



# ***Implementing An Act Preserving Open Space in the Commonwealth***

MLTC Conservation Partners Meeting -  
September 20, 2024

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# Introduction – 3 Key Interacting Elements

## Article 97

Approved in 1972, it guarantees the right to a clean environment and protects land subject to it by requiring a two-thirds role call vote of the Legislature.

*Lands and easements taken or acquired for [Art. 97] purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by two thirds vote, taken by yeas and nays, of each branch of the general court.*

## Article 97 Policy

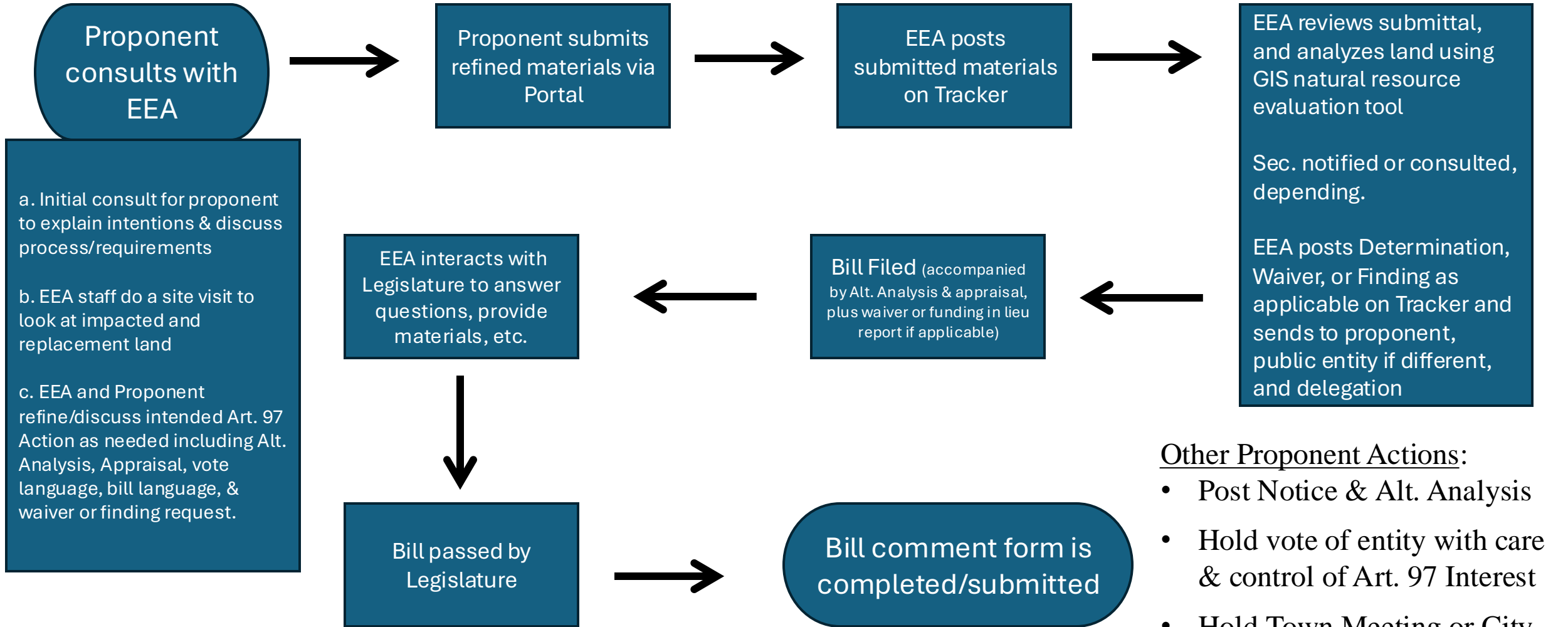
Issued in 1998 it states that:

- It is the policy of EEA and its agencies to protect, preserve and enhance all open space areas covered by Article 97;
- As rule, EEA and its agencies will not advance or support the disposition or change in use of any land subject to Article 97;
- EEA's intent is to ensure no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions; and
- Exceptions will be governed by conditions included in the policy.

## Open Space Act

- Passed in 2022, *An Act Preserving Open Space in the Commonwealth*, also known as the Public Lands Preservation Act (PLPA), established in statute requirements and a process for submission to the legislature of petitions to dispose or change the use of land subject to Art. 97.
- Intent was to codify the No Net Loss Policy and establish a more transparent standard approach that “front loads” the process by making proponents come to EEA before taking a home rule vote and/or filing an Art. 97 bill.
- EEA must now do more somewhat more formally & publicly, with slightly different & a bit more stringent rules, what it has been doing informally since 1998 – engage in the review of proposals to ensure no net loss of Art. 97 protected land.
- Key requirements proponents of Art. 97 Actions must comply with include: (i) notification; (ii) an alternatives analysis; and (iii) identification and dedication of replacement land to Art. 97 purposes.

