



June 8, 2022

Via Electronic Mail

The Honorable Karen Spilka
 Senate President
 Massachusetts State House, Room 332
 24 Beacon Street
 Boston, MA 02133

RE: Reconciling House and Senate versions of *An Act preserving open space in the Commonwealth (H.851/S.2831)*

Dear Senate President Spilka:

We are writing to express our gratitude for the Senate’s recent vote to pass *An Act preserving open space in the Commonwealth*, filed by Senator James Eldridge. This long-needed legislation provides important statutory protections to ensure preservation of open space lands or easements protected under Article 97 of the Massachusetts Constitution.

As the process of reconciling House and Senate versions of this bill proceeds, we urge you to please accept the compromise version recently proposed by the House, which includes a number of important technical amendments that were included in S.2831. **This compromise bill does not include language that would permit the set aside of funding in lieu of dedicated replacement land** in perpetuity for the same Article 97 purpose as the land proposed for conversion to a non-Article 97 use. This provision inadvertently undermines the original intent of the bill to protect public lands that are difficult to replace. **We ask you to please pass a final bill that does not allow cash set-asides in exchange for public land.**

Background

The adoption of Article 97 in 1972 was a clear assertion by the people of the Commonwealth of their right to a clean and healthful environment and for the protection of our valuable open spaces. Lands acquired for conservation purposes under Article 97 have protected status and their disposition must be approved by a two-thirds roll call vote of each branch of the Legislature. In 1998, in an effort to add meaningful review before such action could be taken, the Executive Office of Energy and Environmental Affairs (EEA) established an Article 97 Land Disposition Policy (also known as the “No Net Loss” policy). The policy requires ecologically equivalent replacement land to be conserved when selling, disposing of, or converting Article 97 conserved land.

An Act preserving open space in the Commonwealth would codify into law EEA’s Disposition Policy, clarify EEA’s process for making disposition recommendations to the General Court, and ensure that all future administrations are required to adhere to the law, rather than relying on an unenforceable

administrative policy. This legislation continues to have broad support from lawmakers, municipal leaders, municipal commissions, land trusts, and organizations across the Commonwealth, but many stakeholders remain concerned about the provision adopted by the Senate that would allow the state and municipalities to set aside funding in lieu of providing replacement land at the time of disposition.

Why do we oppose the provision of funding in lieu of replacement land?

- This new provision is inconsistent with EEA's long-standing Article 97 Land Disposition ("No Net Loss") Policy, as adopted in 1998, which does not contemplate nor provide for a cash in lieu of land option.
- Many stakeholders are concerned that explicitly allowing a cash in lieu of land option in the law will lead to the increased use of that option, undermining the constitutional protections of Article 97.
- Communities where open land is so scarce that it may be impossible to identify replacement conservation or park land are precisely the settings where it is most critical to protect existing Article 97 lands. These may be environmental justice neighborhoods where residents rely on a park for outdoor play, summer cooling, or exercise; or a rural area that is critical for preservation of a species that plays an essential role in our ecosystem. A cash in lieu of land option could perpetuate further inequities in access to Article 97 lands.
- According to internal information provided by EEA in recent days, for the 227 Article 97 bills passed in the past 10 years, 37 (16%) authorized a cash in lieu option. None of us had any idea this was occurring to that extent. The frequency with which EEA has recommended that the Legislature allow funding to be set aside in lieu of replacement land is concerning, especially since there is no transparency, public accountability or enforcement about how and whether such "in lieu funds" are ever actually utilized for dedication of ecologically equivalent replacement land for Article 97 purposes. This problematic practice undermines the no net loss principle and should not be codified into law.
- The original House and Senate versions of this bill were supported by a broad coalition of lawmakers, environmental, municipal, and community advocates. However, those original bills did not include a provision allowing funding in lieu of replacement land, and many stakeholders oppose codifying this new language.

We respectfully request that the House and Senate enact *An Act preserving open space in the commonwealth* before the end of this legislative session, and urge the Senate to support final legislative language that does not explicitly permit future administrations to employ a cash in lieu of dedicated replacement land approach to Article 97 implementation.

We would like to schedule a meeting with you to discuss the final language in this important bill and address any questions or concerns you may have. We will be following up with your office for scheduling; in the meantime, please contact Dot McGlincy at the Massachusetts Association of Conservation Commissions, (617) 489-3930, or Robb Johnson at the Massachusetts Land Trust Coalition, (617) 807-0176.

Thank you for your support of this bill, and for your time and consideration of this matter.

Sincerely,

Dorothy A. McGlincy
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Massachusetts Association of Conservation
Commissions

Robb Johnson
Executive Director
Massachusetts Land Trust Coalition

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Executive Director
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Cc: Senator James Eldridge