

# HOUSE . . . . . No. 974

---

## The Commonwealth of Massachusetts

---

PRESENTED BY:

***Lenny Mirra***

---

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting the natural resources of the Commonwealth.

---

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Lenny Mirra</i>	<i>2nd Essex</i>	<i>2/18/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/26/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>3/10/2021</i>

# HOUSE . . . . . No. 974

---

By Mr. Mirra of Georgetown, a petition (accompanied by bill, House, No. 974) of Lenny Mirra, James J. O'Day and Tami L. Gouveia for legislation to further regulate natural resources. Environment, Natural Resources and Agriculture.

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act protecting the natural resources of the Commonwealth.

*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. The General Laws are hereby amended by inserting after chapter 131A, the  
2 following chapter:-

3           CHAPTER 131B

4           PUBLIC LANDS PRESERVATION ACT.

5           Section 1. Definitions. As used in this chapter, the following words, unless the context  
6 clearly requires otherwise, shall have the following meanings:-

7           “Acquire” or “acquired”, land or an interest in land, obtained by a public owner whether  
8 by purchase, exchange, devise, grant, lease, eminent domain, or otherwise.

9           “Article 97”, Article 97 of the Articles of Amendments to the Constitution.

“Article 97 land”, land, or any interest in land, that is subject to protection under Article 97.

“Article 97 natural resource purposes”, the Article 97 purposes that are the conservation, development, and utilization of the agricultural, mineral, forest, water, air and other natural resources.

“Change in use”, a conversion of Article 97 land of a public owner from a dedicated use to a different inconsistent use, excepting any allowed nonconforming reserved use of the Article 97 land.

A valid nonconforming reserved use, including, but not limited to, any building or structure, shall be an allowed use of Article 97 land if (i) declared in a written instrument when land or an interest in land is taken by eminent domain, acquired, or otherwise dedicated as Article 97 land, (ii) the use, when not declared by written instrument, is pre-existing and continuing when the Article 97 land is dedicated, provided the use is legally permissible, or (iii) allowed by a special law approved by a 2/3rds vote of both branches of the general court.

A conversion of Article 97 land caused by natural causes or occurrences shall not be considered a change in use under this definition.

“Disposition”, any transfer, conveyance or release of a public owner’s real property interest whether by deed, covenant, or other instrument, or lawful means or process.

A transfer or release of the public owner’s right of legal control in land shall be a disposition under this definition.

30           The termination of a lease for the use of land shall not be a disposition under this  
31 definition.

32           A revocable permit or license that authorizes another to use Article 97 land of a public  
33 owner, shall not be a disposition when (i) the use is consistent with dedicated or allowed uses of  
34 the Article 97 land, to include, if a forest, harvesting conducted pursuant to an approved cutting  
35 plan; and (ii) the permit or license does not transfer or release a real property interest in the  
36 Article 97 land.

37           “Executive office of environmental affairs”, the executive office of energy and  
38 environmental affairs established under section 1 of chapter 21A.

39           “Land”, land that is without or with water, including, without limitation, estuaries, creeks,  
40 streams, rivers, ponds, lakes, marshes, floodplains, wetlands and coastal tidelands; but, excluding  
41 ocean land lying seaward of the mean low water mark of coastal areas that are within the marine  
42 boundaries of the commonwealth.

43           “Public owner”, the commonwealth, its agencies, executive offices, departments, boards,  
44 bureaus, divisions, authorities, and political subdivisions, including, without limitation,  
45 municipalities, counties, districts, and other governmental bodies and instrumentalities of the  
46 commonwealth that hold Article 97 land.

47           “Real property interest” or “interest in land”, any ownership, or other legal interest, or  
48 right in land, including, without limitation, fee simple interest, easement, partial interest,  
49 remainder, future interest, right of legal control, lease; and conservation restriction, agricultural  
50 preservation restriction, watershed preservation restriction and historical preservation restriction

as defined under section 31 of chapter 184, and non-development covenant or other covenant or restriction that protects natural resources.

