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The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act to protect 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 132B the
2 following chapter:-

3 CHAPTER 132C. PUBLIC LANDS PRESERVATION ACT.

4 Section 1. It is hereby declared to be the policy of the commonwealth that lands or easements
5 taken or acquired for natural resource purposes, consistent with Article 97, are a vital and
6 indispensable public natural resource and, therefore, that there shall be no net loss of public lands
7 or easements taken or acquired for natural resource purposes as a result of disposition or change
8 in use of these lands.

9 Section 2. Definitions. As used in this chapter, the following words shall have the following
10 meanings: -

11 “Alternatives analysis”, a description of alternatives to a proposed disposition or change in use of
12 lands or easements protected under Article 97, including, but not limited to, an analysis of the
13 most reasonable alternative (other than taking no action) that does not require disposition or
14 change in use under Article 97; the description of an alternative shall include analysis of cost,
15 impact on current use, environmental impact and non-financial advantages and disadvantages,
16 vis-a-vis the proposed disposition or change in use.

17 “Appraisal”, a written statement independently and impartially prepared by a state certified or
18 state licensed appraiser setting forth an opinion as to the fair market value of an adequately
19 described property as of a specific date, supported by the presentation and analysis of relevant
20 market information.

21 “Article 97”, Article XLIX, as appearing in Article XCVII, of the Amendments to the
22 Constitution.

23 “Article 97 lands or easements”, lands or easements taken or acquired for natural resource
24 purposes under Article 97.

25 “Change in use” or “used for other purposes”, a diversion of Article 97 lands or easements, or
26 portion thereof, from existing use.

27 “Disposition”, "dispose" or “disposed”, the transfer of physical or legal custody or control of
28 lands or easements, or a portion thereof, by conveying, relinquishing, leasing for any term,
29 granting of interests in, or transferring by any other means physical or legal custody or control,
30 regardless of whether the transfer is for the same or different uses, or for consistent or
31 inconsistent purposes.

32 “Fair market value”, the price, expressed in terms of cash equivalents, at which property would
33 change hands between a hypothetical willing and able buyer and a hypothetical willing and able
34 seller, acting at arm’s length in an open and unrestricted market, when neither is under
35 compulsion to buy or sell and when both have reasonable knowledge of the relevant facts, and
36 assuming the property would or could be put to its highest and best economic use.

37 “Lands or easements”, lands; easements; conservation restrictions, agricultural preservation
38 restrictions and watershed preservation restrictions, as defined in section 31 of chapter 184; and
39 other restrictions or conditions contained in a deed, grant or other instrument purporting to
40 transfer or convey an interest in land, regardless of the term of such easements, restrictions or
41 conditions.

42 “Natural resource purposes”, the purposes described in Article 97.

43 “Owner”, the commonwealth department, agency, authority, public instrumentality, town,
44 municipality or political subdivision that owns or has care, custody or control of the lands or
45 easements for which there is a proposed disposition or change in use.

46 “Replacement land”, lands or easements acquired by the owner that are of equal or greater area,
47 market value and natural resource value and of comparable location and use, as compared with
48 the Article 97 lands or easements being disposed of or changed in use; lands or easements
49 already protected under Article 97 shall not qualify as replacement land.

50 “Taken or acquired”, obtained by gift, purchase, devise, grant, exchange, lease, taking by
51 eminent domain or otherwise, by the commonwealth, any of its political subdivisions or bodies
52 politic, or any instrumentality thereof, or through use of public funds, including land bank funds.

