



Mark Robinson
Not an attorney

PLPA or, What the heck is Article 97 and why is it important for open space protection?



Buzz Constable
Attorney



Southeastern Massachusetts Land Trust Convocation
February 3, 2024
Bourne MA



THE
CONSTITUTION
OR
FRAME OF GOVERNMENT
FOR THE
COMMONWEALTH
OF
MASSACHUSETTS.



1780

B O S T O N :
Printed by BENJAMIN EDES and SONS,
Printers to His Excellency the Governor, the Council and
Senate of the Commonwealth of MASSACHUSETTS.

M, MCC, LXXXI.



John Adams wrote much of the Massachusetts Constitution, with an emphasis on codifying the rights of the people.

It served as a model for the US Constitution in 1787, which he also championed in Congress.

Article XLIX. (Article 49, adopted 1918, annulled 1972)

1918

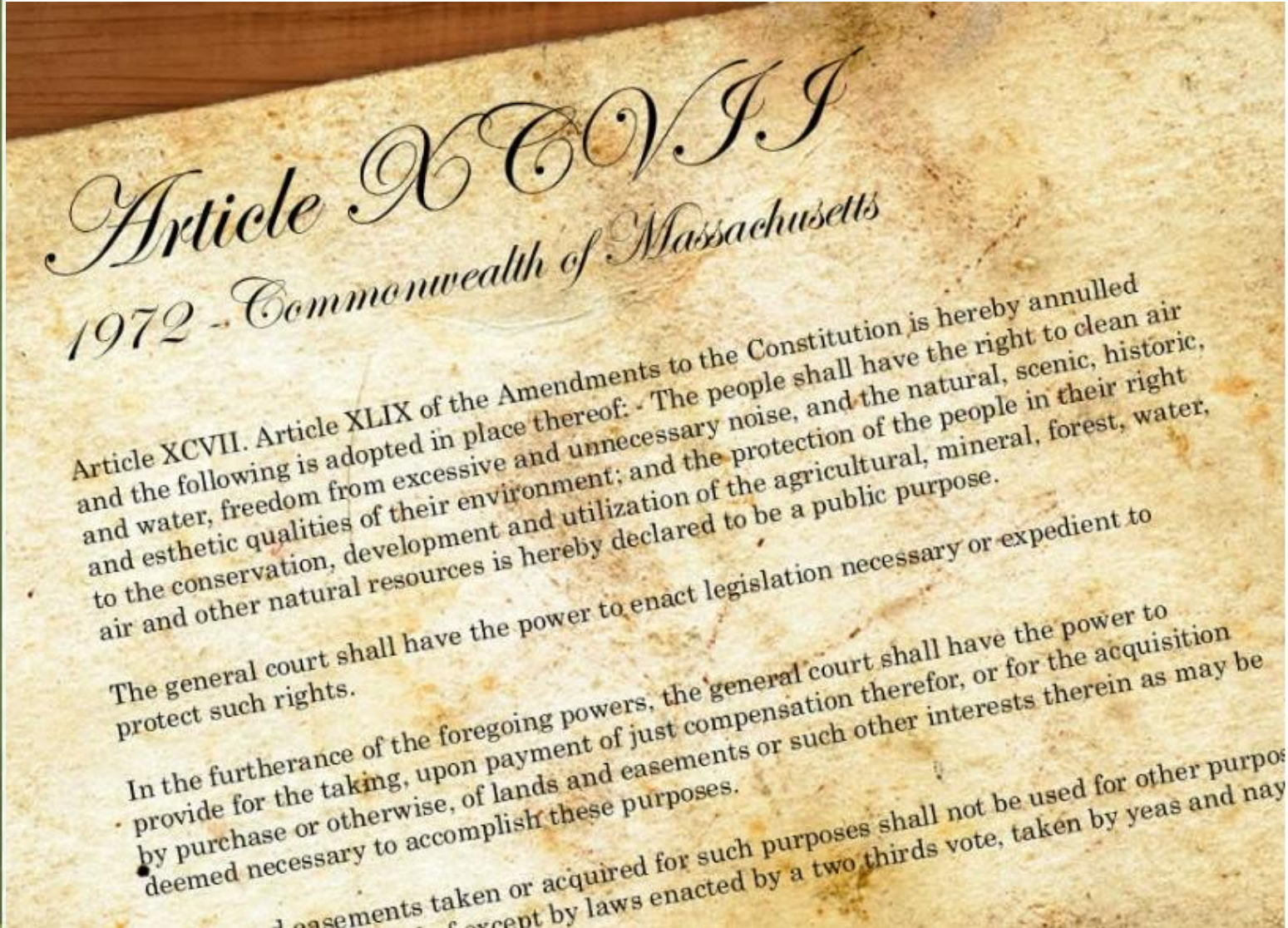
The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the commonwealth are public uses, and the general court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor.

[Superseded by 1972 Amendments, Art. [XCVII.](#)] (Article 97)

The State clarified for the first time that natural resource protection was a valid function of government and land takings for open space was a proper public purpose.



The early 1970s were a time of environmental protection ferment, with the first Earth Day and federal laws like EPA, Clean Water Act, Clean Air Act.



Article XCVII. (Article 97, adopted 1972, replaced Article 49)

1972

Article [XLIX](#) of the Amendments to the Constitution is hereby annulled and the following is adopted in place thereof: -

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic 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.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands 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.

The State created a constitutional right for people to enjoy a healthy environment and government can provide land for that, not to be taken away without a rigorous legislative process.

“Lands 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.”

What public lands and easements are we talking about?

- parks, town commons, playgrounds
- conservation lands (forests, marshes, fields, etc.)
- wellfields
- recreation lands (inc. public golf courses)
- beaches
- farmland
- waterfront access

What cannot be done without legislative permission?

- convert them to another use (non-Art. 97 use)
- sell them
- grant easements to others
- grant conservation restrictions (??)

How did the legislature deal with dispositions?

- 2/3rd roll call vote
- what about local review process?

WHAT ARE WE ***NOT*** TALKING ABOUT?

- Land Trust fee simple properties
- CRs held by Land Trusts on private properties
- Town lands not held for open space purposes
- Chapter 61, 61A, 61B lands

OPINION OF THE ATTORNEY GENERAL REGARDING
THE DISPOSITION OF PUBLIC LANDS UNDER THE
“CLEAN ENVIRONMENT” AMENDMENT TO THE
CONSTITUTION OF MASSACHUSETTS

By Robert H. Quinn (b.1929-d.2014)*

EXCERPTS:

In short, Article 97 seeks to prevent government from ill-considered misuse or other disposition of public lands and interests held for conservation, development or utilization of natural resources. If land is misused a portion of the public’s natural resources may be forever lost, and no less so than by outright transfer. Article 97 thus provides a new range of protection for public lands far beyond existing law and much to the benefit of our natural resources and to the credit of our citizens.

As to all such changes in use previously covered by the doctrine of “prior public use” the new Article 97 will only change the requisite vote of the Legislature from majority to two-thirds. Article 97 is designed to supplement, not supplant, the doctrine of “prior public use.”

under the terms of the new Amendment, and because “disposition” includes any change of legal or physical control, including but not limited to outright conveyance, eminent domain takings, long and short-term leases of whatever length and the granting or taking of easements.