“Replacement land” land or an interest in land, (i) required under this chapter to be provided by a public owner to replace the loss of Article 97 land as a result of a disposition or change in use and (ii) to be taken by eminent domain, acquired or otherwise dedicated, by the public owner as Article 97 land. Replacement land shall not include existing Article 97 land, unless when taken by eminent domain, acquired, or otherwise dedicated by the public owner as Article 97 land, it was to substitute for other Article 97 land proposed for disposition or change in use.

“Secretary” or “secretary of environmental affairs”, the secretary of the executive office of energy and environmental affairs or his authorized representative.

“State agency”, a legal entity of state government established by the general court as an agency, board, bureau, commission, department, office or division of the commonwealth with a specific mission, which may either report to cabinet-level units of government, known as executive offices or secretariats, or be independent divisions or departments; provided a state agency shall not include the counties listed under the definition of “Counties” under section 1 of chapter 7C.

Section 2. (a) To protect the natural resources of the commonwealth and to prevent a net loss of Article 97 land, a public owner making a disposition or change in use of Article 97 land shall acquire or otherwise provide replacement land. Replacement land for a disposition or change in use of Article 97 land shall be: (i) equal or greater in area, (ii) comparable or better in

natural resource value, (iii) located within the same municipal boundaries if feasible, and (iv) not less than the equivalent kind of the real property interest being replaced.

(b) A public owner when acquiring or providing replacement land, shall execute a written declaratory instrument to confirm that such land or interest in land is subject to protection under Article 97, and record the instrument in the appropriate registry of deeds or land court department of the trial court for the county or district where the land is situated. The instrument when executed shall include the dedication date of the Article 97 land and a specific description of the Article 97 land with the restricted and allowed uses of the land. Such instrument shall not preempt or limit a public owner's use of any other lawful method to dedicate Article 97 land. The failure of the public owner to execute or record a declaratory instrument shall not invalidate any existing Article 97 protection of the replacement land.

Section 3. (a) A public owner of Article 97 land shall notify the secretary when the public owner proposes making a disposition or change in use of the Article 97 land. Such notification shall be in writing and made in the manner, as the secretary by regulation shall prescribe, to include the information and documentation as required under subsections (c) and (d).

The secretary shall adopt regulations requiring notification by a public owner be made as early as practicable, and prior to the filing of a petition with the general court to authorize the proposed Article 97 land disposition or change in use, to allow the secretary adequate time to review the proposal. The review shall include any plan of the public owner to provide replacement land. Unless otherwise provided under this section, the notification to the secretary shall be required at least 20 days before the public owner makes a decision to adopt a proposal for a disposition or change in use of its Article 97 land.

For Article 97 land held by a municipality, such notification to the secretary shall be required not less than 30 days before a vote of town meeting or city council, whichever is the case, on the municipality's proposed disposition or change in use of the Article 97 land. If the Article 97 land is located outside the municipality's boundaries then, in addition, the municipality shall make like notification to the local conservation commission where the land is sited.

For Article 97 land held by a state agency, notification to the secretary shall be required in the time and manner provided under subsection (a) of section 8.

The secretary shall post notification information received on Article 97 land proposals and replacement plans, on the public website of the executive office of environmental affairs.

(b) In the event Article 97 land is to be taken by eminent domain, the authorized board acting for the public owner or other entity shall within 10 days after adopting a lawful order of intention to take the land, notify the secretary of the proposed taking. Such notification shall be in writing, and made in the manner with any necessary information relevant to the taking of the land, as the secretary by regulation shall prescribe.

(c) Regulations adopted by the secretary under subsection (a), shall require that notification by a public owner of a proposed disposition or change in use of Article 97 land provide sufficient information about the proposal, and its advantages and disadvantages to the public and the environment. Such regulations shall require current information about the Article 97 land proposed for disposition or change in use, including, without limitation, the following:

- (1) a description of the land including its location, natural resource uses and benefits, approximate size and boundaries, devoted and allowed uses, and buildings and structures

thereon; (2) the property's fair market value based on the municipal assessment; (3) whether the land or any part, is designated as a wetland, flood zone, public water supply, public water supply protection area, or priority habitat for state-listed species that are endangered, threatened or of special concern; or subject to the rivers protection act under chapter 258 of the acts of 1996 or non-development covenant; (4) a general description of abutting parcels; (5) owners that hold a real property interest and description of each respective interest; (6) copies of any deeds, easements, covenants, restrictions, declarations and other instruments that are public records and show (i) each owner's real property interest, and (ii) the land's intended use for a specific natural resource purpose; (7) a description of the proposed disposition or change in use and the reasons for the proposal, including anticipated changes to the land, and the intended grantees of any proposed transfer of a real property interest; and (8) whether the public owner's acquisition of the land was obtained with funds, grants or loans from any federal, state or local source, or from a donation or bequest conditioned that the gift be used for natural resource purposes.

