2024/download</a> lists four requirements, including “Draft legislation and obtain authorization for the filing of a bill. Overall, the <u>Requirements</u> 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	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 regs. Subsection 3a) requires not only the identification of Replacement Land but also the actual acquisition (if necessary) and dedication of the Replacement Land to Article 97 purposes, or the provision of In-Lieu funding. This ignores the need for an intervening step of obtaining legislative approval. Such approval may not be granted.



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	6) Implementation of the mitigation action.	
xx.05.1	Suggest Inserting at beginning of this paragraph 1 “at least 45 days before the first vote by either house of the General Court on the proposed Article 97 Action”	The public should be given full notice of the proposed Article 97 Action at least 45 days before the Legislature starts to take its Article 97 votes on the matter.
xx.05.1	In the second line, change “the Public Entity” to “each Public Entity” and insert “either fee ownership or real property interest rights or” before “care and control of” In the fourth line, change “Entity” “Entity(ies)” as there may be more than one.	In some cases, more than one Public Entity may have ownership or other interests or care and control of Article 97 property. Care and control alone is too narrow a category, excludes other likely categories of public entities’ interests, and thus artificially limits public notice.
xx.05.2	In the second line change “21” to “45”.	Given the constitutional nature of the protected public interest under Article 97 and the PLPA the notice and public comment period should be more than a bare minimum. A 45-day time period is the least that allows for robust public awareness of and public comment on the proposed change of use or disposition of an Article 97 Interest.
xx.06.1	The second sentence should be rewritten to state “Following such consideration, the Proponent shall create an Alternatives Analysis documenting its consideration of alternatives to avoid and minimize the Article 97 Action, its selected option, and all reasons for and against each option including without limitation the selected option.”	Given the constitutional nature of the protected public interest under Article 97 and the PLPA, Proponents should have to fully disclose in writing their Alternatives Analysis and the pros and cons of each option including without limitation the selected option. Limiting Alternatives analysis to one alternatives, as sometimes occurs under MEPA, is inappropriate in this context.
xx.06.2.b	In the last line, replace “the sole basis” to “a basis”.	Cost differences between public and private land should not be relevant in any case.
x.06.2.f	In the first line, “care or control” and to be replaced with “fee or interest ownership” instead.	As above, care and control is a different concept under real property law than ownership of a fee or an interest (e.g., easement or restriction). A Public

		Entity with mere care and control, let alone any private entities dealing with a care and control Public Entity, should not be excused from laying out its full discussions with the Public Entity(ies) that own the fee and any other interests in the Article 97 Interest.
xx.06.2.f	In the last line, after the words “Public Entity” and before the words “if applicable.” consider Inserting the words: “and except in the case of an Article 97 Interest owned by a State Agency, an affirmative vote of a majority of the legislative body of the applicable municipality(ies) in which the Article 97 Interest is or are located.”	Setting aside the case of State Agencies seeking an Article 97 Action, all other Article 97 Actions should require the affirmative, majority vote of the local legislative body (City Council or Town Meeting) prior to an Alternatives Analysis being considered complete. Such legislative actions represent the will of the applicable city and/or town on the question and should be heard before a mere local authority or agency, or a regional entity, completes an Alternatives Analysis.
xx.06.3.d	At the end, suggestion to insert the phrase “, and in any event within an appropriate distance, whether within or outside of a municipality, in the case of all Environmental Justice Populations affected by the proposed Article 97 Action.”	Neither market area alone nor municipal boundaries alone should control in the case of locating appropriate Alternatives when an EJ Population(s) is affected. In many cases a “meso-scale” Alternatives approach may be needed to adequately account for EJ Population impacts of a proposed Article 97 Action by any Proponent.
xx.07.4	Suggestion to revise opening as follows: “A temporary easement or subsurface easement of less than three (3) months’ duration in the aggregate, or other non-fee-simple interest in land that is an Article 97 Interest, and in any case is located more than one mile from any EJ Population will be deemed to affect zero acres and therefore not require Replacement Land, provided that:”	As written the draft would allow air rights use, even permanent air rights use, above Article 97 Interests with impunity. Similarly, temporary easements (typically for construction) of up to 24 months active duration (and greater duration overall) permitted under the draft language is inconsistent with the public constitutional rights at issue here. Such temporary and subsurface rights should be limited to three months’ duration if the result is

		to assume a “zero (0) acre impact” for Alternatives analysis purposes. Likewise, Article 97 protections of public parks and public recreation land proximate to EJ Populations, which often have serious health and transportation challenges should not be disregarded in the case of even temporary or subsurface easements as under the proposed draft language of the regulation.
xx.07.b	In the second line suggested change of “24 months” to “three months”	Construction period impacts of 24 months is inconsistent with awarding a “0” impact to the proposed Article 97 Interest under the proposed draft regulation language. Two years is a very substantial period of time. Especially on park and recreation land and especially in the case of EJ Populations proximate to parks and recreation land.
xx.08.2.a	In the first line, after the words “Replacement Land” and before the words “advances substantially the same Article 97 purposes” insert the phrase “is in a Comparable Location”.	The need for a Comparable Location for determination of Natural Resource Value, especially but not only in the case of affected EJ Population(s) is critical to testing the contributions and equivalent monetary and non-monetary values of Replacement Land.
xx.09.3	In the second line, after the words “pursuant to 301 CMR xx.09(2),” insert “after at least a 45-day public notice and public comment period,	Waivers or modification should require a robust, 45-day public notice and public comment period at the EOEEA Secretary level before the Secretary issues her Report of Findings to the Legislature.
xx.09.7	Insert a new paragraph 7 after current paragraph xx.09.6 as follows: “7. <u>Penalty</u> . Any Public Entity that receives In Lieu Funding to acquire Replacement Land and any municipality or regional or state body to which such Public Entity reports, shall be barred from seeking any other Article 97	The proposed draft carries no consequences for a Public Entity or its local, regional or state related bodies for failure to use In Lieu Funding to produce Replacement Land under Article 97. Such a loophole encourages the abuse of the Article 97 Action process.

