The Commonwealth of Massachusetts

PRESENTED BY:

Gale Candaras

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to land taking regulations.

PETITION OF:

<table>
<thead>
<tr>
<th>NAME</th>
<th>DISTRICT/ADDRESS</th>
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<tbody>
<tr>
<td>Gale Candaras</td>
<td>First Hampden and Hampshire</td>
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<tr>
<td>Cheryl A. Coakley-Rivera</td>
<td>10th Hampden</td>
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<tr>
<td>Michael F. Kane</td>
<td>5th Hampden</td>
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<td>Michael Knapik</td>
<td>Second Hampden and Hampshire</td>
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<tr>
<td>Steven L. Levy</td>
<td>4th Middlesex</td>
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<td>Joseph F. Wagner</td>
<td>8th Hampden</td>
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<td>James Weich</td>
<td>Hampden</td>
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<td>Brian Ashe</td>
<td>2nd Hampden</td>
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<td>Sean Curran</td>
<td>9th Hampden</td>
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<td>Donald F. Humason, Jr.</td>
<td>4th Hampden</td>
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<td>Angelo J. Fuppolo, Jr.</td>
<td>12th Hampden</td>
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<td>Benjamin Swan</td>
<td>11th Hampden</td>
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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 Official Edition, is hereby amended by inserting before the last paragraph, the following paragraph:-

No provision of this chapter shall preclude a person from obtaining judicial review under 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 appearing, is hereby amended by inserting at the end of the second paragraph, the following sentence:-

Notwithstanding the prior sentence, the director of the division of fisheries and wildlife shall be authorized to enter into a written agreement with the owner of land for the limited purpose to designate the land of such owner as a new protected habitat, in substitution of other land so
owned that was designated as a protected habitat; provided, such substituted land is of
approximate equal size and all record owners of such lands are a party to the agreement.

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

(f) Notwithstanding any provision of law to the contrary, a person who is an owner of land and
on the event of a hearing, permit request, proceeding or non-judicial appeal, as provided under
this section or section 4 of this chapter as related to such land, is aggrieved by (i) the director's
application of a law, regulation or procedure that is unlawful, which substantially prejudices the
rights of such person, or (ii) an act or failure to act by the director or secretary of the office of
environmental affairs, as the case may be, that results in a unreasonable or unlawful delay to
reach or render a determination or decision, which substantially prejudices the rights of such
person, shall be entitled to obtain judicial relief in superior court of appropriate jurisdiction;
provided, such action is filed during or within a reasonable time after such event. The superior
court shall have jurisdiction in equity, to enjoin or enter other necessary and appropriate orders in
such case. Such judicial relief shall be in addition to any other available remedy of appeal or
judicial review, and the failure to seek said relief shall not bar such other remedy. The term
“unreasonable” as used in clause (ii), shall include any act or failure to act, by such authority that
is arbitrary, capricious, an abuse of discretion, or lacks reasonable purpose.

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

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

The division of fisheries and wildlife shall revise its regulations promulgated under chapter 131A to comply with the provisions of section 2 of this act, which revised regulations shall have an effective date of February 1, 2013.

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

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