

Q&A – Mass Bay Surplus Land Disposition and Development
October 16, 2025

What if the state sold the land to the town? Or to investors? Could the purchasers do whatever they wanted?

If the Affordable Homes Act (the “AHA”) process is utilized, the land must be used for housing purposes.

What does the 30-day notice actually mean?

The statute gives the municipality 30 days to respond to a notice that land is proposed to be declared as surplus and sold for housing purposes, but does not specify what if anything must be in a response. Initial guidance from the Executive Office of Housing and Livable Communities refers to this as a “comment period” during which DCAMM must consider all comments received in good faith. It seems this is time to weigh in regarding the proposal and content of an RFP.

Can this be considered Article 97 land because it abuts Article 97 land? /

Can the town have it declared Article 97 land?

It is my understanding that a request has been or is being submitted to the Executive Office of Energy and Environmental Affairs seeking a review to determine whether this might be Article 97 land. Town Counsel is also conducting a review.

Has Section 122 of the AHA been tested in court?

No

Is it possible to distinguish this declaration of surplus land from that in other jurisdictions because such a large portion of it is undeveloped forest land?

The AHA does not make any such distinction.

Is there ANY protection from development on wetlands, i.e. even a buffer?

DCAMM has taken the position in other communities that the Wetlands Protection Act does not apply to projects undertaken through the AHA process.

Could a town acquire land designated as surplus from the Commonwealth by eminent domain?

No.

What would be the best way for the town to communicate with MassDOT about traffic mitigation issues?

DPW has contacts with MassDOT and would be a good channel for communication. We have also suggested reaching out to begin discussions with the responsible MassDOT engineer in order to open this line of communication as soon as possible.

Does the statute prohibit the Town from asking DCAMM to pay for funding either partially or fully municipal planning exercises to participate in negotiations?

The AHA does not prohibit this.

What is the mechanism for establishing a subcommittee of subject matter specialists that are not elected to evaluate key negotiating and litigation strategies (e.g., residents that have specialized legal and or negotiation skills, etc)

The Select Board may appoint a subcommittee, but it would be subject to the Open Meeting Law and may also become subject to other laws applicable to public bodies such as the Public Records Law or State Ethics Law. A subcommittee could meet in executive session but would be subject to same limitations that apply to all public bodies when entering executive session with respect to permissible purposes for entering executive session, formalities of convening and voting, minute taking, and making minutes available to the public. Individuals and groups of residents who have not been appointed as a subcommittee, however, may collaborate on their own and are free to submit recommendations to the Select Board without these limitations.

If the project requires infrastructure upgrades, is the state or developer required to pay the municipality for that work?

The AHA is silent on this question. It is our expectation that the RFP will dictate who has responsibility for these costs.

Can DCAMM negotiate with Mass DOT and Mass Bay for roadway improvements to RT 9 and traffic flow changes as part of the design/pre-RFP phase or is that the responsibility of the developer or the municipality after the bid is awarded?

There is no prohibition against this.

Is release of the RFP dependent on the outcome of the parking study and documenting that mass bay can park the cars on campus?

No.

Up to what point can Mass Bay recall the land as non-surplus? What is that process?

Within 60 days after the President of Mass Bay's determination that property is surplus, Mass Bay's Board of Trustees could disapprove of that determination. That is the only specific process for repealing a determination regarding surplus property set forth in the AHA.

If the town is allowed to reasonably control building massing/scale and setback, does that effectively allow us to control units size? (E.g, If you can only build so high and you have specific setbacks and lot coverage requirements, it seems the result would allow the town to impact unit size).

The AHA permits towns to impose reasonable regulations regarding bulk and height of structures, yard sizes, lot area, setbacks, open space and building coverage requirements (provided that not less than 4 units per acre must be allowed by right). Unit size can be indirectly regulated through reasonable regulations on other dimensional requirements.

Can the town restrict/mandate minimum parking requirements?

No.

Is age restricted housing allowable within the AHA?

Yes.

Is a continuing care facility allowable?

It is our expectation that a continuing care community is not the type of permanent housing that is required under the AHA, meaning that a regulation limiting housing on land disposed of as surplus property under the AHA to such use would not be permissible.

Is the Project required to meet our stretch energy code guidelines or is that a negotiation point?

It is our expectation that any project would be required to meet stretch energy code guidelines, but note that DCAMM has taken the position that other laws (such as the Wetlands Protection Act and Subdivision Control Law) do not apply to AHA projects.



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