

HOUSE No. 4208

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to land taking regulations.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4 of chapter 131A of the General Laws, as so appearing in the 2010
2 Official Edition, is hereby amended by inserting before the last paragraph, the following
3 paragraph:-

4 No provision of this chapter shall preclude a person from obtaining judicial review under
5 section 7 of chapter 30A, of regulations adopted pursuant to this section.

6 SECTION 2. Subsection (a) of section 5 of chapter 131A of the General Laws, as so
7 appearing, is hereby amended by inserting at the end of the second paragraph, the following
8 sentence:- Notwithstanding the prior sentence, the director of the division of fisheries and
9 wildlife shall be authorized to enter into a written agreement with the owner of land for the
10 limited purpose to designate the land of such owner as a new protected habitat, in substitution of
11 other land so owned that was designated as a protected habitat; provided, such substituted land is
12 of approximate equal size and all record owners of such lands are a party to the agreement.

13 SECTION 3. Section 5 of said chapter 131A, as so appearing. is hereby amended by
14 inserting after subsection (e) the following subsection:-

15 (f) Notwithstanding any provision of law to the contrary, a person who is an owner of
16 land and on the event of a hearing, permit request, proceeding or non-judicial appeal, as provided
17 under this section or section 4 of this chapter as related to such land, is aggrieved by (i) the
18 director’s application of a law, regulation or procedure that is unlawful, which substantially
19 prejudices the rights of such person, or (ii) an act or failure to act by the director or secretary of
20 the office of environmental affairs, as the case may be, that results in a unreasonable or unlawful
21 delay to reach or render a determination or decision, which substantially prejudices the rights of
22 such person, shall be entitled to obtain judicial relief in superior court of appropriate jurisdiction;
23 provided, such action is filed during or within a reasonable time after such event. The superior
24 court shall have jurisdiction in equity, to enjoin or enter other necessary and appropriate orders in
25 such case. Such judicial relief shall be in addition to any other available remedy of appeal or
26 judicial review, and the failure to seek said relief shall not bar such other remedy. The term
27 “unreasonable” as used in clause (ii), shall include any act or failure to act, by such authority that
28 is arbitrary, capricious, an abuse of discretion, or lacks reasonable purpose.

29 SECTION 4. Notwithstanding any general or special law to the contrary, the provisions,
30 procedures and exemptions of sections 3, 4 and 5 of chapter 131A shall apply to all categories of
31 habitat that are defined and established, under said chapter or by regulation adopted by the
32 division of fisheries and wildlife under said chapter, that may result or effectively results, in the
33 taking or restriction of land for the protection of plants and animals under the authority of
34 chapter 131A, known as The Massachusetts Endangered Species Act, to include the habitat
35 categories in existence on January 1, 2012, of “Significant Habitat” as defined and established

36 under the provisions of said chapter and “Priority Habitat” as defined and established under the
37 provisions of 321 CMR 10.01, 10.02 and 10.11 to 10.26, inclusive.

38 SECTION 5. Notwithstanding the provisions of chapter 131A or other law, the division
39 of fisheries and wildlife shall not adopt or apply any regulation that: (i) establishes or effectively
40 results in the establishment of, any habitat category to protect plants or animals, or both, that is
41 not otherwise in existence under law or regulation on January 1, 2012, limited to “Significant
42 Habitat” and “Priority Habitat” as referenced in section 4 of this act; (ii) establishes any class of
43 protection, other than those that are specifically defined as “Endangered Species”, “Threatened
44 Species” or “Species of Special Concern” under section 1 of chapter 131A; or (iii) is contrary to
45 the intent of this act.

46 The division of fisheries and wildlife shall revise its regulations promulgated under
47 chapter 131A to comply with the provisions of section 4 of this act, which revised regulations
48 shall have an effective date of February 1, 2013.

49 SECTION 5. Sections 1, 2, 3 and 5 shall take effect on the passage of this act.

50 SECTION 6. Section 4, shall take effect on February 1, 2013.