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## MLTC STEERING COMMITTEE (SC) ANNUAL MEMBERS MEETING - MINUTES

Friday, February 24, 2017 / 10:00 AM - 1:00 PM

DFW Field Headquarters / SE Conference Room # 108 / 1 Rabbit Hill Road, Westborough, MA

**Hand-outs:** MLTC website: Agenda & 18Nov2016 SC Minutes; MLTC Board of Directors Slate; Environmental League of Massachusetts (ELM) Green Budget (paper & online): [https://www.environmentalleague.org/wp-content/uploads/2017/01/Online-Version\\_Green-Budget-FY2018\\_FINAL\\_2.14.17.pdf](https://www.environmentalleague.org/wp-content/uploads/2017/01/Online-Version_Green-Budget-FY2018_FINAL_2.14.17.pdf)

**Attendees:** Attendance on record at MLTC office.

10:11 AM - Rich Hubbard, MLTC president, called the meeting to order.

1. **Introductions.** Everyone did so. Karen Grey introduced the young land trust (YLT) conservation professionals group who've been organized to advise MLTC on how to better engage young LT professionals into the MLTC community. Bob Wilber thanked Karen for getting this group organized.

(10:17 Kathy Orlando arrived and assumed meeting chair)

2. **Steering Committee Minutes of Nov. 18, 2016 meeting:** (electronic) Rich Hubbard moved; Ed Becker seconded to approve the minutes. Hearing no discussion. **VOTE:** Unanimous.
3. **Election of Board of Trustees:** Kathy Orlando introduced slate for board of trustees election:
  - a. New member: William "Buzz" Constable, Lincoln Land Conservation Trust, president; on Board of The Trustees (formerly known as Trustees of Reservations)
  - b. Incumbents for re-election: Karen Grey, Wildlands Trust; Andrew Magee, Acton Conservation Trust, Epsilon Associates; Mark Robinson, The Compact of Cape Cod Conservation Trusts; Bob Wilber, Mass Audubon, Stow Conservation Trust
  - c. Jim Lentowski moved to approve the slate and Kathleen O'Donnell seconded. **VOTE:** Unanimous.
4. **Payments in Lieu of Taxes (PILOTs) – Jennifer Ryan, The Trustees & Mark Robinson, Compact of Cape Cod Conservation Trusts.**
  - a. **Jen Ryan, The Trustees,** gave an update on Massachusetts PILOT legislation (H.1565 and the newly formed, broad-based non-profit organization, The Coalition to Preserve Non Profit Services.
  - b. PILOTs are a method for non-profit organizations (NPOs) to reimburse a municipality for services used. Hospitals and academic institutions (Eds & Meds) are the two largest groups that engage in PILOT programs, however, proposed legislation will affect all NPOs, many with fewer resources, than larger EDs & MEDs. Many small NPOs may not use municipal resources.
  - a. A Boston program proposed a 25% of full tax for a PILOT fee. Other cities (e.g. Danvers) have similar programs. Currently, MA legislature discussing option that would require municipalities to negotiate PILOTs with the Eds & Meds. Examples discussed which are driving legislative action include: UMass purchased land in Lowell and turned affordable housing units into student dormitories and Lowell suddenly lost ~ \$300K of tax income. Legislation would require NPOs to pay full tax the first year of land purchase.
  - b. Although the current legislation is based on EDs & MEDS, this will impact all NPOs; therefore, the Coalition to Preserve Non Profit Services is funding a return on investment (ROI) /benefits report demonstrating NPO community value.
  - c. The Mass Municipal Association has proposed PILOT legislation. Jen Ryan emphasized that the LT community must follow this closely.
  - d. Rich Hubbard asked if the legislation could be written specifically for EDS & MEDS and not require our involvement, but Jen Ryan responded general consensus of the Coalition at this time all the NPOs working together may have greater impact. As noted by the Mass Non-Profit Network, Gov. Baker would veto any legislation that would impose PILOTs. Buzz Constable asked what is the

