

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

**EOEA ARTICLE 97 LAND DISPOSITION POLICY
FEBRUARY 19, 1998**

I. Statement of 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. Accordingly, as a general rule, EOEA and its agencies shall not sell, transfer, lease, relinquish, release, alienate, or change the control or use of any right or interest of the Commonwealth in and to Article 97 land. 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. Exceptions shall be governed by the conditions included in this policy. This policy supersedes all previous EOEA Article 97 land disposition policies.

An Article 97 land disposition is defined as a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or license is not considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

II. Conditions for Disposition Exceptions

EOEA and its agencies shall not support an Article 97 land disposition unless EOEA and its agencies determine that exceptional circumstances exist. A determination of "exceptional circumstances" is subject to all of the following conditions being met:

1. all other options to avoid the Article 97 disposition have been explored and no feasible and substantially equivalent alternatives exist (monetary considerations notwithstanding).
Note: The purpose of evaluating alternatives is to avoid using/affecting Article 97 land to the extent feasible. To that end, the scope of alternatives under consideration shall be commensurate with the type and size of the proposed disposition of Article 97 land, and must be performed by the proponent of the disposition to the satisfaction of EOEA and its agencies. The scope of alternatives extends to any sites that were available at the time the proponent of the Article 97 disposition first notified the controlling agency of the Article 97 land, and which can be reasonably obtained: (a) within the appropriate market area for private proponents, state and/or regional entities; or (b) within the appropriate city/town for municipal proponents.
2. the disposition of the subject parcel and its proposed use do not destroy or threaten a unique or significant resource (e.g., significant habitat, rare or unusual terrain, or areas of significant public recreation), as determined by EOEA and its agencies;

3. as part of the disposition, real estate of equal or greater *fair market value* or *value in use of proposed use*, whichever is greater, and significantly greater resource value as determined by EOEA and its agencies, are granted to the disposing agency or its designee, so that the mission and legal mandate of EOEA and its agencies and the constitutional rights of the citizens of Massachusetts are protected and enhanced;
4. the minimum acreage necessary for the proposed use is proposed for disposition and, to the maximum extent possible, the resources of the parcel proposed for disposition continue to be protected;
5. the disposition serves an Article 97 purpose or another public purpose without detracting from the mission, plans, policies and mandates of EOEA and its appropriate department or division; and
6. the disposition of a parcel is not contrary to the express wishes of the person(s) who donated or sold the parcel or interests therein to the Commonwealth.

III. Procedures for Disposition

Although legislation can be enacted to dispose of Article 97 land without the consent of an EOEA agency, it is the policy of EOEA to minimize such occurrences. To that end, and to ensure coordination, EOEA agencies shall:

1. develop an internal review process for any potential Article 97 land disposition to ensure that, at a minimum, the conditions in Section II above are met;
2. develop, through the Interagency Lands Committee, a joint listing of all requests, regardless of their status, for the disposition of Article 97 land;
3. notify the Interagency Lands Committee of any changes to the Article 97 land disposition list;
4. monitor all legislation that disposes of Article 97 land, and communicate with legislative sponsors regarding their intent;
5. recommend to the Secretary that the Governor veto any legislation that disposes of Article 97 land, the purchase, improvement, or maintenance of which involved state funds, on and for which the EOEA agency has not been consulted and received documentation (including information on title, survey, appraisal, and a MEPA review, all at the proponent's expense);
6. obtain the concurrence of the Secretary of EOA for any proposed Article 97 land disposition decision prior to finalizing said decision;
7. if recommending an Article 97 disposition, attach to all Article 97 legislative recommendations and TR-1 forms a justification of the disposition and an explanation of how it complies with this policy, signed by the EOEA agency head;
8. ensure that any conditions approved by EOEA and its agencies to any Article 97 land disposition are incorporated within the surplus declaration statement submitted to and published by DCPO as required by M.G.L. C. 7, §40F and 40F1/2 and throughout the disposition process, and if such conditions are not incorporated in said statement throughout the disposition process, the EOEA agency head shall recommend to the Secretary that the Governor veto any resulting legislation;
9. recommend to the Secretary that the Governor veto legislation that disposes of Article 97 land of which the agency disapproves; and

10. ensure that any Article 97 land disposition is authorized by enacted legislation and approved by all municipal, state and federal agencies, authorities, or other governmental bodies so required and empowered by law prior to conveyance.

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 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 EOEAs Article 97 Land Disposition Policy [note: the municipality must also file an Environmental Notification Form with EOEAs MEPA office].

After the effective date of this policy, any municipality that proposes, advocates, supports or completes a disposition of Article 97 land without also following the terms of this policy, regardless of whether or not state funds were used in the acquisition of the Article 97 land, shall not be eligible for grants offered by EOEAs or its agencies until the municipality has complied with this policy. Compliance with this policy by municipalities shall be determined by the EOEAs Secretary, based on recommendations by the EOEAs Interagency Lands Committee.

*Trudy Coxe, Secretary
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