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March 22, 2011

Chairwoman Anne M. Gobi  
Joint Committee on Environment, Natural Resources and Agriculture  
State House, Room 473F  
Boston, MA 02133

Chairman Marc R. Pacheco  
Joint Committee on Environment, Natural Resources and Agriculture  
State House, Room 312-B  
Boston, MA 02133

**Testimony in Support of H.1124 and S.350**  
***An Act To Protect the Natural Resources of the Commonwealth***

Dear Chairman Pacheco, Chairwoman Gobi, and Members of the Committee:

Thank you for providing this opportunity to offer our comments on **H.1124 and S.350**  
***An Act to Protect the Natural Resources of the Commonwealth***. The Sierra Club wishes  
to express our strong support in favor of **H.1124 and S.350**

The Sierra Club is the oldest and largest non-profit, non-partisan organization environmental organization in the country. With over a forty year history in this chapter, the Massachusetts Sierra Club represents about 22,000 members throughout the state and nearly one million nationwide. We fight for clean air, clean water, the preservation of the Commonwealth's most precious natural spaces, and healthy, vibrant communities.

HB1124, or *The Public Lands Preservation Act*, would remedy a long-standing problem within our laws designed to protect open space and parkland in Massachusetts. These parcels are commonly referred to as "Article 97 Lands" because they are protected by Article 97 of the Constitution which states in part 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 general court." This two-thirds majority vote of the legislature was established by a citizen ballot initiative in 1972 to provide the highest standard before such transfers would occur. In practice the filing and passage of Article 97 land takings have instead become routine in the legislature.

Article 97 lands have come under broad attack in recent years as development pressures increase and available lands diminish. A Sierra Club study demonstrates transfers have become commonplace, and rarely require replacement land despite rigorous efforts of the current administration to apply a no-net-loss policy to any transfers.<sup>1</sup> In the great majority, transfers involve loss of forest, park, wetland, field, playground, open space, conservation,

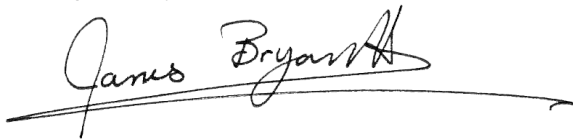
well field, or recreational land. In many cases the new use was not public but private. This can become even more of a problem in difficult economic times when the pressure to develop public lands can increase and the funds to acquire newly protected open space are likely to decrease. Multiple studies demonstrate that open space and parklands enhance property values and can actually ease the financial burdens on cities and towns. Protecting open space can improve municipal bond ratings and reduce the costs of government borrowing.<sup>2</sup>

Despite these facts, Article 97 lands are often viewed by a city or town as merely "land in holding" or "free for the taking" should a community decide it should be converted to another use. This is entirely inconsistent with the spirit and intent of Article 97. In many cases private citizens, who expect or even specifically designate lands to be protected in perpetuity, donate lands to the Commonwealth. While the current administration has been very progressive in its acquisition of open space, as the public becomes more aware that these lands are not truly protected – and could be converted at any given moment – one adverse effect will be a marked decrease over time in the availability and desire to either protect and/or donate open space parcels.

The *Public Lands Preservation Act* declares that it shall be the policy of the Commonwealth that there should be no net loss of lands or easements protected under Article 97. The bill would establish a clear framework to guide legislators' decisions on whether to approve bills that would transfer state or municipally-owned Article 97 lands or easements to a new use, to a different management authority, or from public to private ownership. By requiring information to be provided to the legislature prior to approval of a taking, the *Public Lands Preservation Act* simplifies what has become an overlapping patchwork of policies, procedures, and reviews by multiple layers of state government including municipalities, the legislature, and the administration. Clarifying the Article 97 process will create a more predictable regulatory scheme to ensure lasting protection of our irreplaceable parklands and open space, as well as honor the intent of the voters and citizens of Massachusetts.

HB1124/SB350 has broad public support including a coalition of more than 100 public and private organizations. We ask for your support to help provide important safeguards for lands acquired with taxpayer dollars or donated for natural resource purposes. These are lands which citizens value and are an important component of the quality of life in Massachusetts. As a part of the public trust, these lands are worthy of further legislation action to uphold their intended purpose as protected parkland. We urge the Committee to recommend swift passage of House Bill 1124 and Senate Bill 350, *An Act To Protect the Natural Resources of the Commonwealth*.

Respectfully,

A handwritten signature in black ink that reads "James McCaffrey". The signature is written in a cursive style and is positioned above a long, horizontal, slightly wavy line that extends across the width of the signature.

James McCaffrey  
Director  
Massachusetts Sierra Club

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<sup>1</sup> *Sierra Club Analysis: (Excerpt)* The 2005-2006 and 2007-2008 legislatures passed acts authorizing 98 and 135, respectively, disposals or changes in control or use of commonwealth, city, and town lands. Of these, 60 transactions, or 61%, in 2005-2006 and 83 transactions, or 61%, in 2007-2008 involved lands or easements subject to Article 97. The easements were mostly for utilities (electric, gas, water, sewer) or access. Otherwise the purposes were almost as numerous as the parcels involved (parking lots, housing, schools, memorials, runways, water supply, etc.). In 44 transactions, or 73%, in 2005-2006 there was no replacement land of any kind. The comparable numbers were 52 transactions and 63% in 2007-2008. In only five, or 8%, of the cases was there replacement land of equivalent acreage in 2005-2006. In 2007-2008 there were 16 transfers requiring replacement land of equivalent acreage, or 19% of the total. There were a group of 11 transactions in 2005-2006, or 18% of the total, and another 15 in 2007-2008 (also 18% of the total) in which there was some provision for replacement land, but the land was of lesser acreage than the land being disposed, was to be some unidentified parcel acquired in the future, optional (in some cases payment of cash was an allowed substitute), or a specific parcel but with so little information it was impossible to determine to what extent the parcel qualified as replacement land. The Club is currently conducting research on transfers that occurred during the 2009-2010 legislative session.

<sup>2</sup> *Fausold, Charles J. and Robert J. Lillieholm. 1996. "The Economic Value of Open Space: A Review and Synthesis."* Lincoln Institute of Land Policy Research Paper.