- rationale for all NPOs to be considered together as ED/MEDS and perhaps museums and theaters do use more public services while others such as land trusts use very few if any municipal services. Jen Ryan further countered that NPOs provide benefits that relieve burden on government and further noted that in some communities the amount of protected land greatly reduces tax income. Whit Beal noted that on occasion, tax exempt land is sold, developed and generates tax income.
- e. Lt. Governor Polito has suggested a Right of First Refusal (ROFR) provision for tax exempt land structured similar to Ch. 61 as part of Gov. Baker's 'municipal modernization' package.
  - f. Justine Kent-Uritam described the "North 40" issue in Wellesley wherein Wellesley College marketed 40 acres of land. The Town of Wellesley was awarded the option to purchase; however, the purchase price was first determined by the competitive market.
  - g. **Mark Robinson: Director Cape Cod Compact of LTs** (Slides on MLTC website). As a land conservation practitioner, he believes PILOTs are a serious threat to LT viability and suggested LTs reach out to local assessors. The MA Supreme Judicial Court (SJC) ruling (New England Forestry Foundation (NEFF) vs. Hawley case) that LTs are exempt from property taxes was noted, however, this does not prevent a PILOT. Boston Globe's article referenced: 29 July 2016 Measure Alarms State's Charities: <https://www.bostonglobe.com/business/2016/07/28/proposal-tax-nonprofits-alarms-charitable-sector/Z2Rk5C9cJv1K4IJ7ZrNkaJ/story.html>.
  - h. Mark Robinson described negative impact on LT viability if a LT's lands owned in fee were subjected to PILOTs, especially in eastern MA where land values are high. He suggested that a LT review their land portfolios; understand their valuations and work with the assessor to be sure assessed values are accurate for LT properties and gave an example of a salt marsh parcel being assessed as build-able land.
  - i. Robinson reviewed property land tax sheets and demonstrated how to interpret valuations and recommended additional overlays of protection be placed on the LTs properties to protect and reduce value as undevelopable land. He said to note if there are any restrictions on the deed.
  - j. Kathy Orlando said LT regional practices may be different noting that the Sheffield LT enrolls their land in Chapter 61 (reduces tax assessment) and Sheffield LT does make PILOT payments as a good gesture and noted that MT. Grace Land Conservation Trust does this on forest land.
  - k. Creating a charitable trust for LT properties which prohibits sale for development and reduces assessed value was suggested. It was also noted that the Department of Revenue (DOR) reviews town's assessments.
  - l. Rita Grossman asked which form of ownership provides greater conservation security: An LT owning the land in fee with the Conservation Commission (CC) holding the conservation restriction (CR) or visa-versa. General consensus, LT should own land with a CR placed on each. Assessors should know that a CR is placed on LT property as that will reduce assessed value. Janet Morrison suggested that having the CC own the land in fee invokes Article 97 protection and may be more secure, however, Mark Robinson noted that approximately 50 parcels/year lose Article 97 protection going through due statutory process.
  - m. Ed Becker clarified that proposed PILOT legislation applies to property transactions going forward and suggested it is better for the LT to hold the CR in case of town land taking. Bob Wilber noted that a charitable trust might be a better option as a CR may not perform well in unanticipated future scenarios years from now. He also noted that the SJC decision validated the public benefit of conserved land when public access is not allowed or appropriate, e.g. conserving water, clean air, etc., (SJC decision on Hawley v NEFF case available on MLTC web site).
  - n. General consensus to oppose PILOTs while showing sensitivity to Towns with revenue limits due to large percentages of conserved land. Rita Grossman asked for examples on how to show sensitivity to Town's in this situation. Mark Robinson noted that the Commonwealth pays PILOTs to some towns for state parks, but, these are often underfunded. Kathy Orlando urged each LT to analyze the value of their lands owned in fee and identify best solutions for your community.
  - o. Kathy Orlando asked for a motion for MLTC to join the Coalition to Preserve Non Profit Services effort. Discussion prior to the motion on benefits and negatives. Buzz Constable so moved and Rita Grossman seconded. Further discussion noted that in the future, MLTC may need to reconsider its membership. In response to a question on cost, Jen Ryan noted that ~ \$8K being spent on the ROI

work. Unclear what the financial impact will be to the smaller Coalition members. **VOTE:**  
Unanimous. No abstentions.

- p. Whit Beals noted that the Towns of Chester and of Lancaster are ignoring the SJC decision by charging NEFF property taxes.

(Late arrivals introduced themselves) Marion Larson from Dept of Fisheries & Wildlife introduced.

5. **New Trails Policy from MA DFW – Jennifer Ryan, The Trustees.** Changes to the policy are outlined at: <http://www.mass.gov/eea/docs/agr/legal/regs/proposed/330-cmr-22-00-redline.pdf>

- a. Walking Trails Policy for Wildlife Management Areas (WMA) (2 pages) presented and discussed. Policy originated as many due to many rogue trails being created on DFW properties. MLTC, The Trustees, Mass Audubon and others met with DFW to discuss impact of policy particularly WMAs that abut other conserved parcels.
- b. Noted that WMAs are to be "wild" vs. "groomed." Phil Truesdell from Mass Wildlife said this policy was long in development with the goals of managing WMAs for wildlife vs. public access as trails negatively impact habitat and to create boundaries that maximize wildlife protection while allowing some human access.
- c. Marion Larson noted that there is a difference between policy and regulation and clarified that this is a policy and that there's always been a regulation on WMA areas that prohibit human activity.
- d. Kathleen O'Donnell asked about the insurance policies associated with WMA areas. Noted that the Snowmobile Association of Mass. has a general liability policy. Marion Larson clarified that no agency has taken this on yet.
- e. Rogue trails are the biggest concerns, especially with mountain bikes going off trails, etc. Whit Beals mentioned the issue of having license agreements with users and he also referenced the Mass Water Resources Authority (MWRA) Advisory Board on this issue.