	Action until the expiration of one year after the acquisition of such Replacement Land.”	A fair approach should be to bar any further requests for Article 97 Action until Replacement Land has been acquired and another year has expired for such Replacement Land to be actually placed in practical, useful service.
xx.10.1.a	This sub-paragraph should be rewritten as follows for clarity and precision: “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 without limitation no change allowing the land to be used for another or different purpose), and the Secretary finds in writing that the waiver or modification will not adversely affect any Environmental Justice Population, and all other applicable permits and approvals for such transfer have been obtained beyond all notice and appeal periods;	The draft subparagraph xx.10.a as written is ambiguous and could allow the Secretary to issue waivers or modifications of the Replacement Land requirements even where one Public Entity changes the use of the Article 97 Interest in question. The new clause should make it clear that such change of use voids the ability the Secretary to grant a waiver or modification of the Replacement Land requirement.
xx.10.1	In a new paragraph of xx.10.1 after x.10.1.b, insert the new following language: “The Secretary shall publish such waiver or modification in the Environmental Monitor and her reasons therefor at least 45 days prior to issuing a Report of Findings to the General Court. Notwithstanding any other provision of this Section xx.10.1 to the contrary, in no event shall the Secretary grant any waiver or modification that would adversely affect any Environmental Justice population located within one mile of the Article 97 Interest that is the subject of the proposed Article 97 Action.”	Consistent with earlier comments, robust public notice of and opportunity to comment on all Secretarial decisions, but especially decisions on waivers and modifications, should be mandatory, so the public and the General Court have adequate time to digest and respond in the constitutionally-mandated process before the General Court.  Adverse impacts to EJ Populations proximate to a proposed Article 97 Action should prevent the Secretary from granting a waiver or modification of the Replacement Land requirement. EJ Populations already experience such significant barriers to adequate parks and recreation land that further loss of

		existing Article 97 Interests should be flatly precluded.
xx.10.2	<p>In the fourth line of the current first sentence, replace the word “the” with the word “each” before the words “Public Entity” and insert the words “fee ownership or real property interest holding and/or” before the words “care and control of the Article 97 Interest”.</p> <p>And add to the end of the current first sentence the words “and the Secretary shall publish notice of such waiver or modification request in the Environmental Monitor provide a minimum public comment period of 45 days from such publication in the Environmental Monitor, before granting any such waiver or modification. The Secretary shall make such additional notifications to and opportunities to comment on the requested waivers and modifications to all EJ Populations located within one mile of the Article 97 Interest that is the subject of the proposed Article 97 Action as are consistent with notifications, translations, public meetings, and other opportunities to comment required of private entities under the MEPA Regulations [insert citation].”</p>	<p>Consistent with earlier comments, robust public notice of and opportunity to comment on all Secretarial decisions, but especially decisions on waivers and modifications, should be mandatory, so the public and the General Court have adequate time to digest and respond in the constitutionally-mandated process before the General Court.</p> <p>This is especially the case of proposed Article 97 Actions proximate to EJ Populations.</p>

Sincerely,



Karen Mauney Brodek  
President



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CC:

Senator Jamie Eldridge, [James.Eldridge@masenate.gov](mailto:James.Eldridge@masenate.gov)

Former Representative Ruth Balser, [ruthbalser@gmail.com](mailto:ruthbalser@gmail.com)

Undersecretary Stephanie Cooper, [stephanie.cooper@state.ma.us](mailto:stephanie.cooper@state.ma.us)

Assistant Secretary Kurt Gaertner, [kurt.gaertner@state.ma.us](mailto:kurt.gaertner@state.ma.us)

Michael Gendron, [Michael.gendron2@mass.gov](mailto:Michael.gendron2@mass.gov)

## Gendron, Michael (EEA)

---

**From:** David Buzanoski <[REDACTED]>  
**Sent:** Wednesday, March 26, 2025 4:02 PM  
**To:** Gendron, Michael (EEA)  
**Subject:** Re: 301 CMR 52 : Disposition or Change in Use of Article 97 Interest.

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Michael Gendron

Re: 301 CMR 52

My name is David Buzanoski, President of the Falmouth Heights- Maravista Neighborhood Association in Falmouth MA. I am submitting my comments to the above in advance of today's zoom call as the deadline for same is 5pm, possibly even before the zoom call is over.

Since the last zoom call I have not noted where any changes have been made or proposed and consequently, for the record, I am re-submitting my previous comments, and they have not changed either.

The apparent reason for the proposed changes to Article 97 seems abundantly clear to the citizens of the commonwealth. The Healey administration has seen fit to streamline the permitting per Senate Bill 2967, and now realizing that the current Article 97 protections could stand in the way of green initiatives the administration is endeavouring to change the rules/laws pertaining to same.

This is an egregious affront to every citizen of the commonwealth and should absolutely be rejected by the Mass Legislature.

Respectfully,  
David Buzanoski  
Falmouth Heights - Maravista Neighborhood Association

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 a 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 be 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 that 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 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 of the administration to change Article 97.

Respectfully,  
David Buzanoski, President  
Falmouth Heights - Maravista Neighborhood Association.  
Falmouth, MA



# MASSACHUSETTS LAND TRUST COALITION

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March 26, 2025

Secretary Rebecca Tepper  
100 Cambridge Street, Suite 900  
Boston, MA 02114  
via email: [Michael.gendron2@mass.gov](mailto:Michael.gendron2@mass.gov)

*Re: 301 CMR 52 - comments*

Dear Secretary Tepper:

Thank you for the opportunity to provide a second round of comments on draft regulations to guide implementation of M.G.L. Ch 3, section 5A, known as "An Act Preserving Open Space in the Commonwealth" (the Open Space Act). The Massachusetts Land Trust Coalition (MLTC) works to advance land protection in Massachusetts by supporting and strengthening 140 non-profit land trusts that conserve land for the benefit of all Commonwealth residents. As you know, land trusts have played and will continue to play pivotal roles in conserving many publicly owned parks and open spaces. That's why we worked hard, alongside EEA and many others, to pass the Open Space Act.

On behalf of MLTC, I am pleased to submit the following comments on the two matters for which you have requested additional input. These comments should be considered supplemental to those in a group sign-on letter submitted January 21, 2025, on which I was the lead signatory.

