

Public Policy Update

MLTC Steering Committee Meeting

December 9, 2022

Informal Session Round Up

While the legislature's formal session ended on July 31, 2022, lawmakers continued to meet during "informal" sessions this fall. It's harder to pass bills during informal session because if just one legislator opposes, a bill cannot pass. This year we helped pass not one, but two major pieces of legislation that benefit Massachusetts natural resources:

Public Lands Preservation Act: *Enacted!*

The PLPA was introduced 24 years ago to strengthen the Commonwealth's long-standing "No Net Loss" policy. That policy calls for public open space protected under Article 97 of the MA Constitution that is converted to a different use be replaced with land of equivalent natural resources. The Conference Committee finally resolved the differences between the House and Senate versions, enacted the bill, and Governor Baker signed the bill into law on November 17th. With MLTC in the lead, a strong bill passed that codifies the state's No Net Loss policy while enhancing transparency and accountability, especially surrounding the "cash in lieu" provision. See the partners' joint statement [here](#), and WBUR coverage [here](#).

Economic Development Bill: *Enacted!*

MLTC and a widespread coalition advocated for significant funding to be included in an Economic Development spending package that passed into law this fall. Included is \$100M for open space, outdoor recreation, and ecological restoration and \$75M for open space and climate resiliency in environmental justice communities, as well as additional investments in climate action and the Clean Water Trust Fund. Our present understanding is that these funds will be spent over a three-year period. We plan to work with the Healey-Driscoll Administration on implementation early in 2023.

Administrative Updates

New Office of Outdoor Recreation

At an event on December 5th at the Mt. Wachusett Ski Area, attended by MLTC and many of our advocacy partners, Lt. Governor Polito [announced](#) the establishment of a new Office of Outdoor Recreation (OREC) within the Executive Office of Energy and Environmental Affairs (EEA). The Office will focus on coordinating outdoor recreation policy; identifying funding opportunities for programs and infrastructure; enhancing public access and recreation infrastructure; supporting the outdoor recreation economy; advancing equity and access to recreation opportunities; and promoting Massachusetts as a great place to work, live, and enjoy recreation. AMC and The Trustees were among advocates who had championed this initiative. The [OREC Director](#) will report to the Environmental Undersecretary at EEA.

Resilient Lands Initiative (RLI)

MLTC led the effort to send a letter to the Governor signed by members of the Resilient Lands Initiative Steering Committee requesting that he release of the [Resilient Lands Initiative Vision Plan](#) before leaving office. In personal communication on December 5th, EEA Secretary Beth Card indicated she is hopeful that the report will indeed be released by year-end.

2050 Clean Energy and Climate Plan

EEA will release the Clean Energy and Climate Plan for 2050 by the end of the year. More information [here](#).

Solar Siting

The Department of Energy Resources (DOER) Technical Potential of Solar study is ongoing. The public input phase was recently completed – thanks to everyone who filled out the online survey. Mass Audubon is also conducting an independent study that is focused on analyzing the potential for siting solar within already developed or otherwise altered lands and lands of least ecological value. Meanwhile, *An Act Driving Clean Energy and Offshore Wind* (Ch. 179 of the Acts of 2022) included provisions allowing land with dual solar and agriculture use (aka agrivoltaics) to remain in Chapter 61A as land in agricultural use, without any limitations on the scale of the project. This provision also may allow large solar projects on APR lands. The law applies the agricultural exemption to the Zoning Act to these properties, in addition to the existing exemption for solar projects. The law also created a commission to study and make recommendations “to remove barriers to further development of agrivoltaic projects.”

2023-2024 State Legislative Priorities

The state legislative session begins on January 4, 2023, and bills must be filed by January 20th. The MLTC policy committee has agreed that MLTC will support a limited list of priorities that are grounded in the goals of the strategic plan. After bills are filed, the MLTC policy committee will review last year’s priorities and any new bills to develop a final list of priorities.

Healey-Driscoll Administration Transition

Since Maura Healey and Kim Driscoll became Governor-Elect and Lieutenant Governor-Elect, respectively, advocates have been waiting for an opportunity to influence the next administration. “Transition Committees” were recently appointed and tasked with creating actions the new Administration can implement during their first 100 days in office. To see the list of committees and committee members, visit:

<https://healeydriscolltransition.com/transition-committees>.