6. **Land Protection Certificate Program at UMass** not presented as Paul Catanzaro could not attend.

7. **Latest Article 97 Issue – Kathleen O'Donnell, Attorney & MLTC Trustee.** Kathleen summarized the Smith v Westfield case to be heard by the MA SJC.

- a. Article 97, a MA constitutional amendment (ratified 1972), protects properties taken by municipalities for conservation and this protection cannot be removed without 2/3rds vote of MA legislature.
- b. In Smith vs. Town of Westfield. Westfield residents arguing for protection of a city park being proposed to be taken for a school. Although Federal grant money was awarded to improve the playground, the property was not noted as "protected for conservation" on the deed. The appeals court agreed with the lower court that there was no evidence that the playground land was for conservation, however, dissenting opinions differed. Two cases referenced:
  - i. Board of Selectmen of Hanson v. Lindsay: Town Meeting voted to transfer a municipal land parcel to the Conservation Commission, but, did not record an affidavit of the TM vote at the Registry of Deed (A Town cannot transfer a deed to itself), the vote was forgotten and the land was sold. The SJC ruled for the buyer and noted nothing recorded on the Registry records
  - ii. Boston Redevelopment Authority (BRA) vs the National Park Service (NPS). The BRA proposed to build a restaurant at the end of Long Wharf on an existing park site. There was a plan and a restriction, but bad records. BRA lost to NPS once old records demonstrating conservation intent were found and presented.
- c. A vote of Town Meeting should be sufficient vs. requirement to record with Registry of Deeds, however, issue not so much for LTs as LTs record land acquired in fee and CRs at the Registry of Deeds; however, land protection through a Conservation Commission is a different process.
- d. MLTC not needed at the moment to provide an amicus brief, however, Jocelyn Forbush said The Trustees is working with Mintz and Levin on an amicus brief and believes there is an opportunity for MLTC to participate. Buzz Constable suggested that the Steering Committee (SC) encourage the MLTC Board to participate in the amicus brief. Ray Lyons believes amici briefs serve critical role in

informing the court on the value of conservation and he urges the SC to support this as a way of working with our towns on conservation.

- e. Irene volunteered to assist in writing a portion of the amicus brief and noted that it was never a practice to reference Article 97 protection in deeds; however, Kathleen O'Donnell noted that a Town cannot transfer a deed to itself when land is transferred to the Conservation Commission. Bob O'Connor said of all the Conservation Commission held land about 1/3 of the parcels do not reference Article 97 protections in their deeds. (Reference was made to dissenting opinion: Mielke). He also noted that when land being taken out of Article 97 protection, there's a mitigation requirement.
- f. Mark R emphasized that for town acquisitions of land for conservation to be held by the conservation commission, make sure drafts of closing documents are clear about conservation status, and, warrant articles to acquire land for conservation for town meeting vote should note Article 97.
- g. Buzz Constable supports MLTC's participation to help educate the SJC the need for standards and power of "intent" in town meeting actions.
- h. Ed Becker moved that the SC recommends that the MLTC board consider and participate in an amicus brief on this case. Colin Novik seconded. Jen Ryan clarified that the amicus briefs are due March 20th. Rich suggested an amendment to the motion that MLTC become the lead to get pro bono services. Ed Becker and Colin Novik agreed to the amendment and included funding if needed. **VOTE:** Unanimous.

