

## APPENDIX E

### 2011-2018 Town of Foxborough Open Space and Recreation Plan Section

#### 504 Self-Evaluation

##### Designation of Section 504 Coordinator

The designated Section 504 Coordinator is William Casbarra, ADA Coordinator and Building Commissioner.

##### Grievance Procedures

Persons wishing to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, programs and benefits by the Town of Foxborough should make the complaint in writing according to the grievance procedure adopted by the Justice Department and detailed in the attached document.

##### Public Notification Requirements

Employment advertising contains non-discrimination statements.

##### Participation of Individuals or Organizations Representing the Disabled Community

The Foxborough Disabled Citizens Committee represents the disabled community and participated in the completion of the Transition Plan and Facilities Inventory as supplied by the Conservation and Recreation Departments.

##### Program Accessibility

Many government, recreation, elder services and public service programs provided by the Town of Foxborough are readily accessible and useable by persons with disabilities. These programs are held in buildings and facilities that provide full accessibility, or other accommodations are made for specific disabilities. The Town's Disabled Citizens Committee recommends that the Town prepare a full Self-Evaluation of all town services, policies and practices and update the existing Transition Plan to bring the Town into compliance with the Americans with Disabilities Act of 1990, however a funding source for this study has not been identified. All improvements contained in such a plan will be considered, subject to funding availability.

##### Transition Plan

Since the 1990 Transition Plan, the Town has been upgrading its recreation facilities to accommodate disabled persons. Since that time, the following upgrades have been put in place:

- Council on Aging Facility has been constructed for the elder and is fully accessible.
- An accessible ramp and bathrooms has been constructed at the Mill Street Recreation Facility. A lift has been provided at the Town's public pool.
- An accessible concession stand with bathrooms is being constructed at the Payson Road Recreation Facility.

##### Recreation Facilities Inventory

To be provided by the Recreation Department.

##### Employment Practices

Foxborough has an Equal Opportunity Policy, as documented in the Revised Consolidated Personnel By-Law Preamble. The policy of the Town is to provide equal employment opportunity to all candidates for employment or appointment.

##### Inventory of Open Space Facilities Owned by the Conservation Commission

The Conservation Commission manages certain properties for the Town of Foxborough, but ownership rests with the Town. Some of these properties, especially those managed by the Conservation Commission contain extensive wetlands and are not intended for public access.

***Title II of the Americans with Disabilities Act  
Section 504 of the Rehabilitation Act of 1973  
Discrimination Complaint Form***

Instructions: Please fill out this form completely, in black ink or type. Sign and return to the address on page 3.

Complainant:

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Address:

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City, State and Zip Code:

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Telephone: Home:

Business:

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Person Discriminated Against:  
(if other than the complainant)

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Address:

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City, State, and Zip Code:

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Telephone: Home:

Business:

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Government, or organization, or institution which you believe has discriminated:

Name:

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Address:

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County:

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City:

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State and Zip Code:

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Telephone Number:

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When did the discrimination occur? Date:

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (use space on page 3 if necessary):

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Have efforts been made to resolve this complaint through the internal grievance procedure of the government, organization, or institution?

Yes\_\_\_\_\_ No\_\_\_\_\_

If yes: what is the status of the grievance?

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Has the complaint been filed with another bureau of the Department of Justice or any other Federal, State, or local civil rights agency or court?

Yes\_\_\_\_\_ No\_\_\_\_\_

If yes:

Agency or Court:

Contact Person:

Address:

City, State, and Zip Code:

Telephone Number:



**APPENDIX F**  
**APPLICABILITY OF ARTICLE 97**  
**TO**  
**OPEN SPACES**

Article 97 was adopted in 1972 by the citizens of Massachusetts as the 97<sup>th</sup> Amendment to the state's constitution. Its language is simple:

“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 (aka the State Legislature) shall have the power to enact legislation necessary to protect such rights. Moreover, lands acquired for such purposes shall not be used for other purposes or otherwise disposed of except by a two-thirds vote of each branch (Senate and House of Representatives) of the State Legislature.

Over the ensuing months, the applicability of Article 97 to lands owned by the state and/or local governments was debated. In 1973, the Attorney General of Massachusetts wrote an opinion that tried to clarify the applicability of Article 97 to various situations in which there were proposals to alter open spaces and/or natural resources. The gist of this opinion is that Article 97 applies to both lands owned by the State as well as to lands owned by the municipalities where the lands in question were dedicated to those specified uses and where either the use (i.e., open space or natural resources) or the control (i.e., ownership) of those lands was to be changed. In such cases, a two-thirds vote of the State Legislature is needed to approve the proposed changes to the land's use and/or control. The two-thirds vote is also needed when lands are traded among state agencies.

Additionally in 1998, the Executive Office of Environmental Affairs (EOEA) made the ruling that lands owned by EOEA may not be transferred unless there are “exceptional circumstances.” EOEA also requires municipalities to comply with its policy in order to receive EOEA funding. The purpose of this policy is to have “no net loss” associated with open space land.

In addition to Article 97, there is a long tradition of case law in Massachusetts that governs the disposition of all types of lands (i.e., municipal buildings, easements, railroad beds, etc.) owned by both the state and municipalities. This is the so called common law known as “prior public use.” The 1973 opinion of the Attorney General required a two-thirds vote by the State Legislature to approve ownership changes and land use changes for other types of properties also.

Under the Article 97 Amendment and the “prior public use doctrine,” it is critical to establish the ownership and the restricted use (if any) of the land. In 1974, the Massachusetts Appeals Court held in *Muir v. Leominster* that private land acquired by the Town of Leominster – without any restrictions on its land use – could be conveyed to a different entity without the approval of the State Legislature.

So, how do these laws and policies apply to open space lands in Foxborough?

In our town, the State owns several large parcels, mainly located in the western portion of Town in the F. Gilbert Hills State Forest and at Hersey Farm on Walnut Street and Rt. 140. It would appear that both Article 97 and EOEA policy would govern any change of ownership and/or land use of these properties.

Regarding open space lands owned by municipal agencies, it is important to establish how the land was acquired and whether or not its use was restricted.

Article 97 would only seem to apply if the land use changed (i.e., it were no longer a park) or the ownership changed (i.e., if a *Recreation Commission* changed to ownership to another entity).