## Notification

As noted in our January 21 comment letter, every proposed change of use for Article 97 requires filing an Environmental Notification Form (ENF). Under the Open Space Act, EEA has an expressly defined role in every Article 97 disposition, so MEPA review thresholds should apply. Specifically, 301 CMR 11.03(1) (b) (3) states that "ENF and other MEPA review is required if the Secretary so requires" in the case of: "Disposition or change in use of land or an interest in land subject to Article 97 of the Amendments to the Constitution of the Commonwealth, unless the Secretary waives or modifies the replacement land requirement pursuant to M.G.L. c. 3, § 5A and its implementing regulations." The regulations should remind proponents that -- unless a proposed disposition meets the narrow requirements for waiver under the Open Space Act -- the proposed disposition is subject to MEPA filing and notice requirements, including posting in the Environmental Monitor and notice to community-based organizations and tribal organizations in accordance

with the MEPA Public Involvement Protocol. In addition, EEA should require posting the public notice to the Open Space Act Tracker on EEA's website, to be supplemented by additional materials as they become available. Finally, I would like to reiterate that the proponent should be required to post a physical notice in a highly visible location on the subject parcel or parcels. This would be in addition to posting the proposed change of use on the websites of both the proponent and the land-holding entity (if different.)

#### Methods for Determining Natural Resource Value

While sympathetic with the theoretical appeal and potential practical benefits of an [online tool](#) to facilitate desktop analysis on Natural Resource Value by EEA – as well as by disposition proponents and the concerned public – I was pleased to read in your [February 28<sup>th</sup> Notice to Reviewers](#) that this tool will be used as a supplement to other information provided by the proponent, the public and gathered through field observation. The tool may be of most use to experienced analysts at EEA, since users with only rare occasion to access it -- such as proponents and members of the public concerned with a particular Article 97 disposition -- will likely find it challenging to navigate, even if additional instructions are added. The online tool seems useful for early stages of analysis, with any impressions to be confirmed by other data and, most importantly, a field visit by those with a deep understanding of relevant natural resource values.

Thank you for your consideration of these comments, and for your ongoing efforts to ensure that the Commonwealth's Article 97 interests are protected and preserved to the maximum extent possible.

Sincerely,



Robb Johnson  
Executive Director

## Gendron, Michael (EEA)

---

**From:** Mitchell, Caleb <CMitchell@hinsdalema.gov>  
**Sent:** Wednesday, March 26, 2025 2:57 PM  
**To:** Gendron, Michael (EEA)  
**Subject:** Comments on Article 97 Amendments to the State Constitution

**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. Michael Gendron,

I offer the following comments regarding the Amendment to Article 97 of the State Constitution: I am against the disposition of land subject to article 97 of the amendments to the state constitution for another purpose unless they eliminate the use of waivers or modifications of the replacement land requirement or the payment of money in lieu of providing replacement land. People who sold or donated their land in perpetuity and who thought their land was protected from development forever would probably be disappointed if the Commonwealth of Massachusetts used their land for another purpose. I am completely against using protected land for climate mitigation. The best mitigation of climate change is protected open space land! If I had a choice between farm land or woodland over a solar array or wind turbines, it is a complete no brainer! Not even close. The 110% down payment is completely inadequate. How do you assess the value of open space land and all the beautiful attributes such as clean water, food production and wildlife habitat. This would be a terrible decision to codify this into the state constitution. One of the other problem with this whole scenario is taking by eminent domain somebody else property as replacement land. This appears to be more of a political decision than protecting open space land. This opens the door to steal land for climate mitigation, which is very debatable whether this should ever be considered as a reason to take protected open space land and use it for solar arrays and wind turbines. We have already seen the negative impact in numerous communities because of the proliferation of solar arrays & wind turbines. People are getting fed up with open space land being taken or used for these purposes. Please accept my comments

Sincerely,

Caleb Mitchell

97 Seymour Street  
Pittsfield, MA 01201

March 26, 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 provided a comment letter on the proposed regulations prior to the close of the initial comment period on January 22, 2025. Eversource resubmits its initial comment (see attached), to ensure it remains part of the record in the rulemaking procedure.

In response to the notice of hearing dated February 28, 2025, Eversource offers responses to the particular questions referenced in the accompanying notice to reviewers. First, regarding notice of a proposed Article 97 transaction, it would be appropriate for state agencies to rely on an electronic notification system as opposed to the expense and administrative burden of a newspaper notice. Eversource suggests employing a notification by subscription so that those interested in receiving notifications can subscribe to email notifications of proposed Article 97 transactions that provide links to the proposed action and substantive information already entered into the EEA portal.

Regarding the on-line Natural Resource Value tool, Eversource thinks it provides valuable information, including the identification of trails and open space property and hopes EEA continues to make updates and improvements as additional layers or supportive data is made available. Links to registry resources such as deeds or plans that provide a basis for Article 97 designation would also be helpful.

Thank you for your consideration of our comments.

Sincerely,  
Eversource Energy Service Company



Marc Richards, PE, LSP  
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, appearing to read "Marc J. Richards".

Marc Richards, PE, LSP  
Vice President – Sustainability and Environmental Affairs

## Gendron, Michael (EEA)

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**From:** Nancy Smith [REDACTED]  
**Sent:** Wednesday, March 26, 2025 1:01 PM  
**To:** Gendron, Michael (EEA)  
**Subject:** Comments Article 97 Conversions

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March 12, 2025

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

RE: Public Comments 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 comment on the draft regulations, 301 CMR 52.00, for the Change in Use or Disposition of Article 97 Interests. I live in Sheffield. As a conservationist and a lover of the natural world, I believe that these draft regulations need more clarity and strengthening to better protect lands under Article 97.

My husband and I protected 350 acres of land in Sheffield, and helped launch a larger effort to protect rare wetlands there. I am concerned that if property owners who want to conserve their properties come to believe that Article 97 laws do not sufficiently safeguard conservation lands in perpetuity, that future donors or willing sellers will be deterred. We need more conservation, not less. Of course, the Commonwealth, as well as land trusts and other non-profits, should be reliable, clear and careful in all their conservation work.

Your challenge is a big one; to unambiguously state under what circumstances conversions can take place without giving developers and town administrators latitude in over-developing our precious resources.

When conversion is *proven* to be unavoidable, the regulations should ensure no net loss of valuable conservation lands. Conversions should be an action of last resort. The burden of proof should not be on rural townspeople scrambling to meet unrealistic schedules. The following are some of the ways that new regulations could be strengthened.