1973



Quinn established the Environmental Protection Division in the Mass. AG’s office & led a multi-state coalition to challenge the federal government’s ability to drill for oil offshore.

1998

**EOEA ARTICLE 97 LAND DISPOSITION POLICY
FEBRUARY 19, 1998**



*Trudy Coxe served
as Mass. EOEEA
Secretary 1993-
1998 under Gov.
Weld*

I. Statement of Policy

It is the policy of EOEA and its agencies to protect, preserve and enhance all open space areas covered by Article 97 of the Article of Amendment to the Constitution of the Commonwealth of Massachusetts. Accordingly, as a general rule, EOEA and its agencies shall not sell, transfer, lease, relinquish, release, alienate, or change the control or use of any right or interest of the Commonwealth in and to Article 97 land. The goal of this policy is to ensure no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions. Exceptions shall be governed by the conditions included in this policy. This policy supersedes all previous EOEA Article 97 land disposition policies.

Public Lands Protection Act

Print Page

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AN ACT PRESERVING OPEN SPACE IN THE COMMONWEALTH

2022 - The PLPA codified the administrative process guiding Article 97 conversions and dispositions into law (statute).

<https://www.mass.gov/info-details/article-97-the-public-lands-preservation-act#:~:text=Article%2097%20of%20the%20Amendments,the%20citizens%20of%20the%20Commonwealth>



The late Phil Saunders of Wellesley led a years-long citizen effort to pass the PLPA. It succeeded shortly after he died in 2022.

Guidance on Public Lands Preservation Act Implementation

February 2023

The enactment of *An Act Preserving Open Space in the Commonwealth* (Ch. 274 of the Acts of 2022, codified at M.G.L. c. 3, § 5A), also known as the Public Lands Preservation Act and referred to herein as the Act or the PLPA, established in statute requirements and a process for submission to the Legislature of petitions to authorize the use for another purpose or disposition of land or an interest in land subject to [Article 97 of the Amendments to the Constitution of the Commonwealth](#) (Art. 97). Under this Act, the Executive Office of Energy and Environmental Affairs (EEA) must receive alternatives analyses and consider requests for waivers or modifications of the replacement land requirement or the payment of money in lieu of providing replacement land.

This document is intended to aid the public in understanding and complying with the new law. However, in doing so, this document is not to be construed as encouraging the use for another purpose or disposition of land protected by Art. 97. EEA and its agencies will not authorize, approve or support a change in use or disposition unless in accordance with the EEA Article 97 Policy. This document is not intended to, may not be relied upon to, and does not create any right, benefit or duty, substantive or procedural, enforceable at law or equity by any party in any matter, civil, criminal or administrative. This guidance shall not be construed to create any right to judicial review involving the compliance or noncompliance of EEA, its agencies, its officers or employees, or any other person with this guidance.

2023



*Current Mass. EOEEA
Secretary Rebecca Tepper*

**EOEEA has issued a
Guidance and FAQs to
administer Art 97
requests; a portal and
tracking system are
forthcoming**

PLPA PROCESS:

Determine applicability:

- Land held by public entity

- Use of land by deed, legislative action, or practical application

- Determine change requested – use (other municipal or commercial) or ownership

Submission and Review:

- Engage with public entity owning land and then prepare application for Art 97 Portal

- Identify uses and values of land

- Identify the public purpose of modification

- Identify replacement land and value or other mitigation (\$\$)

- Provide alternative analysis

- Seek public comment (not state's responsibility)

- Determine other land funding or legal compliance

- EOEEA Secretary findings, if applicable

Local petition:

- Home Rule petition approved by Town Meeting (2/3rds) with custodial concurrence

File Art 97 legislation: (Special Act of the General Court)

- 2/3rds approval required

- Governor signs act

Implement mitigation and report actions to EOEEA

PLPA PROCESS: Special Considerations

Replacement land:

- **Cannot be existing Art 97 land**
- **Comparable location, usually same town or resource area**
- **> or = to locus parcel in appraised value, acreage, ecol. value**

Waivers:

- **Transfer of control without change in use (example: RecCom to ConCom for natural lands)**
- **Parcels of less than 2500 square feet and insignificant natural resource value**
- **Funding in-lieu of replacement land**

PLPA PROCESS: Special Considerations

Funding in-lieu of replacement land:

- **Secretary must make a finding why & report to legislature**
- **Can not impact an EJ community**
- **Public notice and comment**
- **Replacement land not feasible in the short-term**

Funding must be:

- **110% of market value or **value in use** of lost land**
- **Deposited in CPA fund or Conservation Fund of town**
- **Used within 3 years to buy replacement land**
- **Town must report annually to EOEEA until it complies with purchase**

“**Value in use**” is a method of valuation that requires an appraiser to consider a property’s value not standing alone, but in the context of the land in question. For example, disposition of a small area of Article 97 land could enable access to a much larger, landlocked parcel, allowing development of the landlocked parcel. In this case, the Article 97 land would have a much higher “value in use” than would be the case if it was appraised in isolation.

Before 1918:

Towns had no authority to take land for open space uses

After 1918:

Towns had authority to take land for open space uses

Towns could convert or dispose of open space by simple majority under “prior public use” law

After 1972:

Towns had authority to take land for open space uses AND need 2/3rds majority vote to dispose or convert use

No required State administrative process; no net loss policy

After 2022:

Towns have authority to take land for open space uses AND need 2/3rds majority vote to dispose or convert use

Strict State administrative process (PLPA)

What other laws and doctrines pertain?

Public Charitable Trust

A legislative act, such as an Art 97 bill for conversion or disposition, cannot defeat a prior charitable trust imposed, express or implied, on a particular property.

Facts and circumstances to decide on whether a charitable trust exists on a property, including funding sources, public solicitation, deed language, donor's memorandum on file.

Eminent domain taking or *cy pres* action in court may be needed to extinguish charitable trust.

EXPLICIT PUBLIC CHARITABLE TRUST EXAMPLE

Prior Public Use or Prior Public Purpose

"public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion."

WE, ROSE MALOOF of 207 Chafin Street, Belmont, Middlesex County, Massachusetts and JEANNE MALOOF DAWAHARE of Lexington, Kentucky, for no consideration paid, this conveyance being a gift for conservation purposes, release, grant and dedicate to TOWN OF YARMOUTH, a municipal corporation located in the County of Barnstable and Commonwealth of Massachusetts, with QUITCLAIM COVENANTS the land in Yarmouth, Barnstable County, Massachusetts, described as follows:

Being shown as LOT 2, containing 15,991 square feet, more or less, on a plan entitled "Subdivision Plan of Land in West Yarmouth, Mass. for Annie C. Barnes, January 21, 1970, Scale 1" = 40', Thomas E. Kelley, Surveyor, South Yarmouth, Mass." duly recorded with the Barnstable County Registry of Deeds in Plan Book 238, Page 111.

