



COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

Public Lands Preservation Act Aims to Guarantee No Net Loss of Conservation Land

BY AMANDA ZURETTI • FEBRUARY 16, 2023

By May 22, 2024, Massachusetts Secretary of Energy and Environmental Affairs (“EEA”) must promulgate regulations under the new Public Lands Preservation Act (“PLPA”), M.G.L. c. 3, § 5A (a) and (b), created by Chapter 274 of the Acts of 2022 “An Act Preserving Open Space in the Commonwealth” effective November 17, 2022.

Although the enactment of the new PLPA may not have attracted broad attention, the legislation has been hailed as the codification of the EEA’s predecessor agency, the Executive Office of Energy and Environmental Affairs’ (“EOEEA”) February 19, 1998 “Article 97 Land Disposition Policy” (“Policy”), whose objective was “ensure no net loss of Article 97 lands such as parks under the ownership and control of the Commonwealth and its political subdivisions.”

Article 97 refers to Article XCVII of the Amendments to the Constitution of the Commonwealth, adopted in 1972 which provides that “[t]he people [of the Commonwealth of Massachusetts] shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and aesthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.” Article 97 further mandates that “[l]ands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the [G]eneral [C]ourt.”

The Act applies to land or interests in land held by state agencies, municipalities, boards and commissions, quasi-public agencies, and other public instrumentalities and subdivisions of the Commonwealth for Article 97 purposes.

Although the public comment period for the new regulations has not yet opened, the EEA has published its “[Guidance on Public Lands Preservation Act Implementation February 2023](#)” (“PLPA Guidance”).

Regardless of whether a proposal to dispose of, or to change the use of, so-called Article 97 is made by a public

instrumentality or a private party, the proponent of the disposition or change in use is expected to submit all of the information detailed in the PLPA Guidance before a request for special legislation is made to the General Court.