# Idealized Art. 97 Process



## Other Proponent Actions:

- Post Notice & Alt. Analysis
- Hold vote of entity with care & control of Art. 97 Interest
- Hold Town Meeting or City Council vote (if required)
- Solicit public comment & respond (required if Finding requested, optional otherwise)

# Tools & Information:

- [Article97@mass.gov](https://www.mass.gov/info-details/article-97-portal) - point of contact & place for all questions related to Art. 97 & The Open Space Act
- [Guidance \(Help in Understanding & Complying with the Open Space Act\)](#) (Updated)
- [Frequently Asked Questions](#) (Updated)
- [EEA Appraisal Standards](#) (to be updated)

# Portal:

### Proponent

Provide contact information for the entity making the submission to the PLPA Portal regarding a disposition or change in use of land subject to [Article 97](#). If the proponent and the owner of the property interest subject to Art. 97 are the same, indicate that in the "Owner" section.

Applying Entity (Proponent)\*

Point of Contact (Name/Title)\*

Email\*

Phone\*

Owner of the land/interest in land subject to the Art. 97 Action\*

### Impacted Land

Proponents must provide information on the land or interest in land subject to Art. 97 that will be affected by their intended Art. 97 Action.

Location \*

Address Line 1

Address Line 2

City

ZIP Code

Current Holder of the Conservation Interest (Identify any public entity that owns a property interest subject to Article 97 that will be impacted by the proposed Art. 97 Action) \*

Natural resources present and current Art. 97 Use(s) such as Active Recreation, Passive Recreation, Habitat Protection, or Climate Change Mitigation that would be impacted by the proposed Art. 97 Action (Describe in sufficient detail to communicate the natural resource and Art. 97 value of the land; see "Natural Resource Value" in the [Guidance](#))

Size - Acres or Square Feet Impacted by the Art. 97 Action \*

Map(s) of impacted area (Attach suitable base map(s) with the property boundaries delineated at a scale where the land and surrounding property uses are clear) \*

Choose File Remove File No File Chosen

The total size of all documents attached to the online form cannot exceed 25 MB.

# Tracker:

### Tracker (Access to M.G.L. c. 3, § 5A Submissions & Decisions)

File Number	Applying Entity	Owner of Art. 97 Interest	Date Submitted	Portal Submission	Alternatives Analysis	EEA Responses	Supplemental Materials Submitted
A97_001_213	Town of North Reading	Town of North Reading			<a href="#">Alternatives Analysis</a>	<a href="#">Waiver</a>	<a href="#">Supplemental Materials</a>
A97_002_305	Wakefield Municipal Light and Gas Department	Town of Wakefield			<a href="#">Alternatives Analysis</a>		<a href="#">Supplemental Materials</a>
A97_003_189	Town of Milton	Town of Milton			<a href="#">Alternatives Analysis</a>	<a href="#">Determination of Natural Resource Value</a>	<a href="#">Supplemental Materials</a>
A97_004_160	City of Lowell	Department of Conservation and Recreation	6/24/2024	<a href="#">Portal Submission Data</a>	<a href="#">Alternatives Analysis</a>		<a href="#">Supplemental Materials</a>
A97_005_223	Town of Orange	Town of Orange	6/26/2024	<a href="#">Portal Submission Data</a>	<a href="#">Alternatives Analysis</a>		<a href="#">Supplemental Materials</a>