There is granted as appurtenant to said Lot, a right of way over Crowell Road and Florence Lane as shown on said plan in common with others who are now or may hereafter be entitled thereto.

Subject to a Covenant with the Town of Yarmouth, recorded with the Barnstable County Registry of Deeds, Book 1477, Page 944.

For Title, reference is made to deed recorded in Book 3640, Page 67.

BUT NEVERTHELESS IN TRUST, upon the following terms and conditions:

1. Said Town shall be Trustee under the trust.
2. The Conservation Commission of the Town of Yarmouth shall manage and control the property conveyed to this public charitable trust and shall constitute a Board of Visitors to enforce and preserve this trust. As such it may take appropriate legal action as an alternate to the Attorney General as Petitioner. If it should cease to exist, such powers shall devolve upon the Board of Selectmen.
3. The trust property shall be used for the purpose authorized by G.L. c. 40 s.8-C as it may hereafter be amended and other Massachusetts statutes relating to conservation including the protection and development of the natural resources of the Town of Yarmouth.
4. If the trust property or any interest or part thereof should be taken by eminent domain by any body, corporate or politic, the net proceeds of the award after paying charges related thereto shall be added to the conservation fund of the Town.
5. This trust shall become effective upon the acceptance of this deed by said Town signified by the approval of its Board of Selectmen thereto as authorized by G.L. c. 40 s. 8-C.

BEFORE THE PLPA PASSED INTO LAW:

An estimated 40-50 legislative bills were filed each 2-year session by local reps to convert Art. 97 lands to another purpose.

In the 2019-2020 session, there were 48 bills passed, converting 62 acres. Average conversion: 1.3 acres. 157 acres were protected in mitigation.

In the 2017-2018 session, there were 39 bills passed, converting just under 160 acres in total. Average conversion: 4.1 acres. 244 acres were protected in mitigation.

In the 2013-2014 session, there were 45 bills passed, converting just over 267 acres in total. Average conversion: 5.9 acres. 417 acres were protected in mitigation.

Source: Mass. Land Trust Coalition, 2024

CHAPTER 135



AN ACT AUTHORIZING THE TOWN OF BARNSTABLE TO GRANT AN EASEMENT TO PARK CITY WIND LLC

SECTION 1. Notwithstanding any general or special law to the contrary, the town council of the city known as the town of Barnstable may grant to Park City Wind LLC, and its successors and assigns, permanent easements in certain parcels of land, namely a portion of Craigville beach shown on the town of Barnstable assessors' maps as parcel 206-013 and a portion of 20 South Main street shown on the town of Barnstable assessors' maps as parcel 228-138, for the purpose of constructing, installing, inspecting, operating, maintaining, repairing and replacing subsurface high voltage electric power transmission lines, along with associated subsurface appurtenances including, but not limited to, subsurface telecommunications lines, conduits, duct banks, bays and vaults, and together with surface appurtenances for access, in connection with the wind generating facility to be developed by Park City Wind LLC in federal waters south of Martha's Vineyard.

SECTION 2. Park City Wind LLC shall provide mitigation for the granting of such an easement pursuant to the host community agreement entered into between the city known as the town of Barnstable and Park City Wind LLC and dated May 6, 2022; provided, however, that such mitigation shall consist of a \$100,000 payment to the town of Barnstable to be used for the benefit of and improvements to Craigville beach or to purchase or improve other Article 97 protected land located in the city known as the town of Barnstable, as determined by the town of Barnstable.

SECTION 3. The town manager of the town of Barnstable may execute and record any instruments necessary on behalf of the town to effectuate the transfer authorized in section 1.

SECTION 4. This act shall take effect upon its passage.

Approved, August 3, 2022.

COMMERCIAL USE OF ACTIVE RECREATION FACILITIES

2022 (before PLPA)

“...mitigation shall consist of a \$100,000 payment to the town to be used for the benefit of and improvements to [the town] beach or to purchase or improve other Article 97 protected land located in the town, as determined by the town...”

THE OLIVER STREET CORP.
a corporation duly established under the laws of Massachusetts
and having its usual place of business at 186 Lincoln Street, Boston,
Suffolk County, Massachusetts, for consideration paid,
grants to The Town of [REDACTED], Massachusetts, through its Conservation
Commission for administration, control and maintenance under the
provisions of Mass. Gen. Laws, Ch. 40, §8C, as amended
with quitclaim covenants

the land with the buildings and improvements thereon in [REDACTED] Barnstable
County, Massachusetts, more particularly described on Exhibit A
attached hereto and made a part hereof.

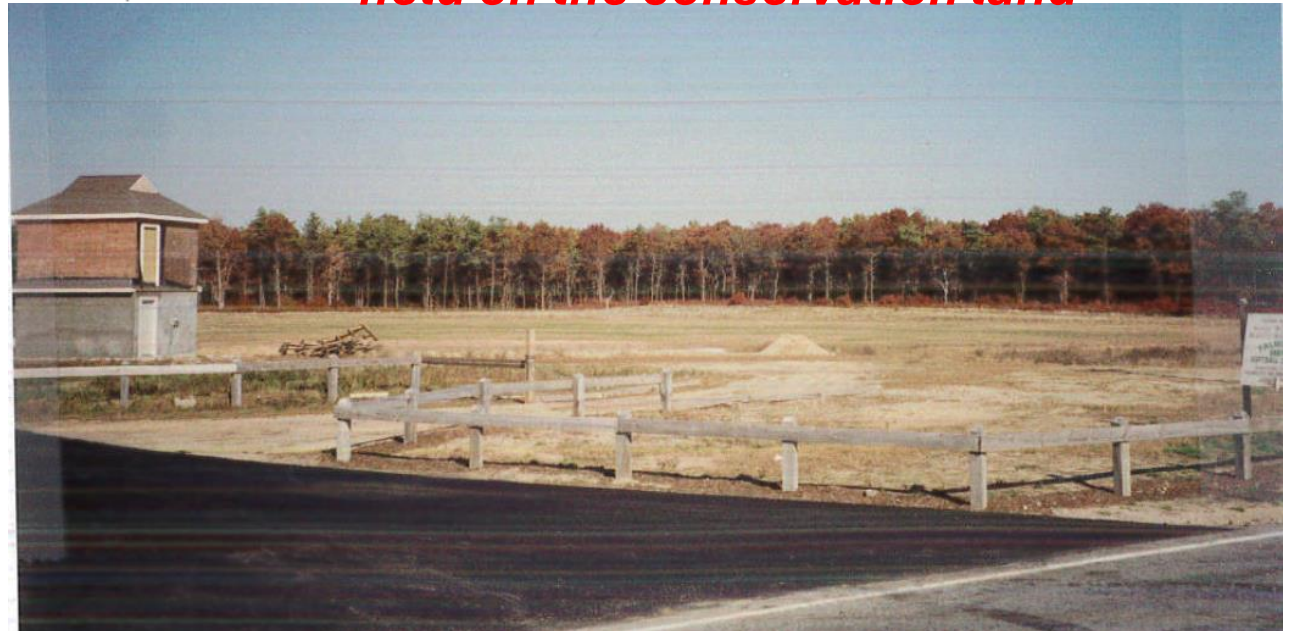
The consideration for this deed and for a deed of even date from
the grantor to the grantee is THREE MILLION THREE HUNDRED AND FIFTY
THOUSAND (\$3,350,000) DOLLARS.