In addition, the regulations shall require that as part of such notification, the public owner certify in writing to the secretary, that the public owner has considered alternatives to the proposed disposition or change in use of the Article 97 land, and has determined no other feasible or practicable alternative exists. The public owner shall provide information about any alternative considered and the reason such alternative was not selected.

(d) The regulations adopted by the secretary under subsection (a), shall require current information about any plan of the public owner to acquire or provide replacement land, including, without limitation, the following: (1) the same kind of information listed in clauses (1) through (4), inclusive, of said subsection (c), however, specific to the replacement land; (2) the condition of the land, and the relevant current and prior uses of the land; (3) owners that will



hold a real property interest in the replacement land, and a description of each respective interest;  
and (4) a description of the intended source of the replacement land to be acquired or provided,  
and information about any funds, grants, loans or other consideration to purchase or obtain such  
replacement land.

(e) A public owner shall supplement the information in subsections (c) and (d), about an  
Article 97 land proposal and replacement land plan, as the secretary shall prescribe by regulation.

(f) The secretary after receipt of a public owner's notification that contains sufficient  
information shall, if requested by the public owner, provide to the public owner a provisional or  
final opinion on whether the proposed replacement land plan meets the no net loss requirements  
under subsection (a) of section 2.

Section 4. (a) A public owner may request from the secretary a waiver to provide  
replacement land for a disposition or change in use of the public owner's Article 97 land,  
notwithstanding the requirements under subsection (a) of section 2. Upon a public owner's  
written request, the secretary may grant a full or partial waiver releasing the public owner from  
any requirement to provide replacement land, subject to the provisions of this subsection. Such  
waiver requests shall be made in the manner and include any related information as the secretary  
shall prescribe. In granting a waiver, the secretary may impose conditions, if necessary, to  
accomplish the intended purpose of the disposition or change in use of the Article 97 land. A  
decision by the secretary to grant or deny a waiver with any conditions shall be in writing and  
state the reasons for his decision. Such waivers shall be limited to those circumstances as  
described in the following 2 paragraphs.

A full or partial waiver may be granted when the disposition or change in use of Article 97 land, will (1) transfer only a right of legal control in the land between state agencies to be held for the same Article 97 natural resource purposes and, if applicable, with the same reserved uses; (2) transfer only a right of legal control in the land between any department, division, board or agency of the same municipality to be held for Article 97 natural resource purposes and, if applicable, with the same reserved uses; (3) transfer a lease interest for a natural resource purpose or use for a term not exceeding 5 years; (4) serve to largely protect, preserve or promote the existing natural resource purposes and uses of the Article 97 land; (5) grant an easement to grade and alter land elevations to prevent erosion or provide lateral support to adjacent land; (6) grant an easement to allow for the temporary use of the Article 97 land for a different purpose for a period not exceeding 5 years, upon the condition that the land be reasonably restored before the easement period ends; (7) grant an easement or lease for subterranean use of the land for green energy projects that will not affect adversely the dedicated natural resource purposes of the Article 97 land; (8) affect a land area not exceeding 2,500 square feet that is insignificant for the dedicated natural resource purposes of the Article 97 land, provided if part of a larger parcel, no other disposition or change in use of that parcel has occurred within 5 years before making a waiver request to the secretary; or (9) transfer a real property interest of a public owner to another public owner, provided upon transfer such interest is protected under Article 97, and is used for the same natural resource purposes and allowed uses.

If after a complete review of a public owner's waiver request and replacement land information, the secretary determines there are other extraordinary circumstances in providing suitable replacement land within particular municipality boundaries or nearby, the secretary may issue a partial waiver to allow for modified replacement land, provided however, the overall

intent of no net loss of Article 97 land will be attained to the maximum extent practicable, and the replacement land allowed is comparable or better in natural resource value to the Article 97 land being replaced.