# Passed Art. 97 Legislation:

Location	Holder of Art. 97 Interest	Proponent	Acres Impacted	Replacement Acres	Purpose	Link to Chapter
Andover	Cons. Comm.	Private Citizen	0.2	0.2	Provide Legal Access to an Existing Home	<a href="#">Session Law - Acts of 2024 Chapter 94 (mlegislature.gov)</a>
Barnstable	Town - Park Purposes	Town/DPW	0.13	0.21	Intersection Reconstruction	<a href="#">Session Law - Acts of 2024 Chapter 96 (mlegislature.gov)</a>
Brookline	Town - Playground Purposes	School Dept.	0	0	Geothermal Facility for New School	<a href="#">Session Law - Acts of 2024 Chapter 91 (mlegislature.gov)</a>
Stoughton	Carton for Water Supply Purposes	MassDOT	0.13	0.13	MassDOT road project	<a href="#">Session Law - Acts of 2024 Chapter 92 (mlegislature.gov)</a>
Cohasset	Town for Park Purposes	Police/Fire - Cohasset Public Safety	2	2	Cell Tower for Public Safety	<a href="#">Session Law - Acts of 2024 Chapter 93 (mlegislature.gov)</a>
Eastham	Town	Town	0	0	Enhance Protection by Conveying CR to Eastham Cons. Foundation	<a href="#">Session Law - Acts of 2024 Chapter 92 (mlegislature.gov)</a>
Fall River	Redev. Authority	Private Developer/Redev. Authority	1	1.8	Industrial Park Land Swap	<a href="#">Session Law - Acts of 2024 Chapter 93 (mlegislature.gov)</a>
Lynn	Parks Dept.	School Dept.	5.8	7.3	School Construction	<a href="#">Session Law - Acts of 2024 Chapter 94 (mlegislature.gov)</a>
Mashpee	Cons. Comm.	Private Citizen	0.07	0.07	Swap Land to Address Lot Line Issue	<a href="#">Session Law - Acts of 2024 Chapter 93 (mlegislature.gov)</a>
Milton	Cons. Comm. & Parks Dept.	School Dept.	7.3	33.9	School Construction	<a href="#">Session Law - Acts of 2024 Chapter 97 (mlegislature.gov)</a>
Nantucket	Parks Dept.	Town/Parks Dept.	0	0	Shift Land from Town to Nan. Cons. Foundation	<a href="#">Session Law - Acts of 2024 Chapter 99 (mlegislature.gov)</a>
Nantucket	Parks Dept.	Town/Cons. Comm. & Parks Dept.	0	0	Shift Land from Town to Land Bank	<a href="#">Session Law - Acts of 2024 Chapter 90 (mlegislature.gov)</a>
Nantucket	County	Town/DPW	0	0	Bike Path Construction	<a href="#">Session Law - Acts of 2024 Chapter 97 (mlegislature.gov)</a>
Nantucket	Cons. Comm.	Town/DPW	0.09	0.12	Roadway Work to Address Coastal Erosion	<a href="#">Session Law - Acts of 2024 Chapter 93 (mlegislature.gov)</a>
New Bedford	Parks Dept.	New Bedford/Umass	0	0	Underground Utilities	<a href="#">Session Law - Acts of 2024 Chapter 96 (mlegislature.gov)</a>
North Reading	Cons. Comm.	Town/DPW	0.012	0	Bridge Repair (533 square feet of impact)	<a href="#">Session Law - Acts of 2024 Chapter 5 (mlegislature.gov)</a>
Orange	Water District	Water District (homeowners)	0.38	0.38	Address Inholdings on Water Dist. Land	<a href="#">Session Law - Acts of 2024 Chapter 91 (mlegislature.gov)</a>
Provincetown	Parks Dept.	Town/DPW	0	0	Underground Wastewater Disposal	<a href="#">Session Law - Acts of 2024 Chapter 92 (mlegislature.gov)</a>
Raynham	DAR	Police/Fire - Raynham Public Safety	6.11	66.38	Public Safety Complex, Road/Shared Use Path/Recreational Field	<a href="#">Session Law - Acts of 2024 Chapter 94 (mlegislature.gov)</a>
Wakefield	Parks Dept.	Wakefield Light & Gas	1	2.72	Energy Storage Facility	<a href="#">Session Law - Acts of 2024 Chapter 71 (mlegislature.gov)</a>
Westfield	DCR	City of Westfield	0	0	Shared Use Path Construction	<a href="#">Session Law - Acts of 2024 Chapter 93 (mlegislature.gov)</a>
Westford	Cons. Comm.	MassDOT	0.01	0.01	MassDOT Road Project (438 square feet of impact)	<a href="#">Session Law - Acts of 2024 Chapter 94 (mlegislature.gov)</a>
<b>TOTAL</b>			<b>34.232</b>	<b>115.02</b>		

## **Roles and Responsibilities of EEA Under the Act:**

The roles and responsibilities described in the Act are, in part, designed to inform legislators and the public on the status and compliance of certain aspects of proposed Art. 97 Actions. These roles and responsibilities assigned to EEA by the Act are as follows:

1. **Determination of Equivalent Natural Resource Value of Proposed Replacement Land** - The Act states that replacement land offered as mitigation for an Art. 97 Action must (among other requirements) be of equal or greater natural resource value as the impacted land, as determined by the Secretary. To satisfy this requirement, EEA will conduct an independent analysis of the involved land and provide to the legislature, the proponent, and the public a written determination of whether equivalent or greater natural resource value would be provided. Such determination will be posted on the online Tracker.
2. **Report of Finding in Response to a Request to Provide Funding in Lieu of Replacement Land** - The Act states that an entity proposing an Art. 97 Action may provide funding in lieu of contemporaneous provision of replacement land if the Secretary has reported to the Legislature a finding that the proposal meets the funding in lieu criteria specified in the Act. EEA will conduct an independent analysis of the proposal and provide to the legislature, the proponent and the public a written report as to whether the criteria have been met. Such report will be posted on the online Tracker.
3. **Annual Report on Instances in which Funding was provided in Lieu of Replacement Land** - The Act states that the Secretary shall issue an annual report on all instances in which funding was provided in lieu of replacement land, including amount of funds provided, the account into which the funds were deposited, whether the funds were expended to acquire replacement land, and a description of any land acquired. Such report will be provided to the Legislature and posted on the Article 97 website
4. **Determination in Response to a Request to Waive or Modify the Replacement Land Requirement** - The Act states that an entity proposing an Art. 97 Action may request a waiver or modification of the replacement land requirement, if the Art. 97 Action meets one of the criteria specified in the Act. When requested the Secretary has discretion as to whether to approve a request, and EEA will provide to the legislature, the proponent, and the public a written waiver or modification determination. Such determination will be posted on the online Tracker.
5. **Promulgation of Regulations** - The Act states that the Secretary is responsible for promulgating regulations to implement subsections (a) and (b) of the Act.