**1986 Deed to Town
for Conservation**

**CONSERVATION DOES
NOT INCLUDE ACTIVE
RECREATION FACILITIES**

CONVERSION ANOMALIES....

**In 1993 the Town Recreation
Commission had part of the forest
cleared and constructed a softball
field on the conservation land**



DEED

00960

The Inhabitants of the TOWN OF [REDACTED] municipal corporation situate in the County of Barnstable and the Commonwealth of Massachusetts, with a mailing address of P.O. Box 215 [REDACTED] Massachusetts 02645, pursuant to a vote taken at the 1981 Special Town Meeting held on April 8, 1981, an attested copy of which Vote is annexed hereto, having been notified by the duly appointed officer of the Conservation Commission that the within described land, of which the Conservation Commission has charge, is no longer required for public purposes, in consideration of ONE DOLLAR (\$1.00) do hereby remise, release and forever quitclaim unto JOHN E. HALL and ELEANOR R. HALL, both of Pine Grove Road, [REDACTED] (est), Barnstable County, Massachusetts, husband and wife, as tenants by the entirety, all right, title and interest which the Inhabitants of the Town [REDACTED] acquired from the said John E. Hall and Eleanor R. Hall in the below-described real estate as a result of an eminent domain taking for conservation purposes made by the Town of [REDACTED] pursuant to authority of a vote under Article 74 of the 1974 Annual Town Meeting Warrant which taking is dated the 30th day of October, 1974, and is recorded at the Barnstable County Registry of Deeds in Book 2116, Page 149.

DISPOSITION ANOMALIES....

In 1982, a Town returned conservation land along a river to the previous owners for one dollar.

The land had been taken in 1974 for conservation purposes and placed under ConCom custody.

In 1981 Town Meeting voted to de-acquisition the parcel without undertaking any Article 97 review process.

The Conservation Commission had simply voted that the land was no longer needed for "public purposes."





LONG POND
(a Great Pond)

BOOK 2831 PAGE 050

1978

CONSERVATION RESTRICTION

We, [REDACTED] husband and wife,
as tenants by the entirety, both of 25 West Water Street,
Lock Haven, Clinton County, Pennsylvania, for consideration paid in
the sum of ONE DOLLAR (\$1.00) grant to THE INHABITANTS OF THE TOWN
OF [REDACTED] a municipal corporation duly organized and chartered
under the laws of this Commonwealth, a permanent CONSERVATION
RESTRICTION from the date of the recording of this instrument with
the Barnstable County Registry of Deeds, on a parcel of land
located in [REDACTED], Barnstable County, Massachusetts, and
more particularly bounded and described as follows:

In 1978 private landowners donated a
“permanent” CR on a 1-acre building lot on the
pond shore of Long Pond to the Town to save on
property taxes .

DISPOSITION
of a CR for
development



LONG POND
(a Great Pond)

1991

RELEASE OF CONSERVATION RESTRICTION

The Town of [redacted] holder of a Conservation Restriction from [redacted] to the Inhabitants of the Town [redacted] dated August 24, 1978, recorded in the Barnstable County Registry of Deeds in Book 2831, Page 050, for consideration, which in the decision of the Massachusetts Secretary of Environmental Affairs dated *May 16, 1991*, she found to be in the public interest including the amount paid of the establishment of the Stephen E. [redacted] Conservation Trust with the Town of [redacted], as Trustee, pursuant to Chapter 424 of the Acts of 1990 and the provisions of M.G.L. c.184, Section 32, hereby releases said restriction on the parcel of land located in [redacted] Barnstable County, Massachusetts, which parcel is more particularly bounded and described as follows:

In 1991, despite the Cons Comm objecting that the CR still had a valid purpose, the Town voted to petition the legislature to approve an Art. 97 bill releasing the CR. The release, as signed by the Secretary, was recorded, the lot sold, and a waterfront house was built a few years later.



THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Four

AN ACT AUTHORIZING THE TOWNS OF DENNIS AND BREWSTER TO GRANT CONSERVATION RESTRICTIONS TO THE DEPARTMENT OF CONSERVATION AND RECREATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The commissioner of the department of conservation and recreation, in consultation with the division of capital asset management and maintenance, may take, in accordance with chapter 79 of the General Laws, or otherwise acquire, and the towns of Dennis and Brewster may convey easements or lesser interests through conservation restrictions under sections 31, 32, and 33 of chapter 184 of the General Laws to ensure the protection of open space, for public recreation, and preserve coastal wetlands and wildlife habitat, in and to all or a portion of certain parcels of land in the towns of Dennis and Brewster identified in section 2.

The parcels were taken or acquired by the towns of Dennis and Brewster for conservation purposes and shall continue to be owned in fee by the towns of Dennis and Brewster, respectively, under the jurisdiction and control of their respective conservation commissions or selectmen, subject to the perpetual conservation restrictions authorized by this act. The department of conserva-

DISPOSITION of a CR for conservation

2004

Example of a Special Act of the legislature allowing the Towns to grant a CR on Town conservation lands to the State, complying with Art 97 “disposition” of an interest in land.