**8. EOEEA Update Bob O'Connor, EEA Land and Forest Policy Director.**

- a. New Land and Park regulations are official (see MLTC or EEA's web site) and process was part of regulation reform and includes definitions for active and passive recreation.
- b. LAND and Water Conservation Grants are due March 9th. Re-authorized for three years and up to \$2M in funding available. Need a yellow book appraisal in application.
- c. Posting of Park and LAND grants should be ready by March 25<sup>th</sup> (Mass Land Conservation Conference / MLCC) with July application deadlines.
- d. Small Communities grants to assist small towns (pop. < 6K) with open space protection work, e.g. Open Space and Recreation Plans; appraisal assistance for acquisitions, etc. are now posted.
- e. Nine grant awards for Federal Conservation Districts which were created by the federal government during the dust bowl era to work with farmers dealing with consequences of drought. LTs should consider partnering with Conservation Districts for conservation working with private land owners. Second round of these grants will be posted in MLTC newsletter.
- f. Bob O'Connor thanked Denise for covering CR work during Martha's maternity LOA. He advocated using the model CRs on EEA's web site to assist process of review and noted EEA prioritizing CR review and approvals based on CR specified deadlines.
- g. Amendments to CRs. EEA would like to keep the amendment clause in CRs to clarify or improve an issue on conservation value; correct an error, or to clarify an inconsistency within a CR.
- h. Mohawk Woodland Partnership. Value of this new program which includes a grant program will be presented at a future SC meeting.
- i. Fifty bills passed removing land parcels from Article 97 conservation protection.
- j. Statewide Comprehensive Outdoor Recreation Plan (SCORP) being updated and revised as current version needed to get Federal monies.
- k. Noted the efforts of LTs working with forestry for conservation.
- l. Janet Morrison asked about a current bill concerning Agricultural Commissions being empowered similar to Conservation Commissions. Referred to Mass Association of Agricultural Commissions.

**9. LTA Update – Rebecca Washburn, Northeast Director, Land Trust Alliance (LTA) Program Updates.**

- a. Standards & Practices revisions are completed after a long process and have been approved by the LTA board. Updated version on LTA web site with a timeline for implementation. Will be in Enews and Rebecca welcomes questions.
- b. LTA has implemented a new climate program. See LTA website for Webinars schedule and in ENews.

- 10. IRS Disallowing Deductions for CRs with Amendment Clauses.** Buzz Constable distributed a copy of his summary on this issue dated 2/24/2017. Memo available at: [www.massland.org/files/MLTC\\_CR\\_Amendments\\_Attnys02252017.pdf](http://www.massland.org/files/MLTC_CR_Amendments_Attnys02252017.pdf)
- a. Clarified this memo is for MLTC SC to improve understanding of the issue.
  - b. IRS is arguing that an amendment clause negates deductibility of a CR. Case has not been heard by the tax court as of yet, however, the IRS is taking a very strong position.
  - c. LTA has provided recommendations to LTs by issuing an update on their position. Amendment clause should allow an update or revision that assures conservation. LTA S & P 11 addresses this.
  - d. Until the IRS or a tax court decides, LTs are prudent to include amendment clauses, however, if there is to be a deduction, LT might want to not include amendment clause in CRs as this issue will not be resolved immediately.
  - e. Kathleen O'Donnell pointed out that as a legal document, a CR could be amended in the future and noted that correcting a scrivener's error is not considered an amendment.
  - f. Ray Lyons commended Buzz Constable on the document and noted that IRS actions are being driven by cases in other states. Massachusetts has a government process for amendments that accommodates the public interest protected by statute; however, this is not the case in other states.
  - g. Mark Robinson said he would be hesitant to include an amendment clause if the landowner has a large deduction pending. Irene Del-Bono noted that an amendment clause was in the CR model but not required and noted the Nov 2016 IRS recommendations say that an amendment can be done according to the IRS's own recommendations. Quote from the IRS guide is in Buzz's memo.
  - h. If the CR donor is well represented, and, the donor wishes to have an amendment clause, should do so as long as owner donor is aware of IRS position. Ray Lyons suggested that LT and landowner should have written agreements on how amendment issues will be handled in the future.
  - i. Bob O'Connor recommended that CR's get EEA review before finalized.
  - j. Buzz Constable moved and Rich Hubbard seconded that the SC recommend to the MLTC board to send a letter to Bob O'Connor in regards to current CR amendment policy and possible revision given current IRS position and further amended the motion to suggest that EEA's policy refer to MA statutory requirements. Mark Robinson questioned why this is necessary. Kathy Orlando suggested a friendly amendment based on LTA recommendation that supports keeping amendment clauses in CRs. If decide to remove, LTA has recommendations as how to proceed. Rebecca will share with MLTC. **VOTE:** Unanimous.
  - k. Ed Becker noted that every LT should have an amendment policy. Amendment Guidelines on MLTC's website at: [www.massland.org/library/meds-model-cr-amendment-guidelines-0](http://www.massland.org/library/meds-model-cr-amendment-guidelines-0). He also noted that this IRS policy would include audits of existing CRs and negate deduction.
  - l. Rebecca noted on a national level trial attorneys are taking this stance and this activity has permeated the IRS and thus far unsuccessful. Ed Becker noted that because we have a statutory process, audits on merits are rare. Audits on value however are not. Bob O'Connor noted that there's value to amendment clauses as things change over time.
- 11. Legislative Update, Jen Ryan, The Trustees.** Jen provided an update on current policy issues and noted that the two year state legislative cycle has started.
- a. CPA legislation (SD588/HD2225 / Sen. Creem / Rep. Kulik) to increase the recording fee on real estate transactions which fund the Community Preservation Trust used for the State match to CPA communities. The fee has never been increased since CPA was enacted in 2001. To date, 172 communities have adopted CPA and state match is declining. Broad support with 123 co-sponsors. Senate speaker, Boston's Mayor Walsh and Revenue Committee have supported. Anticipate vote before 11 new CPA communities require a state match.
  - b. Bill H.4187 proposes a ban on Neonicotinoid use except by a certified private or licensed applicator.
  - c. Land conservation incentives (HD2210 / Rep. Kulik). The MA Conservation Land Tax Credit (CLTC) Program, passed in 2009, has a wait list and an annual cap at \$2M per year. Legislation would raise cap to \$10M per year. If legislature affirmative there's a method to make it work without sun setting. Broad interest in this legislation.