(b) The secretary as a condition in granting to the public owner a full or partial waiver to provide replacement land under clause (6) of subsection (a) for the temporary use of land, may require a performance bond of satisfactory amount for any uncompleted restoration of the land be provided under the terms as specified by the secretary.

(c) The secretary when determining whether the square footage of required replacement land is sufficient, shall not include any aboveground area for an allowed use that is exclusively for other than natural resources purposes, related to the replacement land or subject Article 97 protected land.

(d) The secretary when determining whether proposed replacement land is comparable or better in natural resource value under clause (ii) of subsection (a) of section 2, shall in addition to other factors, consider the land's location and condition, intended and allowed uses and overall natural resource benefits.

(e) If a public owner receives or will receive monetary compensation for a disposition or change in use of its Article 97 land by easement, lease or license comprising less than 22,000 square feet of land area, that is insufficient to acquire suitable replacement land, upon the public owner's request the secretary may approve such monies received be held in trust to be expended only to obtain Article 97 land. The secretary's approval to hold monies in trust for said limited purpose may be conditioned on any additional terms, as he shall prescribe. Such monies held in accordance with the provisions of this section, including any conditions established by the

secretary, shall be in place of the public owner meeting the replacement land requirements under subsection (a) of section 2, for that disposition or change in use of Article 97 land. The secretary's authorization concerning such compensation monies shall be subject to any special law related to the disposition or change in use of the Article 97 land from which the compensation originated.

(f) This chapter and any regulations adopted under the authority of this chapter shall not be subject to the provisions of section 27C of chapter 29.

Section 5. The secretary shall provide to public owners, information and education on the policies, requirements and best practices to protect Article 97 land. To assist a public owner, the secretary as he determines, shall offer advice, guidance and technical assistance with the development of preliminary and proposed plans for the disposition or change in use of Article 97 land and replacement land alternatives. Such assistance shall include an assessment of the anticipated effect of regional climate change in the development of a proposed plan and any alternative options. Upon request of a public owner, the secretary shall review and make written evaluation of whether the public owner's preliminary or proposed plan, or any revision of the plan, complies with Article 97 no net loss requirements under subsection (a) of section 2, and related regulations. A copy of the written evaluation shall be provided to the public owner.

Section 6. (a) The secretary shall provide to the general court a written recommendation to approve or disapprove each legislative petition that proposes a disposition or change in use of Article 97 land. If possible, the secretary shall make the recommendation before the first public hearing of the petition by a joint legislative committee of the general court. The recommendation shall identify the petition and include the secretary's opinion as to whether (1) the disposition or

change in use, including any required replacement land complies with the Article 97 no net loss requirements under subsection (a) of section 2, and related regulations; (2) the disposition or change in use will benefit the public; and (3) the required replacement land will provide equal or greater public environmental benefits.

Additionally, the secretary shall include with his recommendation whether the legislation adequately identifies the subject Article 97 land and required replacement land and contains the necessary terms and conditions. In his statement, the secretary shall detail the reasons for his recommendation on the legislative petition, and identify all alternatives to the proposed disposition or change in use of the Article 97 land that were considered and reported by the public owner, including information reported about any alternative that the public owner did not select. If insufficient information about a proposed disposition or change in use of Article 97 land or replacement land precludes the secretary from giving a full opinion, the secretary shall make known this circumstance and reason in his recommendation.

The secretary shall adopt regulations establishing standards for providing recommendations to the general court on Article 97 land legislation. The regulations shall allow a recommendation of approval of such legislation, if the secretary's opinion agrees with the statements contained in clauses (1) through (3), inclusive of the first paragraph, and if otherwise, he shall recommend such legislation not be approved. Notwithstanding, the regulations shall allow the secretary to recommend approval of the legislation, if he determines there are extraordinary circumstances for a proposed disposition or change in use of Article 97 land or plan for replacement land, provided (i) no practicable or feasible alternative exists for the proposed legislation, (ii) the proposed disposition or change in use of Article 97 land is for a necessary public purpose, (iii) the overall intent of no net loss of Article 97 land will be attained

to the maximum extent practicable, and (iv) the recommendation provides the reasons for the secretary's determination.

