

## Enhanced IRS Scrutiny of Conservation Restrictions (CR)

Particularly more narrow determination of "significant public benefit" under Section 170(h)

*Attorney Advisory Panel of the Mass Land Trust Coalition*

### **Conclusions:**

- In CR audits, IRS has been asking donees (land trusts) for *everything*, inc. minutes, memos from staff, etc.
- Despite the worrisome circumstances we are hearing about (more audits, a narrowing of 107(h) interpretation at the same time when the new tax law is motivating more CR donations), we should not over-react, so long as CR drafters are diligent in describing each CR's importance. [ed. note: The December 2006 Appeals Court decision upholding donors' claim of the significant public benefit of simply protecting natural habitat by a CR in the *Glass* case in Michigan is heartening.]
- MLTC should provide a guidance document to help CR drafters prepare very specific discussions of how each CR establishes significant public benefit.

### **Action items:**

- Steve Small is preparing an article on how to write a good Purposes section of a CR;
- EOEAs are enhancing its Model CR Handbook to include more references to planning documents and maps that are useful to establish clearly delineated governmental policy;
- Towns should draft more specific open space plans, even identifying particular parcels worthy of preservation;
- Land trusts might help to draft the Municipal Certification Form for Conservation Commissions to send to EOEAs, reciting specific conformance of each CR with local policies;
- Selectmen, in certain instances, might be encouraged to sign their approval page with recitals of CR conformance with resource protection objectives of the community; and,
- While the EOEAs Secretary cannot certify significant public benefit to the IRS (only the IRS can do that), perhaps the Secretary's signing statement could recite more specifically how the CR is in the public interest.

**Attorney Advisory Panel of the Massachusetts Land Trust Coalition  
Notes, December 5, 2006**

Attorneys Present: Greg Bialecki, (Chr.), William Constable, Margaret Wheeler, Richard Evans, Elizabeth Wroblicka, Doug Muir, Greg Peterson, Stefan Nagel, Stephen J. Small, Irene Del Bono (via teleconference), Robert Levite, Gordon Bell  
MLTC Present: Bernie McHugh, Mark Robinson (Sec.)