- d. Public Lands protection legislation (SD389/HD2334 / Sen. Eldridge/Rep. Balser) will assure no net loss of Article 97 land when it is transferred from conservation to other purposes.
  - e. Climate change adaptation legislation. (SD1336/HD2704 / Sen. Pacheco / Rep. Smizik) Requires state to develop an interagency plan to manage current and anticipated climate change impacts.
  - f. Ag omnibus bill: legal to sell raw milk. Also allow aggregation for 61A parcels; additional ag industry measures.
  - g. Initiative (Who is?) to identify what's next for conservation with a Doris Duke Foundation grant to produce a report as was done for Maine (the Public Benefits of Conserved Land Report at [http://www.mltn.org/documents/public\\_benefit\\_brochure.pdf](http://www.mltn.org/documents/public_benefit_brochure.pdf)). Goal to identify fund and finance sources for conservation including a constitutional amendment.
  - h. Release of Environmental League of MA (ELM) green budget noted. Gov. Baker's budget not at 1% as promised for the environment. Anticipate that state role will increase for environmental protection funding given federal activities to defund. Rita Grossman shared that the ELM green budget release on February 14<sup>th</sup> was well attended. Focus on persistence to get to 1% state budget funding for the environment. ELM green budget available online: [https://www.environmentalleague.org/wp-content/uploads/2017/01/Online-Version\\_Green-Budget-FY2018\\_FINAL\\_2.14.17.pdf](https://www.environmentalleague.org/wp-content/uploads/2017/01/Online-Version_Green-Budget-FY2018_FINAL_2.14.17.pdf)
  - i. Senate listening tours in progress: Emphasis on CPA; state budget 1% and CLTC
  - j. FEDERAL level: Noted much conversation about impact of new administration on environment and conservation. Groups have met with MA Attorney General Healy as she's very strong on these issues. Meeting with the governor as well to contend with national issues. Most important the discussion on disposition and devaluing of public lands. Conservation community following very closely. Rita Grossman asked Jen Ryan for her perspective most important Federal issues: disposition of public lands; future role of EPA and federal deduction for charitable donations. Tax shelter issue; See Russ Shay LTA.
  - k. STATE: Pending legislation being drafted to determine when to declare a drought. Drought Management Task Force working with the Mass Rivers Alliance: <http://www.mass.gov/eea/waste-mgmt-recycling/water-resources/preserving-water-resources/partners-and-agencies/water-resources-commission/drought-management-task-force.html>.
  - l. LTs urged to be knowledgeable of impacts of development on water resources by Justine Kent-Uritam.
12. **MLTC Current Financial Report.** Kathy McGrath on behalf of John Page and Marylynn Gentry, MLTC Executive reported that MLTC is solvent.
13. **MLCC update.** Registrations filling up fast and deadline for discounted registration is March 10<sup>th</sup>.; E.O. Wilson is the keynote speaker.
14. **Town of Westford's Drew Garden APR.** MLTC is closely following this continuing issue. MLTC attorney's panel letter to Westford Select Board outlines concerns.
15. Jim Lentowski distributed a Nantucket Conservation Foundation Properties Map of Nantucket and welcomed visitors.

1:23 PM - Rita Grossman moved to adjourn and Bob Wilber seconded. **VOTE:** Unanimous

Respectfully submitted,  
Rita Gibes Grossman, clerk

(Note: Group photo taken immediately after adjournment)