## Open Space Act: Determinations of Natural Resource Equivalency for Replacement Land

- For an Art. 97 Action to occur the public entity with care and control of the land subject to the Art. 97 Action must take, acquire or dedicate in perpetuity replacement land or an interest in land that meets the requirements set forth in the Act, absent a waiver or modification from the Secretary or approval by the Legislature of in lieu funding.
- Replacement land must meet requirements set out in the Act:
  1. Cannot already be subject to Art. 97 or otherwise protected in perpetuity.
  2. Must be in a comparable location to the impacted area.
  3. Must be equal or greater than the impacted area with respect to: (i) acreage; (ii) monetary value as determined by an appraisal of the fair market value or value in use, whichever is greater; and (iii) **natural resource value, as determined by the Secretary of EEA**. Natural resource value is the benefit that land provides to the public, such as clean air and water, agriculture, climate change mitigation, wildlife habitat, or recreation.
- Replacement land should advance the same Art. 97 purpose(s) as the land to be lost. There are many Art. 97 purposes covering a wide range of natural resource and recreational values.
- EEA will exercise best judgement, utilizing available natural resource information, including a GIS tool developed for this purpose, and information gathered from site visits to determine whether replacement land provides equal or greater resource value.
- Once final, Determinations will be provided to the public via the Tracker on EEA's website.



# Natural Resource Equivalency GIS Tool: Example

**Area of Interest (AOI) Information**  
 Area : 1.02 acres  
 Sep 18 2024 7:49:36 Eastern Daylight Time

Enter comments here

**Area of Interest (AOI) Information**

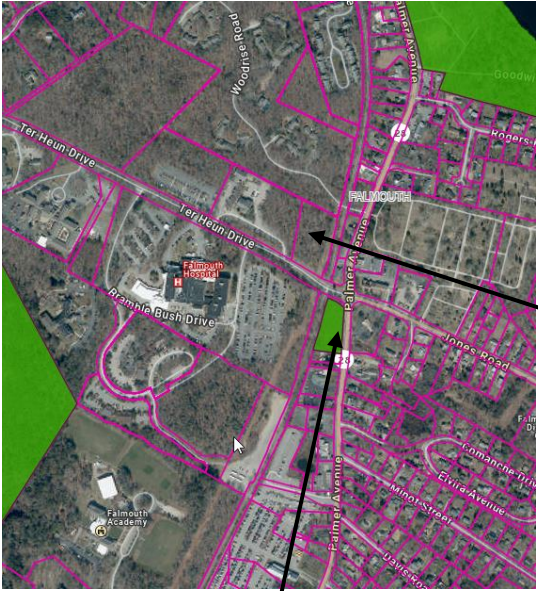
Enter comments here

**Summary**

Name	Count	Area(acres)	Length(ft)
Protected OpenSpace other than Article 97 Land	0	0	N/A
OpenSpace Protected with Article 97	1	1.02	N/A
NHESP Priority Habitats of Rare Species	0	0	N/A
NHESP Natural Communities	0	0	N/A
BioMap - Aquatic Core Habitat	0	0	N/A
BioMap - Wetland Core Habitat	0	0	N/A
BioMap - Forest Core Habitat	0	0	N/A
BioMap - Vernal Pool Core Habitat	0	0	N/A
BioMap Critical Natural Landscape - Landscape Blocks	0	0	N/A
BioMap Critical Natural Landscape - Coastal Adaptation Areas	0	0	N/A
BioMap Critical Natural Landscape - Tern Foraging Habitat	0	0	N/A
Long Distance Trails 10m buffer	0	0	N/A
Hiking Wilderness Trails with 10 meter buffer	1	0.08	N/A
Bike Trails with 10 meter buffer	1	0.08	N/A
EPA Ecoregions	1	1.02	N/A
SSURGO Soils: Prime Farmland Soils	2	1.02	N/A
Prime Forest Land	0	0	N/A
Outstanding Resource Waters	0	0	N/A
Aquifers	0	0	N/A
Sole Source Aquifers	1	1.02	N/A
Areas of Critical Environmental Concern	0	0	N/A
Surface Water Protection Areas: Zone B	0	0	N/A
Surface Water Protection Areas: Zone C	0	0	N/A
Groundwater Protection Areas: Interim Wellhead PAs	0	0	N/A
Groundwater Protection Areas: Zone I	0	0	N/A
Groundwater Protection Areas: Zone II	0	0	N/A
FEMA 1% / 100 yr. flood zones	0	0	N/A