- **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, and to establish a high bar for anyone proposing conversion of such lands to other uses.
- **Natural Resource Values.** This section should be expanded to highlight the property's importance, including whether the land is included in an approved Open Space and Recreation Plan (OSRP). It's fundamentally important to protect lands that people had the prescience over the past hundreds of years to protect.



Many of these conservation lands clean and filter water and air; protect cold water fisheries; have become sources of pollinators that enable our farms to produce food; and are home to exuberant birds and wildlife, and very often, rare species. These lands are hiked, hunted and recreated by millions of citizens. It has been proven that being out in the natural world is critical to the health and mental well-being of humans. As appropriate, these values should be enumerated when considering conversion.

Article 97 protects open space from being lost, and should not be converted and developed in ways inconsistent with the state's critical biodiversity goals, especially in light of Gov. Healey's Executive Order for Biodiversity Conservation (<https://www.mass.gov/executive-orders/no-618-biodiversity-conservation-in-massachusetts>).

- Requirements, Section 4: Instead of stating 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 any vote to authorize the disposition. Those responsible for taking such votes need to have the benefit of all relevant materials before reaching a decision.
- Section 5.1 and 5.2: The minimum public comment period should be extended from 21 days to 30 days, applicable to all Article 97 conversions, not just for those proposing In-Lieu Funding. It is difficult for most small towns with fewer resources to respond quickly to proposals. The process needs more time to engage people thoughtfully.
- Regulations should require at least a 2/3 vote of the subsidiary entity like a town’s conservation commission, in addition to the 2/3 vote of the governing body, such as a City Council, Select Board or Town Meeting.
- In Lieu Funding. In lieu funding should be increased to 150% of the fair market value; costs associated with land transactions can be very expensive.

It’s critical to the well-being of all the Commonwealth’s citizens that local input and oversight are adequate. People have a sincere love of place and of nature and a sense of communal well-being. In this era where we witness the perils of a centralized federal government running roughshod over people, it would be very sad if the Commonwealth would become an unresponsive centralized state authority that would undermine the residents most affected by these projects. I don’t think that will happen, but its important that the citizens and the Commonwealth trust each other to do what is best for all.

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

Sincerely yours,

Nancy Elle Smith

1529 Undermountain Road

Sheffield, MA 01245



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



March 24, 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,

On behalf of the Easton Conservation Commission (ECC), I want to express my appreciation for this opportunity to provide additional 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*, particularly regarding Public Notification and the EEA's online tool for determining Natural Resource Value.

Notification

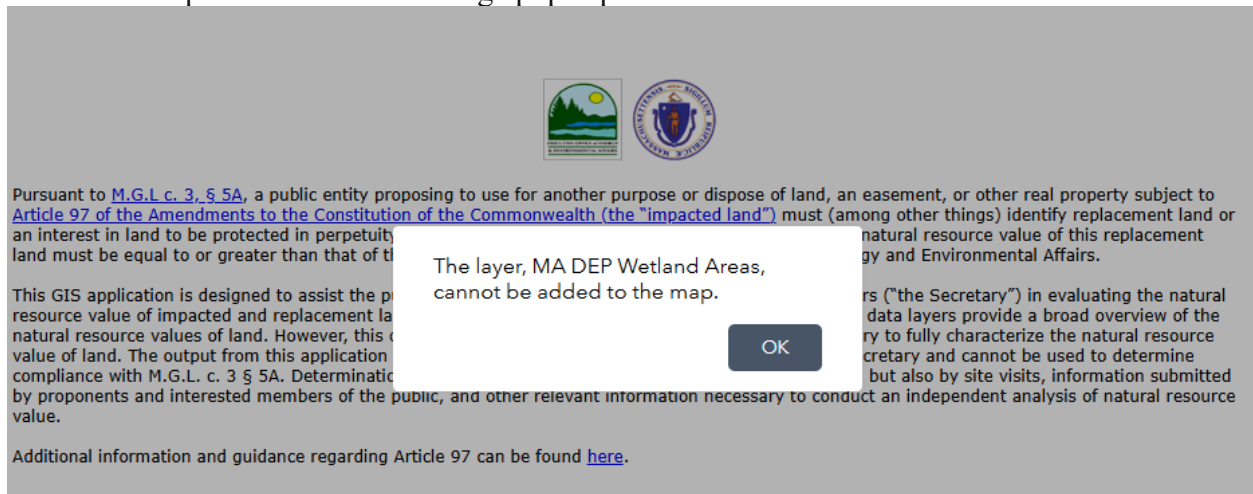
ECC does not have additional comments regarding this issue. The initial comment letter of January 17, 2025 adequately expressed our concerns.

EEA's [online tool](#) for determining Natural Resource Value (NRV)

ECC appreciates EEA's efforts to create an online tool to aid in determining NRV. We also appreciate the acknowledgement in the February 28, 2025 Notice to Reviewers that alludes to ECC's previous comments that the online tool should be used in conjunction with local knowledge and field observation. ECC feels heard about that comment and is pleased at such a quick response by EEA to it.

