

The Commonwealth of Massachusetts

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**In the Year Two Thousand Twelve**  
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An Act relative to land taking regulations.

*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. Section 4 of chapter 131A of the General Laws, as so appearing in the 2010  
2 Official Edition, is hereby amended by inserting before the last paragraph, the following  
3 paragraph:-

4           No provision of this chapter shall preclude a person from obtaining judicial review under  
5 section 7 of chapter 30A, of regulations adopted pursuant to this section.

6           SECTION 2. Subsection (a) of section 5 of chapter 131A of the General Laws, as so  
7 appearing, is hereby amended by inserting at the end of the second paragraph, the following  
8 sentence:- Notwithstanding the prior sentence, the director of the division of fisheries and  
9 wildlife shall be authorized to enter into a written agreement with the owner of land for the  
10 limited purpose to designate the land of such owner as a new protected habitat, in substitution of  
11 other land so owned that was designated as a protected habitat; provided, such substituted land is  
12 of approximate equal size and all record owners of such lands are a party to the agreement.

13           SECTION 3. Section 5 of said chapter 131A, as so appearing, is hereby amended by  
14 inserting after subsection (e) the following subsection:-

15           (f) Notwithstanding any provision of law to the contrary, a person who is an owner of  
16 land and on the event of a hearing, permit request, proceeding or non-judicial appeal, as provided  
17 under this section or section 4 of this chapter as related to such land, is aggrieved by (i) the  
18 director's application of a law, regulation or procedure that is unlawful, which substantially  
19 prejudices the rights of such person, or (ii) an act or failure to act by the director or secretary of  
20 the office of environmental affairs, as the case may be, that results in a unreasonable or unlawful  
21 delay to reach or render a determination or decision, which substantially prejudices the rights of  
22 such person, shall be entitled to obtain judicial relief in superior court of appropriate jurisdiction;  
23 provided, such action is filed during or within a reasonable time after such event. The superior

24 court shall have jurisdiction in equity, to enjoin or enter other necessary and appropriate orders in  
25 such case. Such judicial relief shall be in addition to any other available remedy of appeal or  
26 judicial review, and the failure to seek said relief shall not bar such other remedy. The term  
27 “unreasonable” as used in clause (ii), shall include any act or failure to act, by such authority that  
28 is arbitrary, capricious, an abuse of discretion, or lacks reasonable purpose.

29           SECTION 4. Notwithstanding any general or special law to the contrary, the provisions,  
30 procedures and exemptions of sections 3, 4 and 5 of chapter 131A shall apply to all categories of  
31 habitat that are defined and established, under said chapter or by regulation adopted by the  
32 division of fisheries and wildlife under said chapter, that may result or effectively results, in the  
33 taking or restriction of land for the protection of plants and animals under the authority of  
34 chapter 131A, known as The Massachusetts Endangered Species Act, to include the habitat  
35 categories in existence on January 1, 2012, of “Significant Habitat” as defined and established  
36 under the provisions of said chapter and “Priority Habitat” as defined and established under the  
37 provisions of 321 CMR 10.01, 10.02 and 10.11 to 10.26, inclusive.

38           SECTION 5. Notwithstanding the provisions of chapter 131A or other law, the division  
39 of fisheries and wildlife shall not adopt or apply any regulation that: (i) establishes or effectively  
40 results in the establishment of, any habitat category to protect plants or animals, or both, that is  
41 not otherwise in existence under law or regulation on January 1, 2012, limited to “Significant  
42 Habitat” and “Priority Habitat” as referenced in section 4 of this act; (ii) establishes any class of  
43 protection, other than those that are specifically defined as “Endangered Species”, “Threatened  
44 Species” or “Species of Special Concern” under section 1 of chapter 131A; or (iii) is contrary to  
45 the intent of this act.

46           The division of fisheries and wildlife shall revise its regulations promulgated under  
47 chapter 131A to comply with the provisions of section 4 of this act, which revised regulations  
48 shall have an effective date of February 1, 2013.

49           SECTION 5. Sections 1, 2, 3 and 5 shall take effect on the passage of this act.

50           SECTION 6. Section 4, shall take effect on February 1, 2013.