**Summary**

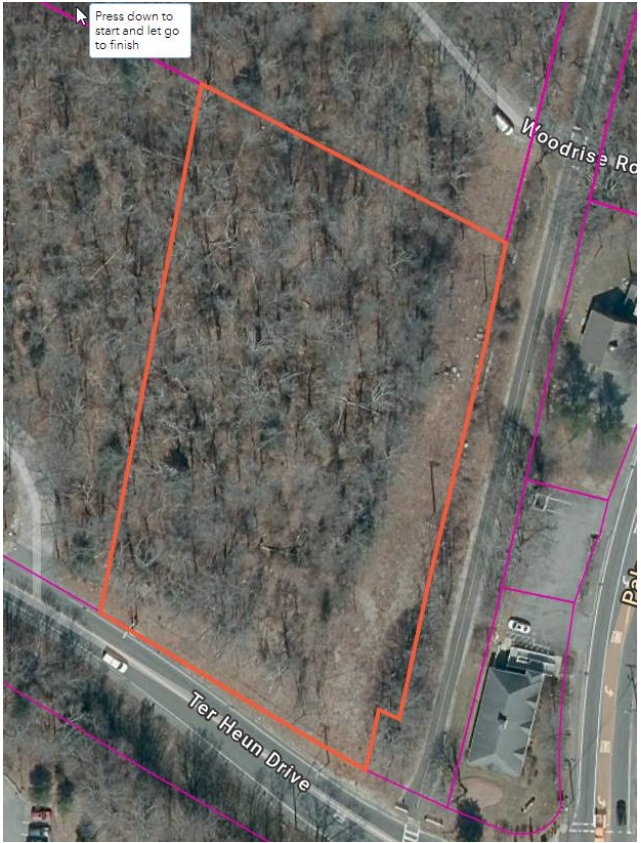
Name	Count	Area(acres)	Length(ft)
Protected OpenSpace other than Article 97 Land	0	0	N/A
OpenSpace Protected with Article 97	0	0	N/A
NHESP Priority Habitats of Rare Species	0	0	N/A
NHESP Natural Communities	0	0	N/A
BioMap - Aquatic Core Habitat	0	0	N/A
BioMap - Wetland Core Habitat	0	0	N/A
BioMap - Forest Core Habitat	0	0	N/A
BioMap - Vernal Pool Core Habitat	0	0	N/A
BioMap Critical Natural Landscape - Landscape Blocks	0	0	N/A
BioMap Critical Natural Landscape - Coastal Adaptation Areas	0	0	N/A
BioMap Critical Natural Landscape - Tern Foraging Habitat	0	0	N/A
NHESP Estimated Habitats of Rare Species	0	0	N/A
Long Distance Trails 10m buffer	0	0	N/A
Hiking Wilderness Trails with 10 meter buffer	1	0.04	N/A
Bike Trails with 10 meter buffer	1	0.04	N/A
EPA Ecoregions	1	2.04	N/A
SSURGO Soils: Prime Farmland Soils	1	0.49	N/A
Prime Forest Land	1	2.04	N/A
Outstanding Resource Waters	0	0	N/A
Aquifers	0	0	N/A
Sole Source Aquifers	1	2.04	N/A
Areas of Critical Environmental Concern	0	0	N/A
Surface Water Protection Areas: Zone B	0	0	N/A
Surface Water Protection Areas: Zone C	0	0	N/A
Groundwater Protection Areas: Interim Wellhead PAs	0	0	N/A
Groundwater Protection Areas: Zone I	0	0	N/A
Groundwater Protection Areas: Zone II	0	0	N/A
FEMA 1% / 100 yr. flood zones	0	0	N/A



