



September 10, 2020

Via Electronic Mail

The Honorable Aaron Michlewitz, Chair, House Committee on Ways and Means
Massachusetts State House
24 Beacon Street
Boston, MA 02133

RE: Support of *An Act Combating Climate Change by Preserving Open Space*

Dear Chairman Michlewitz:

On behalf of our organizations, we are writing to respectfully offer support of *An Act Combating Climate Change by Preserving Open Space*, filed by Representative Ruth Balser, and urge passage this legislative session. This bill (also known as the Public Lands Preservation Act, or “PLPA”) will add clarity and statutory protections for open space in future generations by codifying current state policy and ensuring *no net loss* of lands or easements protected under Article 97. As importantly, this bill will provide these environmental protections without the addition of taxes or fees. A copy of the bill is attached to this letter.

Public lands provide our communities with many benefits, including protecting drinking water quality and quantity; ensuring clean air; supporting agriculture, forestry, recreation, and tourism; sequestering and storing carbon; and buffering against flooding, as storms become more frequent and intense due to climate change.

This is an opportune time for the General Court to restate its commitment to Article 97, as the COVID-19 pandemic has highlighted the importance of open space to public health and outdoor recreation, and to habitat and natural systems in this time of climate change. Now more than ever, PLPA and no net loss regulations are needed to support environmental justice, as those in the communities most heavily impacted by climate change, COVID-19, pollution, racism and poverty are all too often also burdened by a lack of open space.

Background

PLPA legislation will help preserve public lands protected under Article 97 of the Massachusetts Constitution. In the 1970s, Article 97 to the Massachusetts Constitution was a clear assertion by

the people of the Commonwealth of their right to a clean and healthy 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.

Unfortunately, in subsequent years it became apparent that the will of the people could be too readily overridden by a two-thirds roll call vote, resulting in protected open public space being permanently converted to other uses. In an effort to add a meaningful review before such action could be taken, in 1998, 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 outlines an approach to provide equivalent replacement land when selling, disposing, or converting Article 97 land. It is time that the policy be turned into an enforceable statute in order to protect and clarify the no net loss process.

There have been several efforts to codify the 1998 No Net Loss Policy through complex versions of the PLPA. These PLPA bills have had a great deal of support from municipalities, legislators, and environmental groups. The bill before you today, has been boiled down to its essence – the protection of public land as envisioned in Article 97 of the Massachusetts Constitution.

What is in this bill?

- **No Net Loss.** This bill will give the protection of law to the current state policy that there be *no net loss* of lands, or easements, protected under Article 97, and any replacement land must be of comparable acreage, location, fair market value, and natural resource value. This bill will allow for waivers from the replacement land requirement if the disposition involves only transfer of legal control between public entities.
- **Alternatives Analysis.** Prior to filing legislation petitioning a change in use or disposition of Article 97 land, an evaluation of alternatives would be required. This provision is consistent with the current policy.
- **Transparency.** The PLPA would require notification of the public and EEA prior to filing legislation petitioning a change in the use or disposition of public land. Prior notification will help streamline the no net loss process. This will also save time and money for the municipalities, as it offers the opportunity to make sure proposed replacement land is deemed suitable by EEA and the public prior to moving forward with the land disposition process.
- **Regulations.** Regulations would be created to convert the No Net Loss Policy into enforceable regulations.

What is not in this bill?

- PLPA does not require additional funding to be implemented.
- PLPA does not require fees.
- PLPA does not remove municipal decision-making.
- PLPA does not create excessive new legislation: this is a simple, clearly written, bill that will enhance current policies.

Why do we need this legislation now?

Now more than ever, with storm severity and climate change impacts, and increased dependence on outdoor recreation, this legislation is needed to help protect open spaces to provide buffers against floods; minimize heat island effects; help store carbon dioxide in trees and soil; and protect drinking water supplies. PLPA and no net loss regulations are needed to protect critical resources needed in environmental justice communities.

This legislation will provide consistency, predictability, and enforceable regulations to make sure open space is preserved for future generations and to help with climate change resiliency.

If you have any questions about this bill, please do not hesitate to contact Dot McGlinchy, Massachusetts Association of Conservation Commissions, (617) 489-3930, or Robb Johnson, Massachusetts Land Trust Coalition, (978) 443-2233.

Thank you for your time and consideration of this matter.

Sincerely,

Heather Clish
Senior Director Conservation and Recreation Policy
Appalachian Mountain Club

Sarah Freeman
Representative
Arborway Coalition

Clifford A. Mathews
Chair
Bellingham Conservation Commission

Arlene Mattison
President
Brookline Greenspace Alliance

Larry Cohen
Chair
Burlington Conservation Commission

Heather Miller
General Counsel & Policy Director
Charles River Watershed Association

Elizabeth Saunders
Massachusetts Director
Clean Water Action

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Chris Redfern
Executive Director
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Paulette Kuzdeba
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Joseph Berman
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Laurie Bent
Select Board Member
Weston Select Board

Anna Katharina Wilkins
Chair
Weston Sustainability Committee

Cc: Representative Ruth B. Balser
Representative Robert A. DeLeo, Speaker of the House

Attachments:

An Act Combatting Climate Change by Preserving Open Space
Article 97
PLPA Fact Sheet and Supporters of PLPA
EEA Article 97 No Net Loss Policy