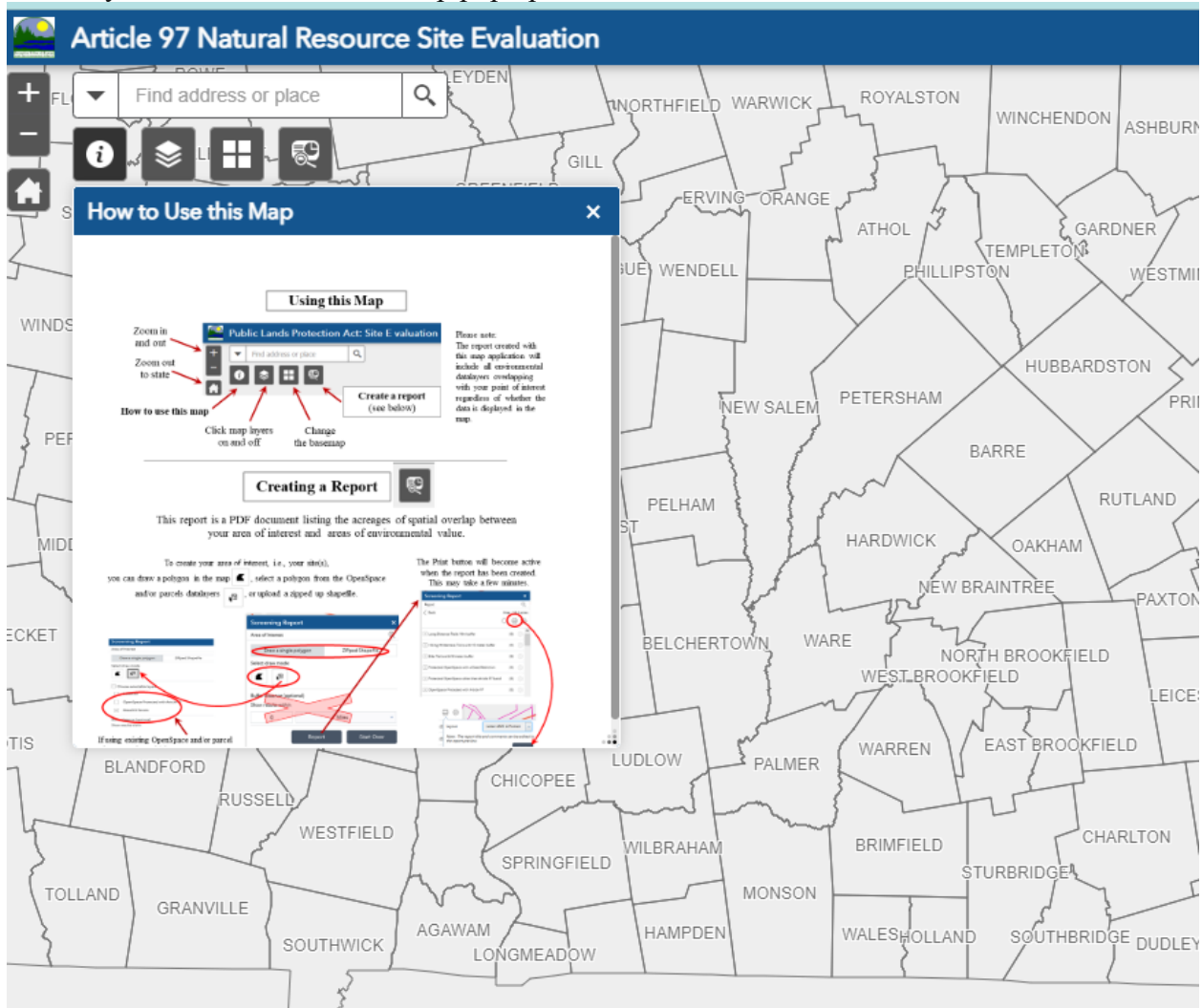
The tool is a good start to providing this online resource but appears to still be in a testing phase. There were many issues when trying to use the tool. This may be user error and would highlight the need for a robust training program, particularly for municipal conservation staff who would need to be very familiar with the program to effectively use it. In the following pages I offer some particular issues I had with using the online tool in hopes of better understanding how we would all use this and to inform EEA staff of some technical issues.

When I first open the tool this message pops up:



The wetland layer will be very important for determining NRV.

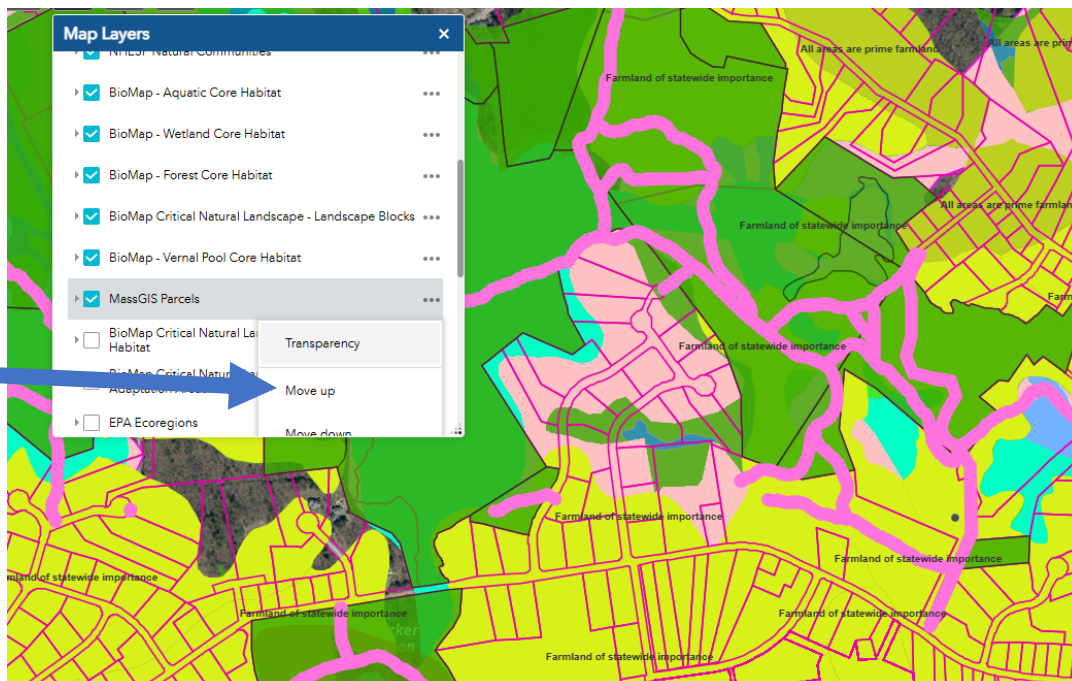
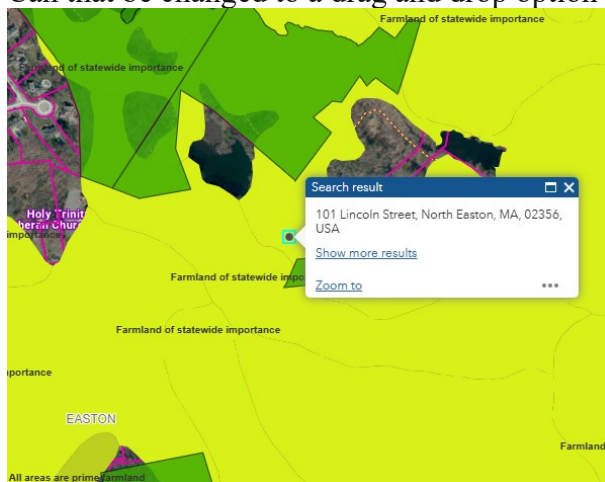
Secondly, the How to Use This Map pop up box is too small to read how to use it.