In circumstances when Article 97 land is to be taken by eminent domain from a public owner, and no replacement land has been proposed, the regulations shall allow the secretary to make a qualified recommendation about the legislation. The secretary as part of the recommendation shall provide information about the proposed legislation, its advantages and disadvantages to the public and the environment, and whether there are any known feasible alternatives to the proposed disposition. In addition, the secretary shall provide an opinion whether the nature of the disposition proposed by the legislation would qualify for a full or partial replacement land waiver. The regulations shall require the secretary to detail his reasons for his qualified recommendation.

(b) A legislative committee of the general court referred a petition related to Article 97 land, may solicit from the secretary his written recommendation on the legislation. The secretary shall respond to the request expeditiously, and in the manner, and using the standards and criteria set forth in the prior subsection.

(c) The secretary shall supplement his recommendation when Article 97 legislation is pending, if he determines there is a subsequent change or event that materially affects his prior response.

(d) The secretary shall post his recommendations on legislation, on the public website of the executive office of environmental affairs.

Section 7. (a) A municipality in making a determination for a disposition or change in use of Article 97 land, to include a detailed plan to provide any required replacement land, shall first

272 obtain the approval of its conservation commission. Approval by the commission shall require a  
273 2/3rds vote in support of the proposed disposition or change in use, at an open public meeting of  
274 the commission. No vote shall be held, unless the commission has conducted a public hearing on  
275 the proposed disposition or change in use. The commission shall give public notice of such  
276 hearing, not less than 30 days before the scheduled hearing date; and, in addition shall provide  
277 written notice to the local regional planning agency.

278         Except, in the event the disposition or change in use of Article 97 land relates to parkland  
279 under the legal control of its municipal park commission, or agricultural land under the legal  
280 control of its municipal agricultural commission, then approval shall be by vote of the respective  
281 commission under the same procedures and requirements in this subsection for conservation  
282 commissions.

283         (b) A municipality in making a determination for a disposition or change in use of Article  
284 97 land and after any approval required in subsection (a), shall obtain the approval of the city  
285 council or town meeting. If replacement land is required, a detailed plan to provide such land or  
286 land interest, shall be included as part of the approval determination by the city council or town  
287 meeting. Such approval shall require a 2/3rds vote by the city council or a 2/3rds vote by an  
288 annual or special town meeting, whichever is the case, in support of the disposition or change in  
289 use, including any replacement land plan. Said vote shall be held at an open public meeting.

290         (c) When a municipality holds Article 97 land sited within the boundaries of another  
291 municipality, the conservation commission of the other municipality may make a  
292 recommendation to the secretary on any proposed disposition or change in use of the Article 97  
293 land. Before making a recommendation, the commission shall hold a public hearing on the

proposal in the municipality, and provide reasonable notice. A commission's recommendation to approve or disapprove the proposed disposition or change in use shall be in writing and include a statement on the proposal's local environmental impacts with the reasons for its determination. Approval of a recommendation shall require a majority vote of the commissioners in support at an open meeting of the commission. Any such recommendation to the secretary shall be made no later than 45 days after receiving notification from the municipal owner of the Article 97 land.

Section 8. (a) When the public owner is a state agency that holds or controls Article 97 land, the executive head of such agency or the secretary of the executive office in which such agency is located, shall make the initial proposal for any disposition or change in use of the agency's Article 97 land. The proposal shall include a plan for replacement land, or information that the proposed disposition or change in use is eligible for a replacement land waiver under subsection (a) of section 4. Such proposal shall be made in writing to the commissioner of capital asset management and maintenance and, if not making the proposal, to the secretary of environmental affairs.

The commissioner prior to making a determination on the proposal shall not less than 60 days after receipt of the proposal, conduct a public hearing with the secretary to consider the proposed Article 97 land disposition or change in use, and any replacement land to be provided by the commonwealth. The public hearing shall be in the municipality where the Article 97 protected land is located. The commissioner with approval of the secretary may waive the public hearing when the proposed disposition or change in use of the Article 97 land: (i) affects a land area not exceeding 11,000 square feet, provided the area is not located in a public park, (ii) affects a land area of a public park not exceeding 11,000 square feet, provided the area does not exceed 20 percent of the total square footage of the park parcel, (iii) transfers the land with any



existing reserved uses to another state agency to be held for the same or similar Article 97 natural resource purposes, (iv) establishes a temporary easement related to construction or natural resource project, (v) establishes an easement to alter land grades affecting small portions of the parcel, or (vi) allows reserved uses pertaining to small buildings or structures with a combined total area not exceeding 2,500 square feet.