Locus Map

Replacement Land

Impacted Land



**OpenSpace Protected with Article 97**

#	SITE_NAME	FEE_OWNER	Area(acres)
1	Cape Cod Land Bank Acquisition	Town of Falmouth	1.02

**Hiking Wilderness Trails with 10 meter buffer**

#	SITE_NAME	Shape_Area	Shape_Length	Area(acres)
1	No Data	64230577.638914	6549095.973627	0.08

**Bike Trails with 10 meter buffer**

#	LOCAL_NAME	Shape_Area	Shape_Length	Area(acres)
1	Shining Sea Bikeway	345085.004944	34562.521443	0.08

**EPA Ecoregions**

#	Ecoregion	Area(acres)
1	Cape Cod and Islands	1.02

**SSURGO Soils: Prime Farmland Soils**

#	Prime category	Area(acres)
1	Farmland of statewide importance	0.16
2	All areas are prime farmland	0.86

**Sole Source Aquifers**

#	SSA Name	Area(acres)
1	Cape Cod Aquifer SSA	1.02

**Hiking Wilderness Trails with 10 meter buffer**

#	SITE_NAME	Shape_Area	Shape_Length	Area(acres)
1	No Data	64230577.638914	6549095.973627	0.04

**Bike Trails with 10 meter buffer**

#	LOCAL_NAME	Shape_Area	Shape_Length	Area(acres)
1	Shining Sea Bikeway	345085.004944	34562.521443	0.04

**EPA Ecoregions**

#	Ecoregion	Area(acres)
1	Cape Cod and Islands	2.04

**SSURGO Soils: Prime Farmland Soils**

#	Prime category	Area(acres)
1	Farmland of statewide importance	0.49

**Prime Forest Land**

#	Prime category	Area(acres)
1	Prime 3	2.04

**Sole Source Aquifers**

#	SSA Name	Area(acres)
1	Cape Cod Aquifer SSA	2.04

## Open Space Act: Funding in Lieu Findings

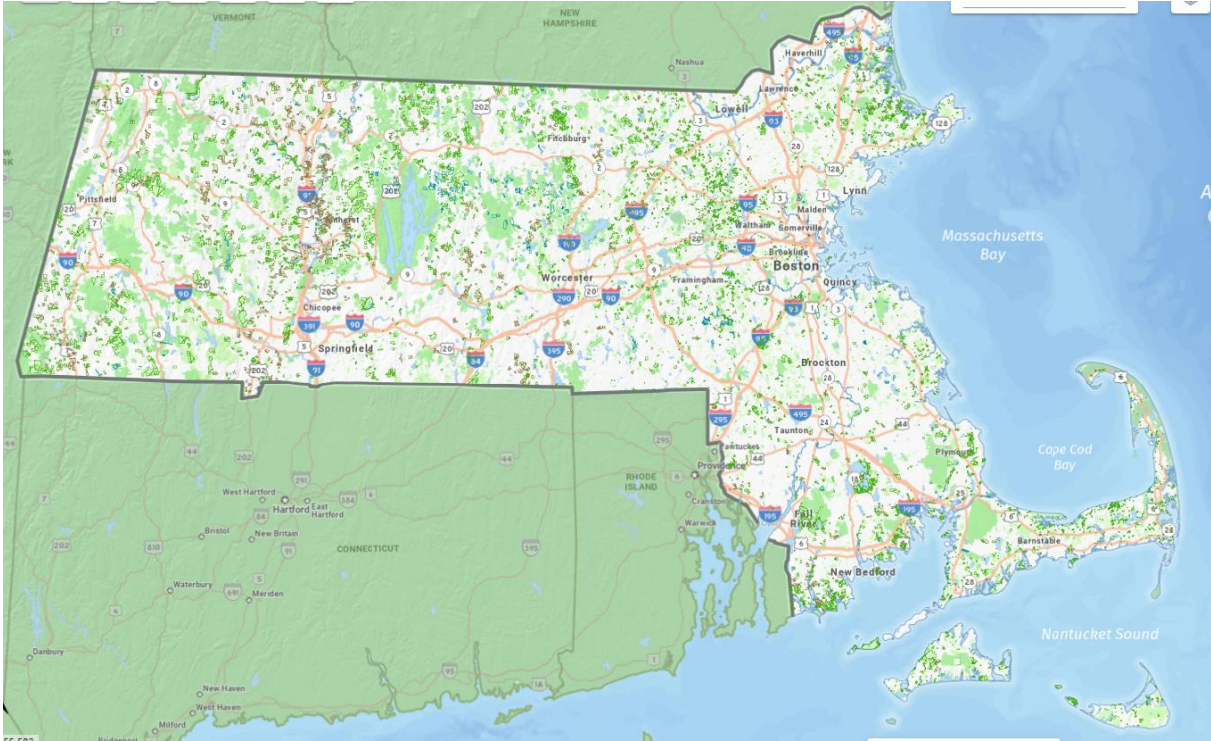
- Proponents may provide funding in lieu of replacement land, or a combination of land and funding, only if specific conditions are met. The Secretary must report to the Legislature an explicit finding that:
  1. the Art. 97 Action serves a significant public interest;
  2. the Art. 97 Action will have no adverse impact on an environmental justice population (“Environmental justice population” is defined in [M.G.L. c. 30, § 62](#));
  3. the alternatives analysis has been subjected to public notice and comment and demonstrates that, for specifically stated reasons, no feasible or substantially equivalent alternative exists to avoid or minimize Art. 97 impacts; and
  4. it is not feasible to contemporaneously designate replacement land.
- The Secretary has discretion as to the content and timing of findings issued in response to a request.
- Once final Reports of Findings will be posted on the Tracker on EEA’s website.
- If the Legislature enacts legislation approving in lieu funding, the public entity holding the in lieu funds will be required to submit an annual update to EEA on the status of acquiring replacement land until it confirms in writing to EEA that replacement land has been conserved.





# Open Space Act: Waivers & Modifications of the Replacement Land Requirement

- In two circumstances the Secretary may consider requests to waive or modify the Act’s replacement land requirement:
  1. Transfer of legal control between public entities without a change in use
  2. Transfer of a parcel less than 2,500 square feet in area and with insignificant natural resource and recreation value that serves a significant public interest
    - EEA cannot waive or modify the replacement land requirement if no significant public interest is advanced, or it determines that the land has significant recreational or natural resource value.
- The Secretary has discretion to determine whether to approve a request for a waiver or modification
- Once final Determinations will be posted on the Tracker on EEA’s website



<u>Legislative Session</u>	<u># of Bills Passed</u>	<u>Acres Disposed</u>	<u>Acres of Replacement Land</u>	<u>Ratio</u>	
23-24	22	34	115	3.38	<u>TO DATE</u>
21-22	40	163	263	1.61	
19-20	49	62	223	3.60	
17-18	40	160	245	1.53	
15-16	46	245	370	1.51	
13-14	45	267	417	1.56	
11-12	50	215	360	1.67	
<b>TOTAL</b>	<b>292</b>	<b>1146</b>	<b>1993</b>		
Average	49	191	332	2.48	