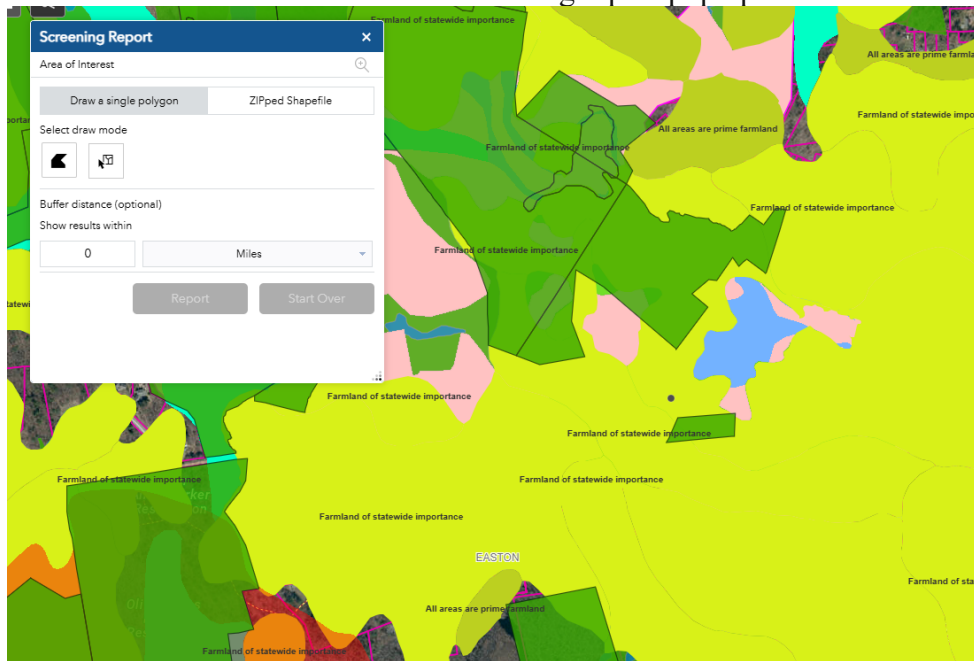
This should be enlarged so the text is legible or be a separate panel on the left side of the map.

I started doing a test with the location of our town pool, 101 Lincoln St, Easton. It is owned by the Select Board and managed by the Recreation staff. This should be Article 97 land but does not show that way on the map. Consequently, the open space datalayer will need to be updated. We know MassGIS has standard forms to complete when new land is added to our inventory but having to go through MassMapper and compare with our town lists is going to be time consuming and labor intensive. I've also spent considerable time updating MassGIS with these forms, providing copies of deeds, drawing the parcel on USGS maps, copying property maps and sending all of this to MassGIS only to have those protected parcels removed from the MassMapper datalayer years later without any explanation or notification. I will now have to do that all over again to make sure my municipality's datalayer is correct. EEA is requested to work closely with MassGIS on a strategy to update the open space with Article 97 protection datalayer with the municipalities.

The parcel can quickly get lost when selecting the map layers. Is there a way to keep the parcel boundaries on top of the layers? I see the 3 dots to the right of the map layer, but do I really have to click "move up" 28 times through all the other data layers so that the parcel layer is on top? Can that be changed to a drag and drop option instead?

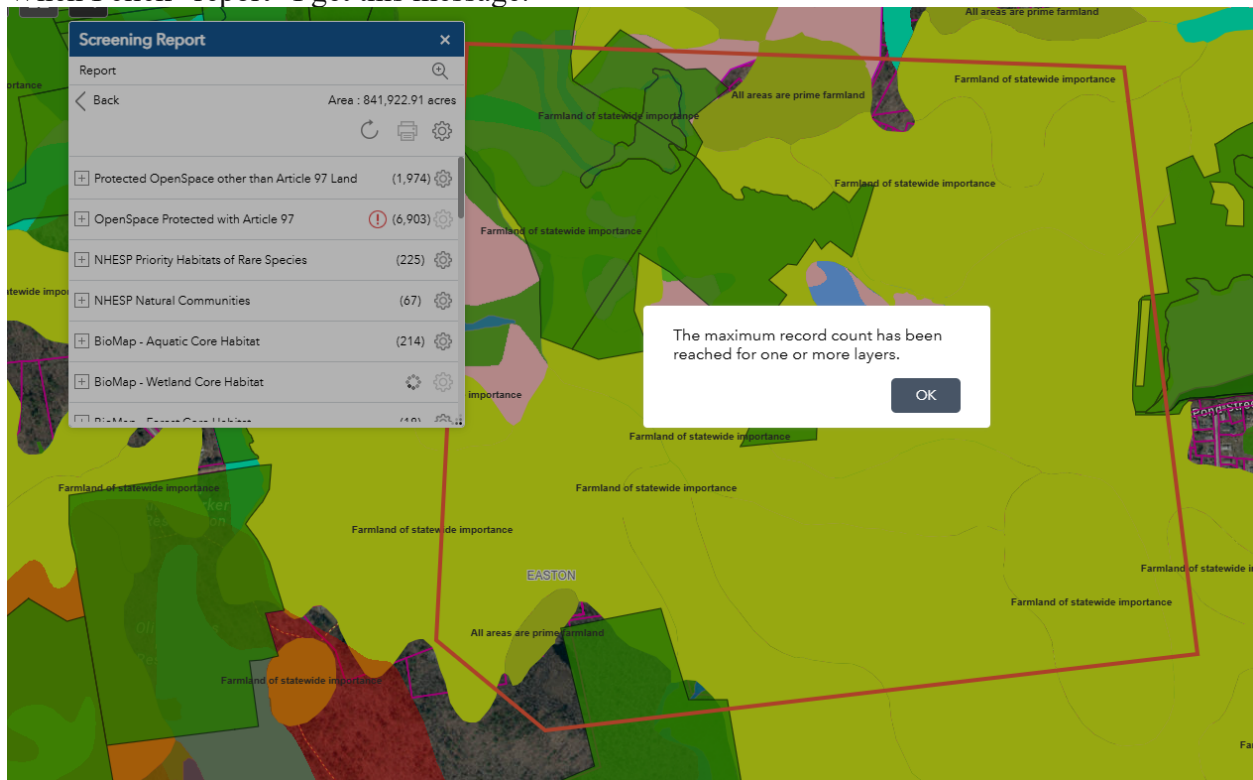


Please add some directions for the screening report pop up.