53 Section 3. It shall be the policy of the general court not to enact legislation to allow a disposition
54 or change in use of lands or easements taken or acquired for natural resource purposes under
55 Article 97, unless the owner of the lands or easements provides the general court the following:

56 (a) a statement from the secretary of energy and environmental affairs as to whether the lands or
57 easements are classified as Article 97 lands or easements;

58 (b) either in the text of the proposed legislation or separately in writing a description of the lands
59 or easements, including legal description, location, name of owner, acreage, purpose for which
60 land was acquired, current use and natural resource benefits, and a description of the proposed
61 disposition or change in use, including name of any proposed grantee, purpose of the proposed
62 disposition or change in use, proposed new use, and anticipated physical changes in the land or
63 easements;

64 (c) copies of the deed conveying the lands or easements to the present owner and of any
65 restrictions on the lands or easements;

66 (d) copies of statutorily required approvals by the governing body or officer of the owner,
67 approving the disposition or change in use of the lands or easements, including, if applicable,
68 copies of required approvals by the local conservation commission, which shall have been
69 obtained prior to approval by the governing body or officer;

70 (e) either in the text of the proposed legislation or separately in writing a description of the
71 replacement land, including legal description, location, name of landowner, acreage, current use,
72 and, if the landowner is a public entity, purpose for which land was acquired;

73 (f) an alternatives analysis approved by the secretary of energy and environmental affairs;

74 (g) statements of the fair market value of the lands or easements and of the replacement land,
75 each substantiated by an appraisal;

76 (h) copies of statutorily required approvals by the governing body or officer of the owner,
77 approving the acquisition of the replacement land; and

78 (i) a statement from the secretary of energy and environmental affairs that the proposed
79 replacement land meets the requirements set forth in the definition of replacement land.

80 Section 4. Upon application of the owner, the secretary of energy and environmental affairs
81 may grant a waiver releasing the owner from the requirements set forth in sub-sections (e)
82 through (i) of Section 3, conditional upon:

83 (a) subsequent to disposition there being no change in use or physical change in the lands or
84 easements disposed other than change due to natural causes, provided the lands or easements are
85 currently serving a public natural resource purpose;

86 (b) any proposed change in use being temporary and within no more than five years from the
87 change in use the lands or easements reverting to the same state and use as existed immediately
88 prior to the change in use;

89 (c) the lands or easements proposed for disposition or change in use being occupied primarily
90 and substantially by pre-existing, non-encroaching buildings or sheds, which may include
91 immediately adjacent land containing out-buildings, paved areas or landscaped areas appurtenant
92 to, necessary for and used solely for said pre-existing buildings or sheds; or

93 (d) the lands or easements having an area of 2,500 square feet or less, the secretary of energy and
94 environmental affairs providing a statement that the lands or easements are insignificant for

95 natural resource purposes, and the lands or easements not being part of a contiguous area of
96 Article 97 lands or easements any part of which have been approved by statute for disposition or
97 change in use within the five years prior to filing of legislation proposing disposition or change
98 in use.

99 If a waiver is granted such waiver shall be provided to the general court in lieu of the
100 requirements set forth in sub-sections (e) through (i) of Section 3.

101 Section 5. Any act authorizing disposition or change in use of Article 97 lands or easements shall
102 stipulate that approval of the disposition or change in use shall be conditional upon acquisition of
103 the replacement land described in Section 3, unless a waiver has been granted pursuant to

104 Section 4. Any act authorizing disposition or change in use Article 97 lands or easements
105 subject to a waiver under conditions in Section 4(a) or Section 4(b) shall stipulate that, if at any
106 time any condition on which the waiver is based ceases to be met, title, jurisdiction, control, and
107 other rights and perquisites disposed shall revert to the owner or the change in use shall become
108 invalid and cease to have statutory approval, and any deed, lease, or other instrument effecting
109 the disposition or change in use shall so state.

110 Section 6. Any committee in the Massachusetts General Court to which has been referred any
111 bill involving dispositions or changes in use of lands or easements taken or acquired for natural
112 resources purposes under Article 97 shall, by August 31 of the second year of each legislative
113 session, each file with the clerks of the senate and house of representatives a report detailing
114 their activities on all said bills.

115 Section 7. The commonwealth or its agency, authority or instrumentality, but not including
116 municipalities, shall notify the public at least 30 days prior to filing a bill to dispose or change
117 the use of any Article 97 lands or easements.

118 SECTION 2. Within 6 months after the effective date of this act, the secretary of energy and
119 environmental affairs shall develop and publish for public review and comment guidelines for
120 conducting an alternatives analysis and identifying replacement land and within 1 year after the
121 effective date of this act shall publish the guidelines in final form.