

# AN ACT PRESERVING OPEN SPACE IN THE COMMONWEALTH

SECTION 1. [Chapter 3 of the General Laws](#) is hereby amended by inserting after section 5 the following section:-

Section 5A. (a) In order to use for another purpose or otherwise dispose of land, an easement or other real property interest subject to Article XCVII of the Amendments to the Constitution of the Commonwealth, a public entity, which for the purposes of this section shall include the commonwealth, any agency, authority, board, bureau, commission, committee, council, county, department, division, institution, municipality, officer, quasi-public agency, public instrumentality or any subdivision thereof shall: (i)(A) notify the public and the secretary of energy and environmental affairs and conduct an alternatives analysis demonstrating that all other options to avoid or minimize said Article XCVII disposition or change in use have been explored and no feasible or substantially equivalent alternative exists; and (B) submit the analysis to the secretary of energy and environmental affairs and make the analysis public; (ii) identify replacement land or an interest in land, which is not already subject to said Article XCVII, in a comparable location and that is of equal or greater natural resource value, as determined by the secretary of energy and environmental affairs, and acreage and monetary value, as determined by an appraisal of the fair market value or value in use, whichever is greater; and (iii) take, acquire or dedicate the replacement land or interest in said land identified pursuant to clause (ii) in perpetuity for said Article XCVII purposes. Upon request of a public entity seeking to use for another purpose or otherwise dispose of land, an easement or another real property interest subject to said Article XCVII, the secretary of energy and environmental affairs may waive or modify the replacement land requirement pursuant to clauses (ii) and (iii) of the first sentence if: (A) the disposition involves only the transfer of legal control between public entities as described in this subsection and does not involve any other change, including, but not limited to, a change allowing the land to be used for another purpose; or (B) the transfer is of a parcel that is of insignificant natural resource and recreation value and is less than 2,500 square feet in area and the transfer serves a significant public interest.

(b)(1) Notwithstanding clause (iii) of subsection (a), a public entity seeking to change the use of or otherwise dispose of land subject to Article XCVII of the Amendments to the Constitution of the Commonwealth may provide funding in lieu of replacement land, or a combination of funding and replacement land or an interest in land, if the secretary of energy and environmental affairs has reported to the legislature an explicit finding that: (i) the proposed change in use or disposition serves a significant public interest; (ii) the proposed change in use or disposition will have no adverse impacts on an environmental justice population, as defined in section 62 of chapter 30 of the General Laws; (iii) the alternatives analysis required by said subsection (a) has been submitted to the secretary of energy and environmental affairs and subjected to public notice and comment and said analysis demonstrates that all other options to avoid or minimize the disposition or change in use have been explored and no feasible or substantially equivalent alternative exists for reasons specifically stated; and (iv) it is not feasible to contemporaneously designate replacement land that satisfies the requirements of said subsection (a).

(2) If a public entity provides funding in lieu of or in combination with replacement land, the following conditions shall be met: (i) the amount of funding provided shall be not less than 110 per cent of the fair market value or value in use of the Article XCVII land, whichever is greater, as determined by the secretary of energy and environmental affairs after an independent appraisal; (ii) the funding provided to change the use of or otherwise dispose of: (A) municipal land shall be held in the municipality's Community Preservation Fund and dedicated solely for the acquisition of land for Article XCVII purposes or another already established municipal account for land preservation purposes or, if the municipality lacks such a fund, in a segregated account and dedicated solely for the acquisition of land for Article XCVII purposes; and (B) commonwealth land shall be held in a fund for acquiring Article XCVII land; and (iii) the funds shall be used within 3 years to acquire replacement land in a comparable location and dedicated in perpetuity for Article XCVII purposes; provided, however, that replacement lands acquired with in lieu funds shall be of equal or greater natural resource value, as determined by the secretary of energy and environmental affairs, and acreage and monetary value, as determined by an independent appraisal of the fair market value or value in use, whichever is greater.

(3) The secretary of energy and environmental affairs shall annually issue a report of all of the instances in which funding was provided in lieu of replacement land in exchange for a change in the use of or disposition of an interest in land taken, acquired or designated for purposes pursuant to Article XCVII of the Amendments to the Constitution of the Commonwealth including the amount of funds provided, the account into which the funds were deposited, whether the funds were expended to acquire replacement land and, if so, a description of the land that was acquired. Said report shall be submitted annually not later than December 15th to the clerks of the senate and house of representatives and made available on the executive office of energy and environmental affairs' website.

(c) A petition to the general court to authorize the use for another purpose or other disposition of land, an easement or another real property interest subject to Article XCVII of the Amendments to the Constitution of the Commonwealth shall be accompanied by: (i) an alternatives analysis conducted pursuant to subsection (a); (ii) a description of the replacement land or interest in land to be dedicated pursuant to said subsection (a), if not waived pursuant to said subsection (a); (iii) a copy of the appraisal required by said subsection (a); (iv) a copy of any waiver or modification granted pursuant to said subsection (a); and (v) if applicable, a copy of the report of the findings of the secretary of energy and environmental affairs required by paragraph (1) of subsection (b).

SECTION 2. The secretary of energy and environmental affairs shall promulgate regulations to implement subsections (a) and (b) of section 5A of chapter 3 of the General Laws within 18 months after effective date of this act.

*Approved, November 17, 2022.*