



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

June 18, 2026

Dear Secretary Tepper,

The Nantucket Land Bank is requesting your consideration of draft legislation allowing the Land Bank to add both greater legal protection and natural resources value to some of our existing land, in a manner consistent with Article 97 and the Public Lands Protection Act in order to provide regulatory mitigation under the MESA.

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Below is a detailed explanation of our request and rationale, followed by draft legislative language that has already been reviewed and found acceptable by some of your colleagues at EEA.

- The Nantucket Land Bank's enabling legislation authorizes us to acquire and hold land for a variety of purposes : open space, conservation, passive and active recreation, golf, protection of existing and future wellfields and aquifer recharge areas, as well as for agricultural purposes.
- Since 1983, the Land Bank has acquired ±3,477 acres that are used to benefit the island community across these different purposes.
- Regulatory permits for work consistent with some of the LB's allowed uses require mitigation (e.g., impacts to lands mapped as Priority Habitat under Massachusetts Endangered Species Act (MESA) associated with proposed development of active recreation or beach parking lots, and development or expansion of public drinking water supplies under DEP's Water Management Act).
- For land to count as mitigation under these regulatory programs, some of the Land Bank's allowed uses must be further restricted by the placement of a permanent conservation restriction (CR) excluding the use of the land for non-conservation purposes.

- Due to the limited land area of the island of Nantucket, the fact that over 50% of the island is already restricted for conservation by the Land Bank, the Town and other non-profit conservation organizations, and the fact that most of the unbuilt portions of the island are already designated as Priority Habitat under MESA, finding alternative replacement land for regulatory mitigation is extremely difficult if not impossible.
- The Land Bank's goal is to be able to place a CR(s) over some of their existing non-conservation land to provide mitigation to support their current and future goals to create public spaces authorized in the Land Bank Act: i.e. parking and access to beaches, ponds, the heathlands and the moors; and construction of recreational opportunities for children and adults across the island. Since there is such a limited number of acres of available land on Nantucket, we propose also making such mitigation available for selected public projects undertaken by the Town of Nantucket.
- Most of the Land Bank's land is subject to Article 97. Under the Public Lands Protection Act (PLPA), a change in legal control of land (e.g. placing a CR) subject to Article 97 requires the proponent to submit: (i) notification; (ii) an alternatives analysis; and (iii) identification and dedication of replacement land to Art. 97 purposes.

The PLPA provides for waiving or modifying the replacement land requirement, and allows funding in lieu of replacement land, generally under the assumption that the change in legal control **is a reduction in protection on the land**.

The PLPA does not address the situation that the LAND BANK finds itself in:

- The Land Bank **wants to add legal protection to some of their existing land** and is willing to further restrict portions of its land to purely conservation purposes to provide mitigation for current and future projects on Nantucket. This action would further restrict the use of Land Bank land by prohibiting the construction of recreational facilities or farming and would not allow additional uses beyond its current purpose.
- Such a CR could be held by the Town of Nantucket, a public entity or other non-profit conservation organizations. There would be no change in use of the land used for mitigation, no change in public access, no diminishment of habitat protection, and where the land would then be actively managed for the benefit of rare species, an actual increase in the natural value of the land for rare species.
- Although EEA staff have already offered to help the Land Bank seek a waiver under the PLPA of replacement land, in recent discussions EEA legal staff have determined that a CR, even one adding protection, is still a "disposition" under Article 97 and it is therefore necessary to go before both houses of the Massachusetts Legislature for a 2/3's vote. This makes planning and execution of public projects that require such

regulatory mitigation extremely difficult.

- The process of obtaining this vote is not something that the Land Bank can control and requires the filing of a home rule petition. Even with the support of the legislative delegation, there is no guaranteed mechanism or timeline to get the votes necessary to place a CR over our lands.
- There is also concern that seeking approval for a disposition from the Legislature under Article 97 for each individual CR that is needed for regulatory mitigation will be perceived by the public as the Land Bank weakening environmental protection over land on Nantucket, when this is clearly not the case.
- We would like the Legislature and EEA to consider this issue from a policy and land protection point of view and ask for your support of legislation that would allow the Nantucket Land Bank to be authorized to grant CRs to other public entities that **adds** legal protection and natural resource value to the land without having to go through the PLPA waiver and legislative process for each individual CR.
- Such draft legislation could look like the following:

Notwithstanding any general or special law to the contrary, and pursuant to article 97 of the amendments of the constitution of the commonwealth, the Nantucket Islands Land Bank may convey a conservation restriction, as defined in section 31 of chapter 184 of the general laws, on any and all land owned by said Nantucket Islands Land Bank in fee at the time of this act, provided that said conservation restriction: (i) has the benefit of section 32 of said chapter 184; (ii) is intended to further protect the conservation values of the land; (iii) is consistent with the article 97 purpose and use of the land; and (iv) would not result in a net loss of land subject to article 97.

We would appreciate your consideration of this draft legislation and your help in moving it through the legislative process. We have already secured the support of our home legislative delegation (Sen Julian Cyr and Rep Thomas Moakley) as well as support from the Town Administrator and the unanimous support of our elected Commissioners themselves. If there is anything we can do to help in this effort, please let us know.

Thank you for your time and consideration and thank you for the incredible assistance we have already been receiving from your staff.

Sincerely,.

A handwritten signature in black ink, appearing to read 'Rachael Freeman', with a stylized flourish at the end.

Rachael Freeman, Executive Director
Nantucket Islands Land Bank

cc: Stephanie Cooper, Kurt Gaertner, Michael Gendron, Johannes Buchanan