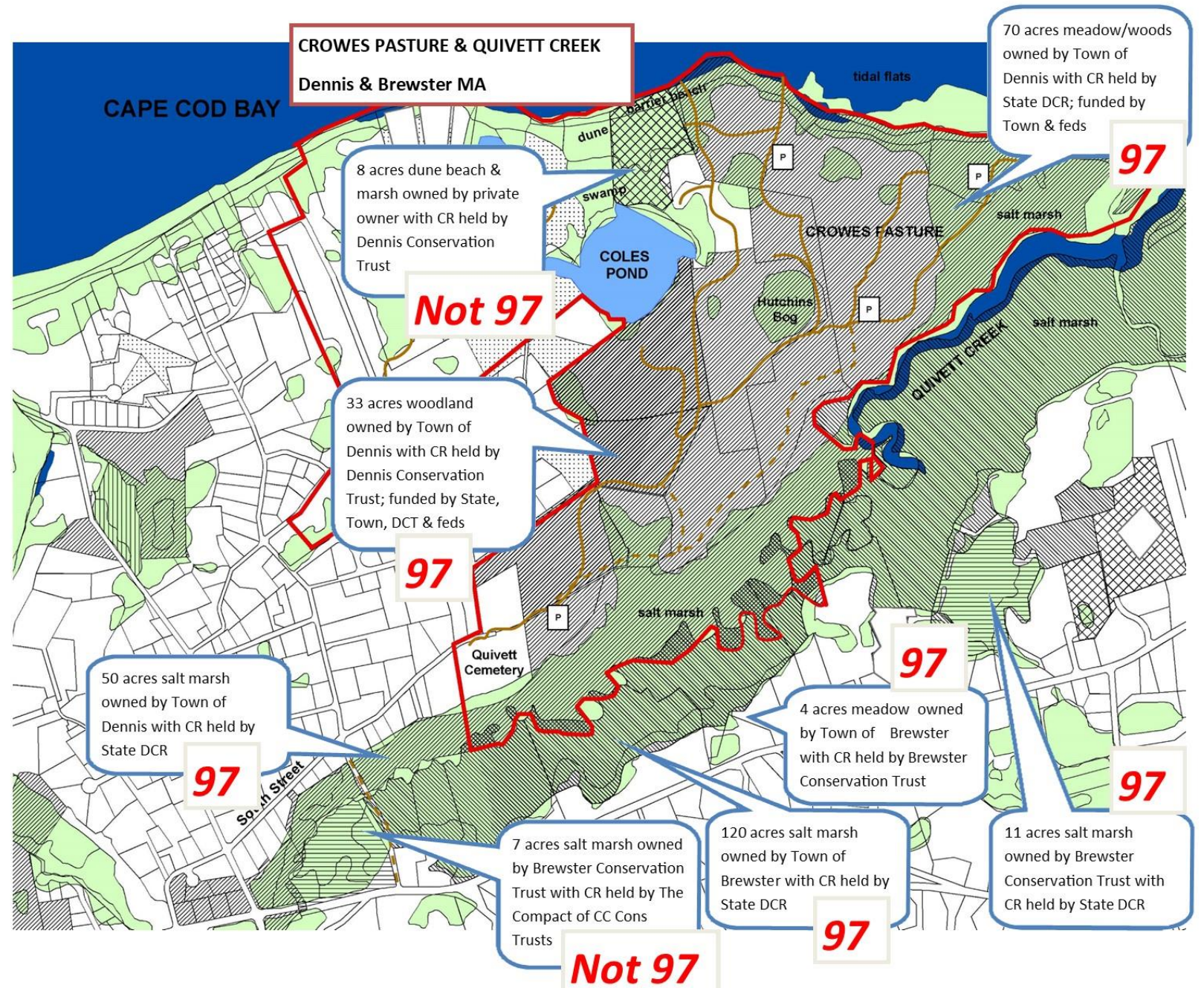
An assemblage of public and privately owned conservation lands may or may not have Article 97 protection, depending on how they are held.

Article 97 protection:

- Town Conservation Land
- Town Conservation land with CRs
- Land Trust lands with CRs held by Town or State

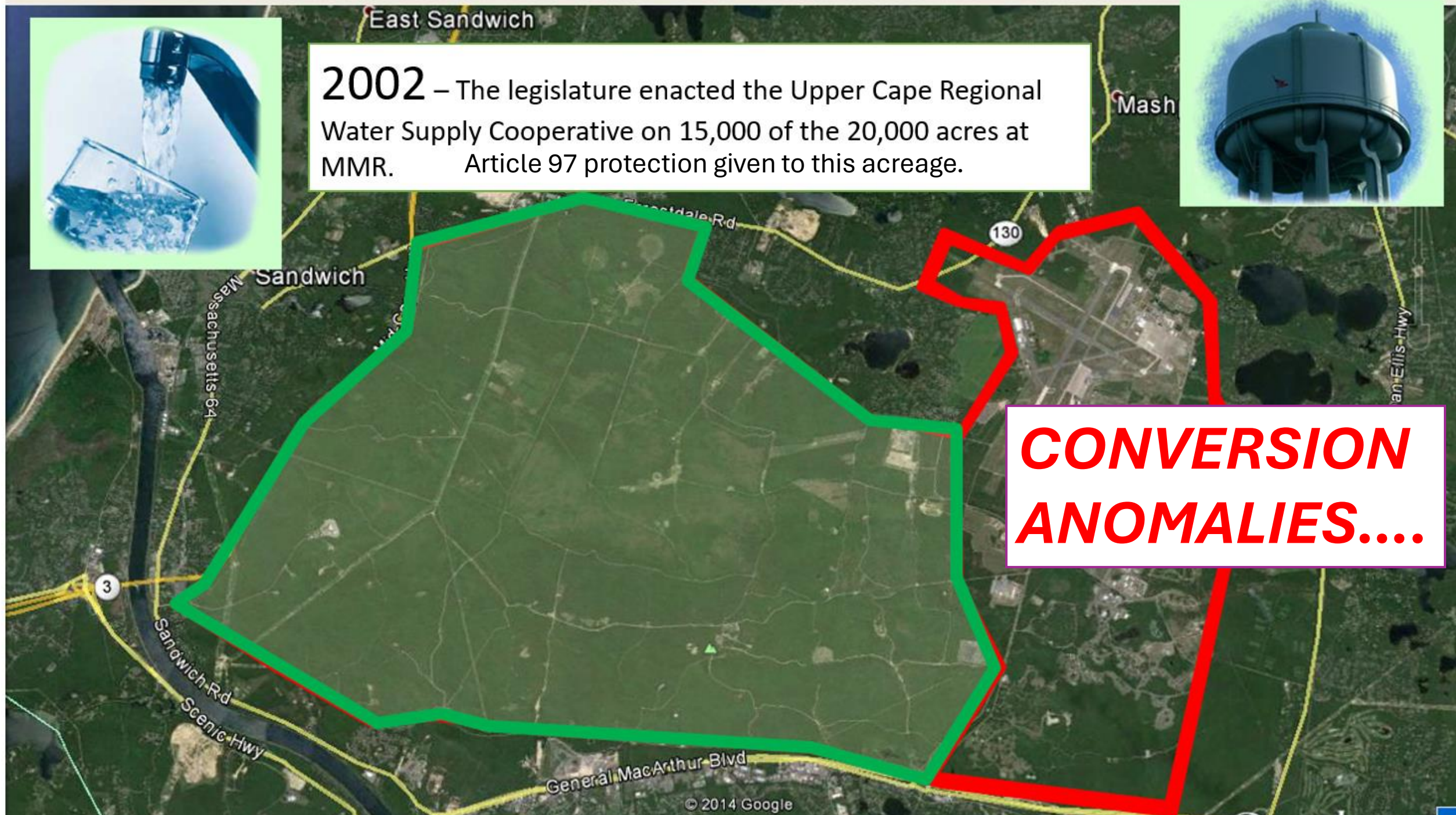
Not 97 lands:

- Private property with CR held by Land Trust
- Land Trust land with CR held by another Land Trust