The commissioner shall provide public notice of such hearing at least 30 days prior to the scheduled hearing date. Such notice shall be posted in the central register and on the public website of the executive office of environmental affairs, and additionally, shall be placed at least once each week for 4 consecutive weeks prior to the hearing, in newspapers with sufficient circulation to inform the people in the locality where the Article 97 land is situated.

In the event the hearing is waived or not required, the commissioner and secretary of environmental affairs shall accept written comments for a period of 30 days. Public notice of the comment period shall be posted in the central register and on the executive office of environmental affairs' public website.

Within 30 days after any required hearing or comment period, the secretary shall make a determination whether the proposed disposition or change in use of the Article 97 land and any replacement land plan, complies with the Article 97 no net loss requirements under subsection (a) of section 2, or substitute method under subsection (e) of section 4. Alternatively, the secretary shall determine whether such proposed disposition or change in use qualifies for a replacement land waiver. Such determination shall be in writing and give the reasons for his decision with any recommendations and comments about the proposal. The secretary shall provide a copy of the determination to the commissioner, secretary of administration and finance

and state agencies affected by the proposal; and shall post the determination on the executive office of environmental affairs' public website. The secretary's determination shall be submitted with any request of the commissioner to the general court to authorize the disposition or change in use of such proposed Article 97 land.

(b) The provisions of section 4 of chapter 7B and sections 33 and 34 of chapter 7C shall not limit or modify the requirements under this chapter, applicable to the disposition or change in use of Article 97 land, held or controlled by a state agency.

(c) In the event of an emergency affecting public health and safety that necessitates a temporary and significant change in use of Article 97 land of the commonwealth, the commissioner of capital asset management and maintenance upon written certification of such emergency and with the approval of the secretary, may waive or reduce the time period for any public notice, hearing or comment period required under subsection (a) regarding such land use. The certification shall identify the current and proposed change in use of such land, and the commissioner's reasons for his proposed action.

Section 9. (a) When the public owner is a regional conservation district that holds Article 97 land that it has proposed for disposition or change in use, the supervisors of the conservation district shall approve such disposition or change in use, and any plan to provide replacement land. Such approval shall require a 2/3rds vote by the supervisors in support of the disposition or change in use, and any replacement land plan, held at an open meeting. No vote shall be held, unless, the supervisors first conduct a public hearing on the proposed disposition or change in use and replacement land plan. Such public hearing shall be conducted in the municipality where

the land protected under Article 97 is located. The chairperson of the district supervisors shall provide public notice of the hearing not less than 30 days before the scheduled hearing date.

(b) When the public owner is a county government not abolished by chapter 34 or other law, which holds Article 97 land that it proposes for disposition or change in use, the county commissioners shall approve such disposition or change in use, and any plan to provide replacement land. Such approval shall require a 2/3rds vote by the commissioners in support of the disposition or change in use, and any replacement land plan, held at an open meeting. No vote shall be held unless the commissioners conduct a public hearing on the proposed disposition or change in use and replacement land plan. The commissioners shall give public notice of the hearing not less than 30 days before the scheduled hearing date.

(c) When a public owner, other than a municipality, state agency, conservation district, or unabolished county government, holds Article 97 land it proposes for disposition or change in use, the public owner shall conduct a public hearing not less than 30 days prior to its final determination on the proposal and any plan to provide replacement land. A final determination to authorize the proposed disposition or change in use of Article 97 land shall be by a vote of an authorized board, commission or other body of the public owner, and if no such board, commission or body exists, then by a written decision of the public owner's executive officer. The hearing shall be conducted in the municipality where the Article 97 land is situated. The public owner shall give public notice of the hearing not less than 30 days before the scheduled hearing date.

