



August 16, 2022

*Via Electronic Mail*

Senator Sal DiDomenico and Representative Ruth Balser (Co-Chairs), Senator James Eldridge, Senator Ryan Fattman, Representative James O’Day, Representative Susan Gifford  
Massachusetts State House

RE: Input on Conference Committee Report for *An Act preserving open space in the Commonwealth* (H.851/S.2831)

Dear Public Lands Preservation Act Conference Committee Members:

Thank you for your commitment to reach an agreement on a conference report enabling passage of *An Act preserving open space in the Commonwealth* during an informal session this year. We maintain that the contemporaneous designation of replacement land of comparable natural resource and recreational value is always preferred when land is removed from Article 97 constitutional protections. If the Conference Committee decides it is necessary to include a provision allowing an option for cash in lieu of contemporaneous designation of replacement land, we respectfully offer the following recommendations on provisions that would enable us to support that option:

Our organizations respectfully recommend that a cash-in-lieu exception, if any is included in the bill, should be considered only if and when the Secretary of Energy and Environmental Affairs has reported to the General Court an explicit finding that the following conditions have been met:

- The proposed change in use of existing Article 97 land serves a substantial public purpose;
- The project has no adverse impacts on an Environmental Justice Population, as defined in Chapter 21N of the General Laws;
- The required alternatives analysis has been submitted to the secretary and subject to public notice and comment; and
- There is no feasible alternative, for reasons specifically stated, to changing the use of the existing Article 97 land, and it is not feasible to contemporaneously designate appropriate replacement land.

In circumstances where the legislature allows cash in lieu based on the above findings from the secretary, the final conferenced bill should also include the following conditions, or substantially similar conditions, to ensure timely and appropriate use of the funds for replacement land and to provide transparency and public accountability:

- The amount of cash in lieu shall be equal to at least 150% of the monetary value of the land removed from Article 97 protections, together with the value of any improvements on that land, such as recreational or trail facilities, as determined by a qualified appraisal of the fair market value or value under any proposed use, whichever is greater. (In addition to serving as a disincentive to cash in lieu, this provision would ensure there are sufficient funds to acquire replacement land in the future, improve lands as necessary to replace lost facilities, and protect communities from inflation in real estate and materials costs between the time cash is set aside and when it is used to acquire replacement land).
- The funds are held in a new or existing state or municipal account dedicated to the acquisition and improvement of lands designated for Article 97 purposes. When state lands are removed from Article 97, the Department of Conservation and Recreation Public Lands Trust could be an appropriate fund. When municipal lands are removed from Article 97, a local Community Preservation Fund or another municipal fund dedicated to acquisition of conservation/parks land would be appropriate.
- The funds are used to acquire appropriate replacement land within three years of the date the home rule petition becomes law.
- Replacement lands acquired with in-lieu funds meet the same standards as required for replacement land that is contemporaneously designated under the statute; that is, be of equal or greater natural resource value, acreage, and fair market value; be of comparable location to the land removed from Article 97 protections; and be dedicated in perpetuity for the same Article 97 purposes. (Regulations promulgated to implement this law should define the meaning and application of key terms such as “natural resource value” and “comparable location.” Regarding location, in-lieu funds should be used to acquire replacement land in the same municipality as the land removed from Article 97 protections — and in Boston and other larger cities, in the same neighborhood — to the greatest extent possible.)

To further transparency and accountability to the public — a critical purpose of this legislation — we respectfully urge you to include language requiring:

- Municipalities and state agencies holding in-lieu funds for non-contemporaneous acquisition of replacement lands annually report to the Secretary of Energy and Environmental Affairs (i) expenditures of such funds, including the size, location and natural resources of lands acquired, the Article 97 purposes to which they have been dedicated, and the lands they were intended to replace; and (ii) an inventory of in-lieu funds that remain unspent.
- The Secretary of Energy and Environmental Affairs annually report to the general court and the public an account regarding all in-lieu funds over the prior fiscal year, including (i) a list of all Article 97 bills approved by the general court for which cash in lieu of contemporaneous designation of replacement land was allowed, detailing for each such case the amount of funds set aside and where they are held; (ii) a list of any expenditures of such funds, including the size, location and natural resources of lands acquired, the Article 97 purposes to which they have been dedicated, and the lands they were intended to replace; and (iii) an inventory of in-lieu municipal and state funds that remain unspent.
- The Secretary of Energy and Environmental Affairs declare that any public entity that fails to comply with provisions of this act to be ineligible for grants offered by the Executive Office of Energy and Environmental Affairs or its agencies until such entity is in compliance.

Thank you for your consideration of these recommendations. We deeply appreciate your continued efforts to advance this critical legislation this year. If you have any questions, please do not hesitate to contact Robb Johnson at the Massachusetts Land Trust Coalition, at (617) 807-0176 or [robb@massland.org](mailto:robb@massland.org).

Sincerely,

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