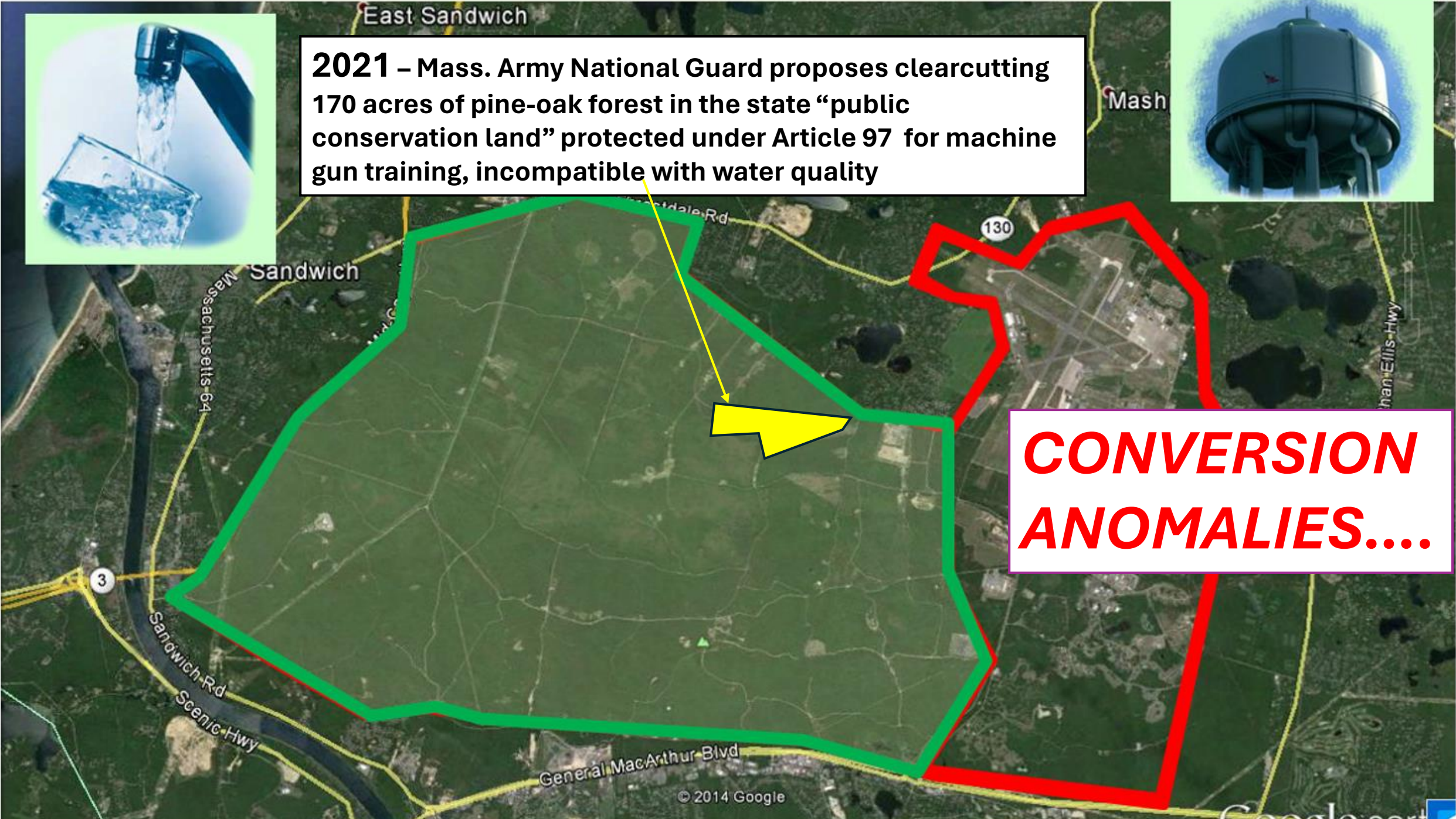
2002 – The legislature enacted the Upper Cape Regional Water Supply Cooperative on 15,000 of the 20,000 acres at MMR. Article 97 protection given to this acreage.



CONVERSION ANOMALIES....



2021 – Mass. Army National Guard proposes clearcutting 170 acres of pine-oak forest in the state “public conservation land” protected under Article 97 for machine gun training, incompatible with water quality



CONVERSION ANOMALIES....

IMPORTANT Article 97 case law:

Selectmen of Hanson v. Lindsay, 444 Mass. 502, 508-509 (2005)

"...a town meeting vote to designate for conservation purposes land that had originally been taken for tax purposes did not subject that land to art. 97 protections absent recordation of a restriction on the title. Without the execution or recordation of a deed containing the conservation restriction, the land "never became specifically designated for conservation purposes in the first instance" and accordingly "was not held for a specific purpose" under art. 97, so "compliance with the provisions of art. 97 ... was not required." Id. at 508-509. This was true despite the clear intent of the town meeting members to hold the property for conservation purposes."

*What the Town of Hanson should have done:
record a deed from Selectmen to ConsComm*

In 1998, the Town of Hanson sold a parcel of tax title land at auction for \$10,000, not realizing it had been transferred by Town Meeting vote to ConCom in 1971. Was the deed valid?

Doc#1,226,031 07-15-2013 11:30
Ct#:#DD/N
BARNSTABLE LAND COURT REGISTRY

Bk 27541 Pg43 #41061
07-15-2013 @ 11:37a

DEED OF TRANSFER OF CONTROL

The **TOWN OF BREWSTER**, a Massachusetts municipal corporation having its principal offices at Town Hall, 2198 Main Street, Brewster, Massachusetts, 02631, acting by and through the duly elected **Board of Selectmen** of the Town of Brewster, for consideration of ONE DOLLAR (\$1.00) paid, hereby grants to the **Conservation Commission** of the Town of Brewster, having its principal offices at Town Hall, 2198 Main Street, Brewster, Massachusetts, 02631, the care, custody, management and control and the right to do all things necessary to preserve in their natural state, while allowing for public passive recreation, certain vacant parcels of land located in the Town of Brewster, Massachusetts, more particularly described in Exhibit A attached hereto.

This transfer of the right to administer and control said parcel is authorized by a vote in favor of Article 34, duly moved and seconded, at the Brewster Annual Town Meeting held on May 7, 2012, an attested copy of which vote is attached hereto as Exhibit B.

Said parcels are transferred for the purposes as set forth in the General Laws Chapter 40, Sec. 8C and are hereby subject to the protections afforded under Article 97 of the Amendments of the Massachusetts Constitution.

Said parcels are subject to a Conservation Restriction running to the Trustees of the Brewster Conservation Trust recorded in the Barnstable County Registry of Deeds in Deeds Book 27387 Page 108 and in Land Court Document #1,221,562 registered on Certificate #119740.

IMPORTANT Article 97 case law:

Mahajan v. DEP, 464 Mass. 604 (2013)

“...the land at issue is but a small part of a much larger taking effectuated for the purposes of urban renewal, it is difficult to identify a "specific purpose" for which the project site was acquired or held that would clearly bring it within the protection of Art. 97.”



Long Wharf, Boston Harbor

In 2008 the Boston Redevelopment Authority proposed building a restaurant at the end of the Wharf. Was the land subject to Art. 97 as a park and so that would be a violation?

IMPORTANT Article 97 case law:

***VIRGINIA B. SMITH & others vs. CITY OF WESTFIELD & others.
478 Mass. 49 (2017)***

“This court concluded that parkland protected by art. 97 includes land dedicated by municipalities as public parks that, under the prior public use doctrine, cannot be sold or devoted to another public use without plain and explicit legislative authority;”...“in the totality of the circumstances, the city, ...had dedicated the playground as a public park, and [by] its acceptance of Federal conservation funds to rehabilitate the playground...the city surrendered all ability to convert the playground to a use other than public outdoor recreation without [federal] approval.”