## **Regulations: Key Elements**

- Provide for administration and implementation of the Act by the Secretary and establish a process and requirements for Public Entities and Proponents to satisfy the requirements of the Open Space Act.
- Define an Article 97 Action, those subject to the Open Space Act and requiring legislative approval pursuant to Article 97, as a disposition or change in use, whether by deed, easement, lease, or any other instrument, of an Article 97 Interest.
- Define other key terms such as Comparable Location, Natural Resource Value, Proponent, and Value in Use.
- Provide for pre-submission consultation.
- Specify requirements that must be followed to comply with the Open Space Act including measures pertaining to public notice, conducting an Alternatives Analysis, submitting materials, assessing EJ implications of Funding in Lieu requests, providing replacement land (including improvement as needed), and meeting reporting requirements.
- Address actions not requiring replacement land (e.g., subsurface) and outline the requirements for determinations of natural resource value, waivers, and findings in lieu.

## **Other Updates/Actions**

- Appraisal Policy – EEA to update to address Value in Use, the requirement to submit an appraisal when filing a bill, and other Open Space Act implications (review due anyway).

**EEA will implement the Art. 97 Policy and the Act by:**

1. Working with public entities, other project proponents, and the legislature in a practical manner to ensure that Article 97 legislation complies with the Policy, with a focus on ensuring that there is no net loss of land subject to Art. 97;
2. Responding to technical questions and receiving and considering information from all parties while engaging publicly only as specified by the Act;
3. Advising the Governor as to whether Article 97 legislation adopted by the legislature complies with the Policy and should be approved; and
4. Reviewing and identifying remedial measures to address noncompliance with the Policy.



# Article 97 Policy Updates:

## Anticipated Updates/Enhancements:

- Specify that the policy doesn't create rights enforceable in court
- Add climate change mitigation and resilience to the list of disallowed impacts
- Allow the Secretary to make public entities ineligible for EEA grants for violation of Art. 97, the Art. 97 Policy, or failure to comply with Art. 97 Legislation
- Reorganize and re-title sections and update agency and statutory references (e.g., DCAMM not DCPO)
- Utilize current and more specific language
  - “Land or interests in land” instead of “open space areas”
  - “Disposition or change in use” instead of a long list of actions
  - “Enforceable condition or condition of a gift" instead of “wishes of a donor”
  - “Equal or greater natural resource value (as per Open Space Act) not “significantly greater natural resource value”
- Clarify eligibility of land to serve as Replacement Land
- Rationalize the vote metric
- Address, explicitly, the need to improve replacement land to achieve equivalent Art. 97 use
- Eliminate unnecessary/outdated procedural provisions:
  - ILC roles: Disposition list development; list change notification; and provision of municipal violation recommendations
  - Signature of an agency head for a proposed Art. 97 Action.