Section 10. For public notice required under sections 8 and 9, separate written notice shall also be provided to, for each city or town in which the Article 97 land is located, the city

manager in the case of a city under Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town; and the regional planning agency; and the representative members of the general court.

Section 11. Notwithstanding the provisions of subsection (a) of section 2 to the contrary, when a special law allows a disposition or change in use of specific Article 97 land, which requires or references any substitute land or interest in land, the public owner's obligation to acquire or provide replacement land shall be governed exclusively by such special law.

Section 12. A public owner having made a disposition or change in use of Article 97 land shall notify the secretary, when related to such disposition or change: (i) the public owner acquires or provides any required replacement land, (ii) a temporary easement in the Article 97 land terminates, (iii) an event or act completes the Article 97 land disposition or change in use, or (iv) upon any other event or act as the secretary shall establish by regulation. Such notification shall be made in the manner, and include any necessary information as the secretary shall prescribe.

Section 13. The secretary shall prepare annually a comprehensive report describing the work of the executive office of environmental affairs relative to the protection of Article 97 land in the commonwealth for the preceding calendar year. The report shall provide information about the disposition and change in use of Article 97 land and replacement land, including, without limitation, the total number of notifications received, reviews conducted and opinions provided; total acreage and description of replacement land required to prevent a no net loss of Article 97 land; and total acreage of Article 97 land that lost protection. The annual report shall be filed with the clerks of the house of representatives and senate, and the chairs of the joint committee

on environment, natural resources and agriculture, and shall be posted on the public website of the executive office of environmental affairs, on or before the first Monday of April the following year.

Section 14. (a) When a public owner's Article 97 land is taken by eminent domain, the public owner upon receiving the entire damage award for such taking shall acquire or provide suitable replacement land. The replacement land shall meet the no net loss criteria under clauses (1) through (4), inclusive, of subsection (a) of section (2); except, the replacement land required shall be limited by the total value of the award for damages sustained by the public owner resulting from such land taking. The value of any land and additional funds conveyed or transferred to the public owner to replace the loss of Article 97 land, and that may be, partially or entirely, in lieu of damages, shall be considered an award for damages for the purpose of determining the total value limitation under this subsection.

Before acquiring or providing any replacement land, the public owner shall consult with the secretary to review the planned replacement land. The secretary in his review shall determine whether the replacement land complies with said no net loss criteria, subject to, and, after taking into consideration the total value limitations on replacement land. The secretary shall provide the public owner with an opinion as to whether the planned replacement land is suitable.

The secretary may grant a full or partial waiver to a public owner to acquire or provide replacement land under subsection (a) of section 4, when the public owner's Article 97 land is taken by eminent domain from the public owner. Notwithstanding, if the monetary portion of a damage award and any other compensation received by the public owner are not sufficient to acquire or provide suitable replacement land, upon the public owner's request, the secretary may

426 approve monies received be held in trust to be expended only to obtain Article 97 land, in lieu of  
427 replacement land. The secretary's approval to hold monies in trust for said limited purpose may  
428 be conditioned on any additional terms, as he shall prescribe. A public owner shall provide to the  
429 secretary relevant information about any planned replacement land under this section, as the  
430 secretary shall prescribe by regulation.

431 (b) Notwithstanding any other general law to the contrary, the secretary shall first  
432 approve any interest in land conveyed or transferred to a public owner under section 7M of  
433 chapter 81, if the conveyance or transfer is to replace Article 97 land taken by eminent domain  
434 from such public owner.

435 Section 15. (a) The secretary shall establish a self-subscribing email notification delivery  
436 system to send informational emails to the public and government organizations about proposed  
437 dispositions of Article 97 land and recommendations of the secretary on related legislation.

438 (b) Information required under this chapter to be posted on the executive office of  
439 environmental affairs' public website, shall, in addition be posted in the environmental monitor.

440 (c) The secretary shall charge no fee for informational emails under subsection (a), or to  
441 access information posted on the executive office of environmental affairs' public website as  
442 required under this chapter.

443 SECTION 2. The secretary of the executive office of energy and environmental affairs  
444 shall, not later than 1 year after this section takes effect, promulgate regulations for the  
445 requirements, administration, and enforcement for the chapter established under section 1 of this  
446 act.