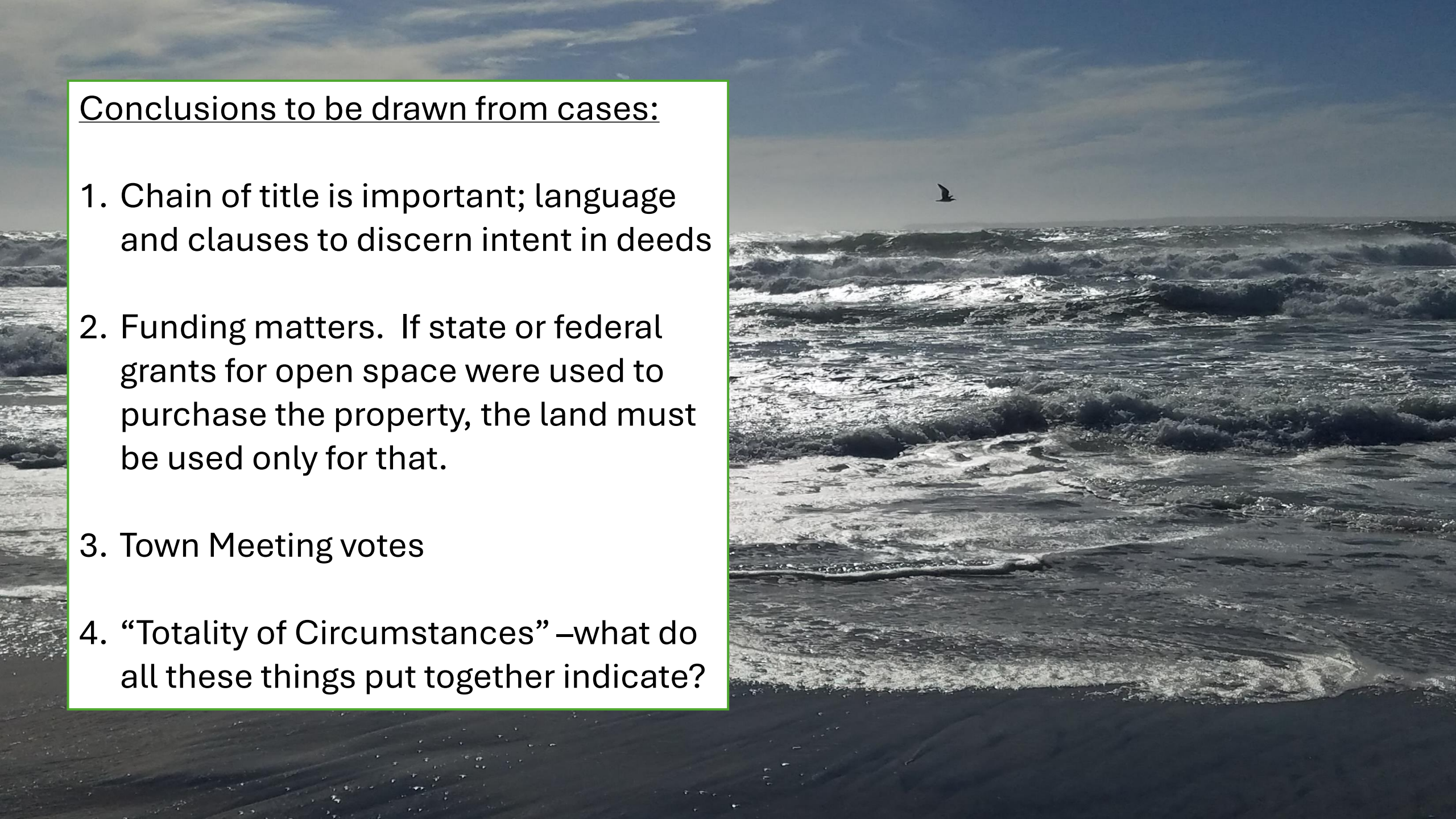
The city wanted to build a school on part of the playground. Could it do that under Art. 97?

Cross Street Playground, Westfield



Conclusions to be drawn from cases:

1. Chain of title is important; language and clauses to discern intent in deeds
2. Funding matters. If state or federal grants for open space were used to purchase the property, the land must be used only for that.
3. Town Meeting votes
4. “Totality of Circumstances” –what do all these things put together indicate?



ARTICLE 97 TIPS for CONSERVATIONISTS

KNOW YOUR TOWN-OWNED LANDS

Do not rely solely on GIS maps,
Open Space and Recreation Plans, and
Assessing records - *DIG! & update records.*

The Town acquired a 35-acre parcel for conservation in 1967, but assessing records were never updated and so the town and state maps never showed it as Town conservation land (still don't).

In 2021, the estate that thought it owned it tried to sell it to the Town!

BOOK 1371 PAGE 044

MASSACHUSETTS QUITCLAIM DEED SHORT FORM (INDIVIDUAL) 681

We, **ALFRED C. KELLEY and RICHARD S. HALL,**
as tenants in common,

of both of Dennis (South), Barnstable County, Massachusetts,
~~being~~ for consideration paid, grant to the TOWN [redacted], a municipal corporation
duly established under the laws of the Commonwealth of Massachusetts, and having
its principal office in Sou [redacted] Barnstable County, Massachusetts,