1. I lost my parcel in all the layers and not sure what I'm supposed to do here.
2. For "select draw mode", what are we drawing? Will that be the extent of the map produced? Or the extent of an evaluation of all the selected layers? What are the 2 boxes in "select draw mode"?
3. How do we know how many buffer distance miles we should be showing?

When I click "report" I get this message:

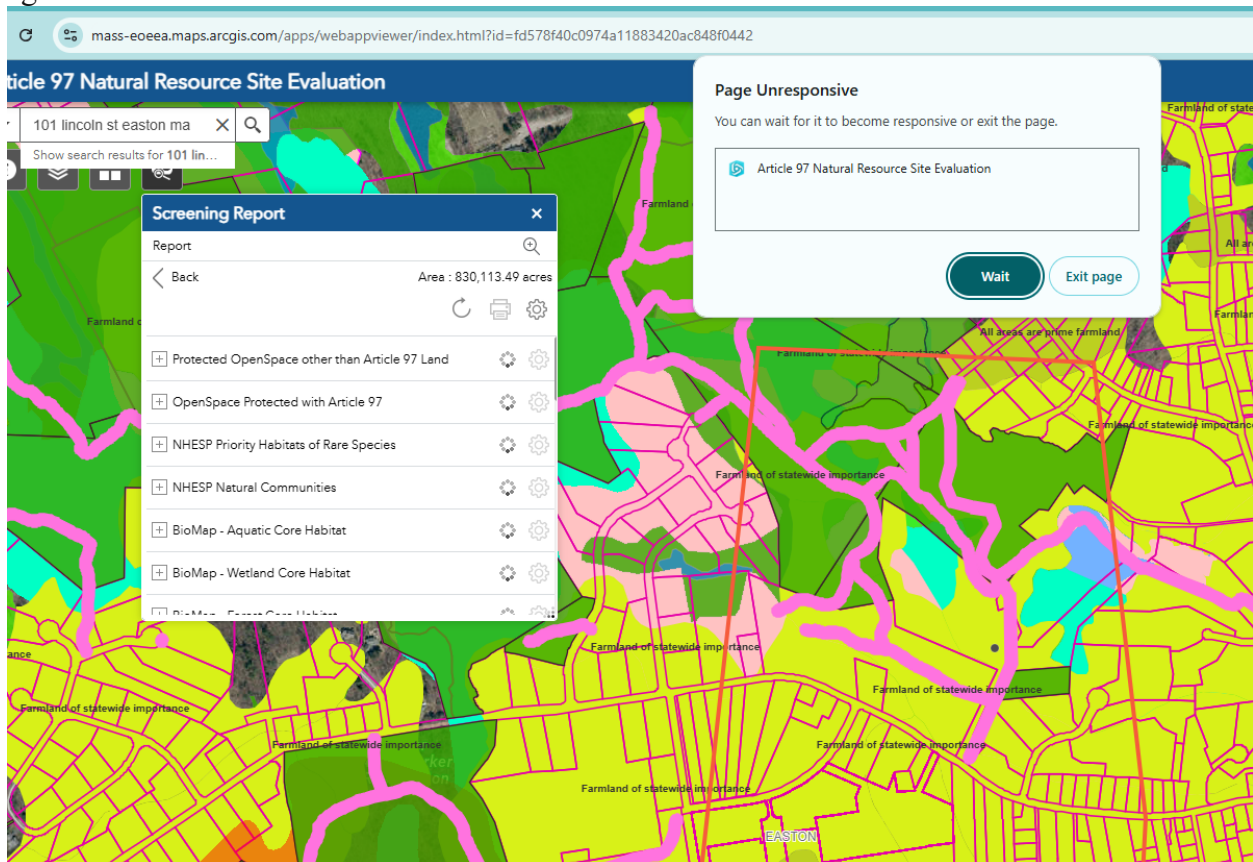


What's the maximum record count? How do we know if we'll reach that when we select our



layers or drawing the area? What do we do now? Start all over? I clicked ok and the screen froze. It then was unresponsive and I had to start from scratch.

Second time around. I made a smaller search area. I received the same message and had to start again.



Luckily, local knowledge and field inspections will play a greater role in determining the NRV because by this online tool, this very important parcel doesn't appear to provide much value. 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.

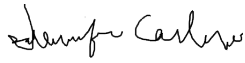
My efforts at using this tool emphasize the essential need for EEA to provide robust training on how to use the EEA's Natural Resource Tool and creating the screening reports if this tool is to be utilized going forward.

EEA is requested to meet with a stakeholder group, such as Massachusetts Society of Municipal Conservation Professionals (MSMCP), to discuss received comments and collaborate on the Regulations. 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. I look forward to continued collaboration on this important and essential process.

Thank you!

Sincerely,



Jennifer Carlino,  
Land Use and Environmental Planner

Enclosure

CC: via email

Governor Maura Healey, [Maura.Healey@mass.gov](mailto:Maura.Healey@mass.gov)  
Representative Ruth B. Balser, [Ruth.Balser@mahouse.gov](mailto:Ruth.Balser@mahouse.gov)  
Senator James Eldridge, [James.Eldridge@masenate.gov](mailto:James.Eldridge@masenate.gov)  
Under Secretary Stephanie Cooper, [Stephanie.Cooper3@mass.gov](mailto:Stephanie.Cooper3@mass.gov)  
Assistant Secretary Kurt Gaertner, [kurt.Gaertner@mass.gov](mailto:kurt.Gaertner@mass.gov)  
Bob Wilber, [bob.wilber@mass.gov](mailto:bob.wilber@mass.gov)  
Secretary Rebecca Tepper, [Rebecca.L.Tepper@mass.gov](mailto:Rebecca.L.Tepper@mass.gov)  
Robb Johnson, Mass Land Trust Coalition, [robb@massland.org](mailto:robb@massland.org)  
Massachusetts Society of Municipal Conservation Professionals,  
[massconpros@gmail.com](mailto:massconpros@gmail.com)  
Dorothy McGlinchey, Massachusetts Association of Conservation Commissions  
[dorothy.mcglincy@macweb.org](mailto:dorothy.mcglincy@macweb.org)



*Grassroots Support for a Green Community*

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March 25, 2025

Michael Gendron

Executive Office of Energy and Environmental Affairs

Via email: Michael.gendron2@mass.gov

Comments on Open Space Act draft regulations: 301 CMR 52

Dear Mr. Gendron:

The Brookline GreenSpace Alliance appreciates the opportunity for additional comment on the draft regulations for implementation of the Open Space Act. We have just one comment to add to the comments we previously submitted.