We understand that the **Climate Readiness, Resiliency and Adaptation Committee** was asked, among other things, for ideas for ways to *Harness natural resources to build climate resiliency; and adopt measures for adaptation to the already manifest and further expected consequences of climate change*. Several partners are submitting recommendations.

MLTC joined 27 other 501(c)(3) charitable organizations focused on energy, environment, and justice to produce a *Massachusetts Climate and Environmental Policy Briefing Book* for educational purposes. The briefing book was provided to all gubernatorial candidates, as well as lieutenant governor and attorney general candidates, and the group briefed interested campaign staff over the summer. The briefing book provides an excellent summary of a wide range of environmental issues facing the Commonwealth and is [worth downloading](#) to review and save for future reference. We are now working to summarize priorities from the Book to send to the Healey-Driscoll transition team.

Federal Policy Update

Election Recap

With the 2022 midterm elections now behind us, we now know that the 118th Congress, that will begin convening in January, will be divided. Democrats will control the Senate while Republicans will control the House. On the Senate side, Committee leadership is expected to stay consistent, except for Senate Appropriations Committee, as

both chairs have retired. On the House side, changes in committee leadership will occur in several key committees.

The Charitable Conservation Easement Program Integrity Act

The land trust community continues to pursue passage of the Charitable Conservation Easement Program Integrity Act in the lame duck session of Congress. As a reminder, the Integrity Act was incorporated into the Enhancing American Retirement Now (EARN) earlier this year. The EARN Act is one part of the Senate version of the Setting Every Community Up for Retirement Enhancement (SECURE) Act 2.0. The SECURE Act enjoys strong bipartisan, bicameral support and is expected to be considered as part of an end of year package. Potential vehicles include a tax extenders package, should Congress move forward with one in the lame duck session, or more likely, an omnibus bill to fund the federal government for the remainder of fiscal year 2023.

However, there are no guarantees. Therefore, the Land Trust Alliance is urging all Massachusetts land trusts to reach out to their elected officials. In reaching out, land trusts should urge their members of Congress to co-sponsor the Integrity Act (H.R. 4164, S. 2256) and ensure its swift passage during this lame duck session. Once you reach out, please alert the Alliance by emailing policy@lta.org.

The urgency for Congress to act this year is greater than ever given the recent Tax Court ruling that gutted the IRS' ability to identify abusive conservation easement tax shelters (see below).

U.S. Tax Court Ruling to Impact IRS' Ability to Identify Abusive Conservation Easement Tax Shelters

In the case, *Green Valley Investors, LLC v. Commissioner*, the U.S. Tax Court ruled that the IRS violated the Administrative Procedure Act when it issued Notice 2017-10 in December of 2016. The IRS argued that Notice 2017-10 was an interpretive rule not requiring the APA process and, alternatively, that Congress authorized the IRS to identify listed transactions without notice-and-comment rulemaking. The Tax Court disagreed with this assessment and ruled in favor of the taxpayer, disallowing penalties associated with the notice. While the IRS is expected to appeal the ruling, it stresses the importance of Congress passing the Charitable Conservation Easement Program Integrity Act.

USDA Seeks Public Input on Implementation of Inflation Reduction Act Funding

The USDA's Natural Resources Conservation Service has announced a [public input period](#) to inform the Service's efforts in implementing funds received as part of the Inflation Reduction Act. This request for input includes providing feedback on how to best maximize benefits for climate mitigation, promote equity and further streamline and improve program delivery. The Alliance plans to submit input so if you'd like to share any feedback simply email policy@lta.org.

Land and Water Conservation Fund

With the passage of the Great American Outdoors Act in 2020 LWCF now receives \$900 million annually. However, the need is so great in Massachusetts and nationally that advocates have been pushing the Biden/Harris Administration to include an additional \$450 million in discretionary funding in the President's FY24 budget. Several Massachusetts members of Congress, including Senators Warren and Markey and Congressman McGovern, sent a [letter](#) to the administration in October making this request.

Recovering America's Wildlife Act (H.R. 2773, S. 2372)

In June, the bipartisan Recovering America's Wildlife Act passed the U.S. House of Representatives 231-190. Unfortunately, since then the bill has been largely stalled in the Senate due to how it would be paid for. However, it now appears that Senators may have a solution. E&E News reported earlier this month that Senators are looking at redefining cryptocurrency assets as securities – not properties as a means of paying for the \$12.7 billion conservation bill which would provide billions in funding to states and territories to assist in efforts to conserve, restore and protect wildlife and habitat. Organizations across the country are advocating for this to be included in an end of year package.