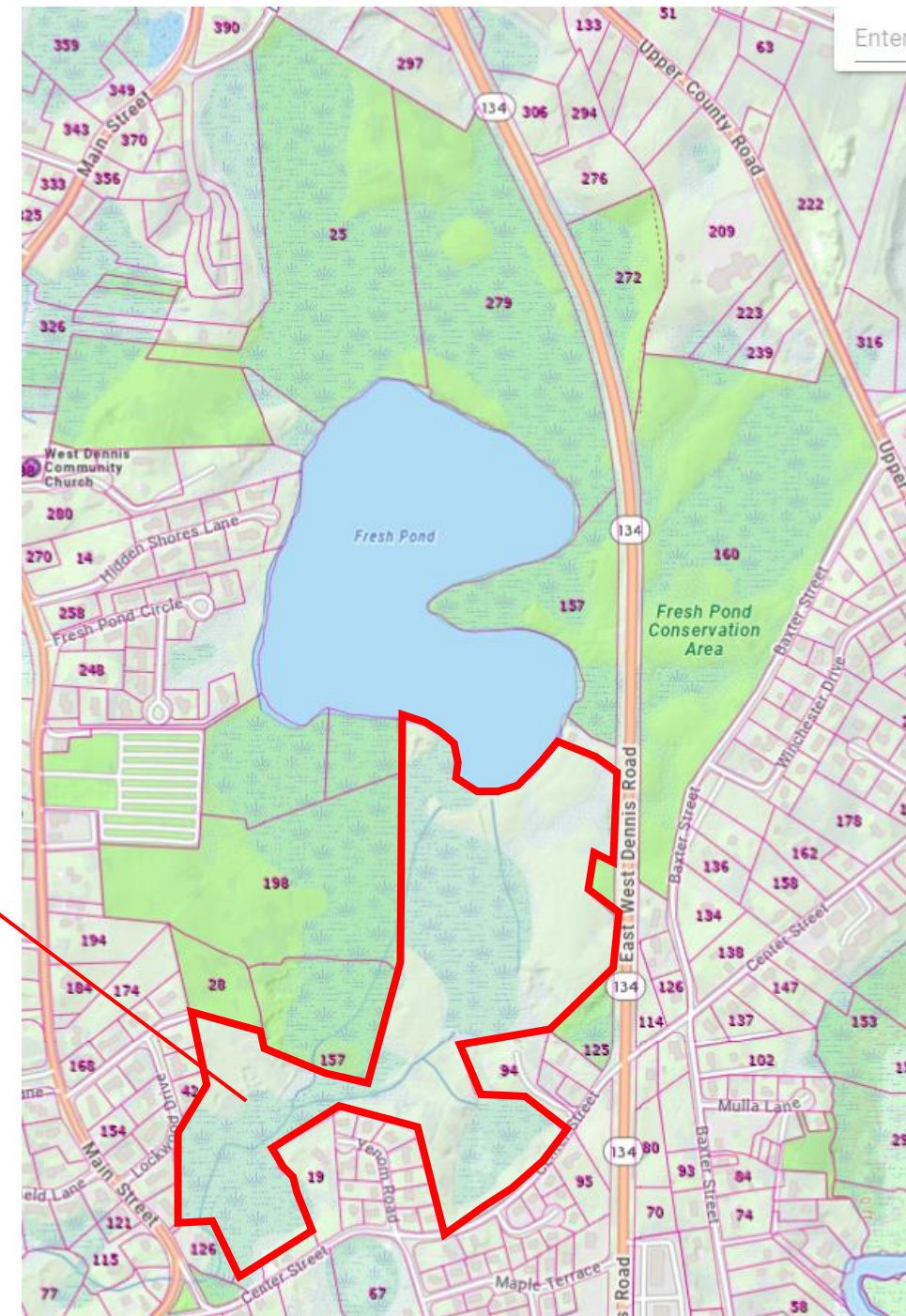
At [redacted] with quitclaim covenants
the land in [redacted] (South), Barnstable County, Massachusetts, bounded and described
as follows: [Description and encumbrances, if any]

**PARCELS NO. M-25, M-26, M-27, M-18 and M-17 as shown on plan entitled: "TOWN OF
[redacted] FRESH POND CONSERVATION AREA SECTION 2," which said plan is dated May 23,
1967, drawn by S. E. Sweetser, Engineer, Dennisport, Mass., DES60-C1902, and re-
corded in Barnstable County Registry of Deeds of even date herewith;**

Containing 35.2 acres ±.

For title of grantors, see deed to Alfred C. Kelley, dated July 28, 1959,
in Book 1052, Page 558, Barnstable Registry of Deeds, from Makepeace Bros., Inc.,
and deed from him to himself and Richard S. Hall—as tenants in common, dated August 21,
1959, recorded in Book 1052, Page 561.

The above-mentioned lands are to be managed by and under the control of the
conservation commission—and the lands are to be used for the purposes described in
M.G.L.A., c. 132-A, §11 and c. 40, §8-C, as amended.



ARTICLE 97 TIPS for CONSERVATIONISTS

Follow the trail for new acquisitions

Do not rely on Town staff and Town attorneys to know the proper drafting of Town Meeting articles and deeds and recording practices to ensure that the intended Art 97 protections are carried through the whole process.

EOEEA has model deeds for conservation that should be followed.

Bk 34914 Pg151 #88
02-17-2022 @ 01:06

FIDUCIARIES' DEED

BEST! 😊

We, Mischa B. Richter and Lisa Ventre, Personal Representatives of the Will of John Dennis Eder Barnstable Probate Court (Docket No. BA20P0936EA), late of Provincetown, Barnstable County, Massachusetts, by power conferred by said Will and by every other power, of c/o 459 Commercial Street, Provincetown, Massachusetts 02657,

For consideration of Three Hundred Thousand and 00/100 (\$300,000.00) Dollars paid, grant to

The Town of Provincetown, a duly organized Massachusetts municipal corporation, having an address of 260 Commercial Street, Provincetown, MA 02657, acting by and through its Select Board pursuant to the vote taken under Article 16 of the May 1, 2021 Annual Town Meeting vote, a certified copy of which is attached hereto as Exhibit A and incorporated herein, with the management and control of the following described parcels held by the Conservation Commission for conservation and passive recreation purposes under G.L. c. 40, §8C, as it may hereafter be amended, and Amendment Article 49 as amended by Article 97 of the Massachusetts Constitution,

With Quitclaim Covenants,

BK12413 PG050 56
07-16-1998 @ 01:1

QUITCLAIM DEED

VAGUE 😞

WE, JENNIE PINA, MANUEL A. CARDOZA and JAMES A. CARDOZA, Trustees of Cardoza Realty Trust established under a Declaration of Trust dated July 11, 1998, and recorded in the Barnstable County Registry of Deeds in Book 12120 Page 218, with an address of 604 Nantasket Avenue, Hull, Massachusetts, in consideration of One Million Three Hundred Thousand Dollars (\$1,300,000.00) grant to the Town of [REDACTED] a municipal corporation with offices at Town Hall Square, [REDACTED] Massachusetts, for the purposes delineated in Section 2 of Chapter 293 of the Acts of 1998 (the "Cape Cod Open Space Land Acquisition Program"), with QUITCLAIM COVENANTS:

If you mean conservation, say it!

ARTICLE 97 TIPS for CONSERVATIONISTS

Follow the trail for new acquisitions, Part II

Do not rely on Town staff and Town attorneys to know the proper drafting of Town Meeting articles and deeds and recording practices to ensure that the intended Art 97 protections are carried through the whole process.

How one long-time local attorney serving as Town Counsel drafted a deed into the Town for conservation purposes in 2017; we fixed it!

INFURIATING! 😞

QUITCLAIM DEED

Candace M. Gordon as Trustee of 483 Plymouth Street Realty Trust, under a Declaration of Trust dated September 25, 2003 and recorded at the Plymouth County Registry of Deeds in Book 26723 Page 85, of 10 Owl Drive, Sharon, MA

for **Four Hundred Fifty Thousand (\$450,000.00) Dollars** consideration paid

grant to the **Town of Middleborough** a Massachusetts Municipal Corporation with a place of business at Town Hall, 10 Nickerson Avenue, Middleborough, MA 02346

with **Quitclaim Covenants**

The land in [REDACTED] Plymouth County, Massachusetts, with the buildings thereon, and

TAKEAWAYS on ARTICLE 97

Refers to a part of the State Constitution passed in 1972

More than just conservation land

Provides extra protection to public open space lands and CRs held by public entities

Applies to both conversions in use or dispositions (title or interest transfers) for Art 97 lands

New law approved in 2022 sets out a standard and strict legal review process for changes in these lands

Conservationists should research portfolio of town and state lands in their community and update inventories, so you know ahead of time which parcels should be protected under Art 97

Do not assume!