The email from EEA states:

**Natural Resource Value:** *EEA has designed an online tool to assist (supplemented by other information provided by the proponent, the public and gathered through field observation) in determining Natural Resource Value consistent with Section 52.08 of the draft regulations. EEA is looking for specific feedback on this tool and other information that could assist in the evaluation of Natural Resource Value for both EEA and the public.*

We have reviewed the online tool. The tool is based almost exclusively on ecological values like wetlands, presence of endangered species, prime soils, etc. These are certainly important considerations. But there is little recognition of the value of open space to humans other than hiking and biking trails. The notice asks for "other information that could assist in the evaluation of Natural Resource Value."

The Brookline GreenSpace Alliance respectfully urges that the following criteria be considered in evaluating Natural Resource Value:

- \* tree cover that beautifies a neighborhood and contributes to reducing summer heat stress;
- \* all forms of public recreation, both organized and informal, in addition to hiking and biking;
- \* historic landscape value.

Regards,

Sean M. Lynn-Jones

President, Brookline GreenSpace Alliance



## Gendron, Michael (EEA)

---

**From:** Sandy Stosz <[REDACTED]>  
**Sent:** Sunday, March 16, 2025 9:04 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 Mr. Gendron,

### **RE: Article 97 "An Act Preserving Open Space in The Commonwealth of Massachusetts"**

Please don't weaken Article 97!

The new proposal (301 CMR 52 "Disposition of Change in Use of Article 97 Interests") would weaken this article via policy changes which would make siting and permitting easier for developers, or others. Article 97 was intended as a protection "for the people of the Commonwealth, to 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 to the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources and was declared a public purpose."

I notice the Healy administration recently announced \$1.3M in grants to 13 cities and town and one non-profit organization for tree planting, from the Cooling Corridors program. Weakening Article 97 is at odds with preserving our fragile environment and fighting climate change.

It's common knowledge that trees benefit the Earth and fight against climate change. Yet in my town, Falmouth, profit-hungry 40B developers ravage our woodlands and conservation areas. We've lost many acres of older-growth forest, some of it on conservation lands, due to the relaxed zoning regulations.

The Kendall Lane development in Falmouth, MA, for instance, bulldozed 4.5 acres of forest situated directly on already-distressed Little Pond. The woodland was inhabited by box turtles and many other birds/animals, and is located directly adjacent to vernal pools and white cedar swamps. This pristine acreage, directly adjacent to a large waterfront conservation parcel, was recklessly replaced with a high-density, city-style development of 28 huge, million-dollar homes (with 9 to 10-foot ceilings on both floors) that tower over the surrounding neighborhood dwellings.

The laws are already on the developers' side and against the people. Please don't further weaken them.

Thank you for considering these concerns,

Sandra Stosz  
Falmouth, MA

**Gendron, Michael (EEA)**

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**From:** J DiTomasso [REDACTED]  
**Sent:** Thursday, March 13, 2025 7:40 AM  
**To:** Gendron, Michael (EEA)  
**Subject:** Comments Regarding Sec 5a of 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.

Secretary Gendron,

I have concerns regarding Dispossession of Land in Lieu Funding as stated in Sec 5a of Article 97:

Primarily about the value assessed to an Article 97 parcel, how the value is determined and the time frame to purchase comparable land for replacement.

With property values continuing to increase in value faster than CPI inflation, is it fair to calculate at 110% of Fair Market Value, given the 3 year window opportunity to purchase replacement land? I believe this is flawed and could be used for nefarious purposes.

Sincerely,

John DiTomasso  
Peru, Massachusetts

## Gendron, Michael (EEA)

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**From:** Ben Greer [REDACTED]  
**Sent:** Wednesday, March 12, 2025 9:33 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.

Good Morning Michael,

I am a local resident of Great Barrington who frequents Beartown State Park upwards of 4 times a week. I am writing as a concerned citizen of the proposed change to Article 97 which would allow the preservation of land to be supplanted by other desires of the state and commercial entities. The land we have set aside for recreation and aesthetic purposes is already so small, and to shrink them anymore shows a lack of creativity from all folks involved in not coming up with an alternative solution to provide for our communities. They are truly invaluable spaces allowing respite, community building, and a generation of sense of place. I hope we can continue to leave things as they are so our nature can return to more of a semblance to how it was.

Best,  
Ben

## Gendron, Michael (EEA)

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**From:** P Burke <[REDACTED]>  
**Sent:** Monday, March 10, 2025 6:38 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,

I cannot find any introductory information about the proposed reasons for, nor advantages to, the Commonwealth of Massachusetts's and its citizens for changing Article 97. Why is this needed? I have tried to read the proposal but it is very hard to make sense of the long term consequences of the proposed changes. It seems to be inviting some entities to learn how to get around the article. I am not at all convinced this is a good idea, so please register me as opposed. Thank you!

Sincerely,

Patricia Burke  
7 Hawthorne Lane  
Dover, MA 02030

Sent from my iPhone

**Gendron, Michael (EEA)**

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**From:** Candace Lofgren [REDACTED]  
**Sent:** Monday, March 10, 2025 2:43 PM  
**To:** Gendron, Michael (EEA)

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Sent from my iPhone  
Please protect our parks and open spaces. I am opposed to any changes!

Candace Lofgren  
40 lake Leaman Road  
Falmouth, Ma 02540

**Gendron, Michael (EEA)**

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**From:** [REDACTED]  
**Sent:** Monday, March 10, 2025 12:50 PM  
**To:** Gendron, Michael (EEA)  
**Subject:** Article 97 "An Act Preserving Open Space in The Commonwealth of Massachusetts"

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Mr. Gendron,

As a property owner in the Falmouth Heights area, I am disappointed that Governor Healey would pull a Donald Trump move and take protected land and change Article 97 to open the door to big business and to serve her own agenda for wind power.

Respectfully,

Rick Mullin