# Legislative Session: Results

<u>Location</u>	<u>Holder of Art. 97 Interest</u>	<u>Proponent</u>	<u>Acres Impacted</u>	<u>Replacement Acres</u>	<u>Purpose</u>	<u>Link to Chapter</u>
Andover	Cons. Comm.	Private Citizen	0.2	0.2	Provide Legal Access to an Existing Home	<a href="#">Session Law - Acts of 2024 Chapter 154 (malegislature.gov)</a>
Barnstable	Town - Park Purposes	Town/DPW	0.13	0.21	Intersection Reconstruction	<a href="#">Session Law - Acts of 2024 Chapter 176 (malegislature.gov)</a>
Brookline	Town - Playground Purposes	School Dept.	0	0	Geothermal Facility for New School	<a href="#">Session Law - Acts of 2024 Chapter 171 (malegislature.gov)</a>
Stoughton	Canton for Water Supply Purposes	MassDOT	0.13	0.13	MassDOT road project	<a href="#">Session Law - Acts of 2024 Chapter 152 (malegislature.gov)</a>
Cohasset	Town for Park Purposes	Police/Fire - Cohasset Public Safety	2	2	Cell Tower for Public Safety	<a href="#">Session Law - Acts of 2024 Chapter 163 (malegislature.gov)</a>
Eastham	Town	Town	0	0	Enhance Protection by Conveying CR to East ham Cons. Foundation	<a href="#">Session Law - Acts of 2024 Chapter 162 (malegislature.gov)</a>
Fall River	Redev. Authority	Private Developer/Redev. Authority	1	1.8	Industrial Park Land Swap	<a href="#">Session Law - Acts of 2023 Chapter 69 (malegislature.gov)</a>
Lynn	Parks Dept.	School Dept.	5.8	7.3	School Construction	<a href="#">Session Law - Acts of 2024 Chapter 94 (malegislature.gov)</a>
Mashpee	Cons. Comm.	Private Citizen	0.07	0.07	Swap Land to Address Lot Line Issue	<a href="#">Session Law - Acts of 2024 Chapter 93 (malegislature.gov)</a>
Milton	Cons. Comm. & Parks Dept.	School Dept.	7.3	33.9	School Construction	<a href="#">Session Law - Acts of 2024 Chapter 147 (malegislature.gov)</a>
Nantucket	Parks Dept.	Town/Parks Dept.	0	0	Shift Land from Town to Nan. Cons. Foundation	<a href="#">Session Law - Acts of 2024 Chapter 159 (malegislature.gov)</a>
Nantucket	Parks Dept.	Town/Con. Comm & Parks Dept.	0	0	Shift Land from Town to Land Bank	<a href="#">Session Law - Acts of 2024 Chapter 160 (malegislature.gov)</a>
Nantucket	County	Town/DPW	0	0	Bike Path Construction	<a href="#">Session Law - Acts of 2024 Chapter 177 (malegislature.gov)</a>
Nantucket	Cons. Comm.	Town/DPW	0.09	0.12	Roadway Work to Address Coastal Erosion	<a href="#">Session Law - Acts of 2024 Chapter 153 (malegislature.gov)</a>
New Bedford	Parks Dept.	New Bedford/UMass	0	0	Underground Utilities	<a href="#">Session Law - Acts of 2024 Chapter 175 (malegislature.gov)</a>
North Reading	Cons. Comm.	Town/DPW	0.012	0	Bridge Repair (533 square feet of impact)	<a href="#">Session Law - Acts of 2024 Chapter 5 (malegislature.gov)</a>
Orange	Water District	Water District (homeowners)	0.38	0.38	Address Inholdings on Water Dist. Land	<a href="#">Session Law - Acts of 2024 Chapter 151 (malegislature.gov)</a>
Provincetown	Parks Dept.	Town/DPW	0	0	Underground Wastewater Disposal	<a href="#">Session Law - Acts of 2024 Chapter 92 (malegislature.gov)</a>
Raynham	DAR	Police/Fire - Raynham Public Safety	16.11	66.18	Public Safety Complex, Road/Shared Use Path; Recreational Field	<a href="#">Session Law - Acts of 2024 Chapter 174 (malegislature.gov)</a>
Wakefield	Parks Dept.	Wakefield Light & Gas	1	2.72	Energy Storage Facility	<a href="#">Session Law - Acts of 2023 Chapter 71 (malegislature.gov)</a>
Westfield	DCR	City of Westfield	0	0	Shared Use Path Construction	<a href="#">Session Law - Acts of 2024 Chapter 173 (malegislature.gov)</a>
Westford	Cons. Comm.	MassDOT	0.01	0.01	MassDOT Road Project (438 square feet of impact)	<a href="#">Session Law - Acts of 2024 Chapter 161 (malegislature.gov)</a>
TOTAL			34.232	115.02		

- 22 Bills, plus 2 pending RWAs
  - Low #; average is about 45
  - 4 Waivers
  - 1 Funding in Lieu Finding
  - 1 Nat. Res. Value Determination

**Lessons Learned:**

- Almost everything happened at the end of the session – not early or transparent (17 of 24 bills)
- Conformance with Act and other timing constraints becomes a big problem
  - Funding deadlines, local bid constraints, etc.
  - Local vote taken; proponents don’t want or have time to vote again
- Compliance is a problem, lots of materials missing & process deviations (“notwithstanding”)
  - The Act does not address penalties; EEA to focus pragmatically on no net loss & Art. 97 Policy compliance
  - The Legislature is best positioned to enforce the Act; help the Legislature comply with & enforce its rules.
- Renewed efforts to be proactive are critical; strongly promote upfront/transparent actions.

**Efforts to Address Compliance Concerns:**

- Pre-session briefings for the Legislature & proactive outreach to bill sponsors
- Presentations at the MMA, MACC, & MLTC conferences and other venues
- Enhanced tools, documents, & graphics
- Assistance from conservation allies

**Timeline/Process:**

- Art. 97 Policy update essentially complete, awaiting regulatory approval process
- Regulations - M.G.L. Chapter 30A, the State Administrative Procedure Act. covers format, filing requirements, and publication deadlines
  - Next Steps:
    - Regulations approved by Administration & Finance
    - Formal process for promulgation of permanent regulations (see table)
      - Draft provided to Sec. of State & issued for public review
      - Public comment solicited, reviewed, & addressed
    - Final Regulations Issued

**Goal:** Issue regulations before the filing deadline

Permanent Regulations	
Time	Actions
35 days before hearing/comment period	Notify Local Government Advisory Committee
21 days before hearing/comment period	<ul style="list-style-type: none"> <li>•Publish hearing/comment period notice in a local newspaper</li> <li>•Send hearing/comment period notice to anyone who requested notification</li> <li>•Send notice and Small Business impact Statement to the Secretary for publishing in the Register</li> <li>•Send electronic and paper copies of proposed changes to the Secretary</li> <li>•Make proposed regulation available for public viewing</li> </ul>
After hearing or comment period	<ul style="list-style-type: none"> <li>•File amended Small Business Impact Statement before adoption</li> <li>•File print and electronic versions of Regulation Filing Form</li> <li>•File “draft” pages with changes marked in red</li> <li>•Include any items “incorporated by reference”</li> </ul>



# ***Implementing An Act Preserving Open Space in the Commonwealth***

Conservation Partners Meeting -  
September 20, 2024

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