



**THE COMPACT**  
OF CAPE COD CONSERVATION TRUSTS, INC.

10 April 2013

TO: Mass. Land Trust Coalition & others

FROM: Mark H. Robinson, Exec. Dir.

RE: Towards a “model” Purpose(s) clause for land trusts re: tax exemption for parcels

Background: For the past several years, I have been working with MLTC attorney/advisor Bob Levite and others to examine our collective response to the alarming, emerging issue of local assessors taxing non-profit land trusts on all or some of their properties. My office was directly involved in the collation of the Purposes clauses from some 30 separate land trusts. We also categorized the types of purposes, based on a comparative analysis. We sort of exhausted the study there, expecting attorneys for land trusts to use the collation to modify their own land trust’s clauses, as needed. Atty. Ray Lyons has also taken a deep interest in these issues.

I now believe we need to take a next step. **We should provide more instruction as to what the attorneys ought to be considering in this Purposes review with regard to the tax-exempt issue**, without telling them how to do their work. This work ought to go forward regardless of the outcome of the *NEFF v. Hawley* case, or its timing, in my opinion.

Significance: Under Mass. law, land acquired by a nonprofit land trust and used for its stated purposes becomes exempt from local property tax. “The following property shall be exempt from taxation . . . : Personal property of a charitable organization . . . and real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized . . .; [emphasis added] (Massachusetts General Laws [MGL] Chapter 59, Section 5, Clause 3).

Clearly, then, the Purpose(s) of the charity, that is, what it says the land trust is in business to do, is vital in providing the framework for a taxing authority to relate any given parcel that the land trust owns, to see whether “it fits” enough to merit tax-exemption. An upland lot in a subdivision owned by a land trust should not be tax-exempt if the land trust says its purpose is to preserve duck habitat. That same lot might be tax-exempt if the land trust says it is in business to preserve open land as a way to reduce density and provide breathing space in rapidly-developing residential areas. It may not be enough to prove that a given parcel is environmentally-significant, if the significance is not related to the land trust mission.

The other standard, that of occupation, as mentioned in the statute, has been interpreted to mean an “active appropriation” by the group, using the land for its Purpose. We are forced to sometimes “prove a negative”: steps taken to actively appropriate a parcel to preservation may often mean leaving it alone, like a salt marsh. (Ironically, installing a chain link fence to enable rare salamanders to come and go about their work in a vernal pool, while keeping out predators, dogs and humans, *would* be an active appropriation to preservation! And antithetical to the vaunted public access requirement sought by the Appellate Tax Board. )

Discussion: I see a lot of land trust Purpose clauses speaking of “promoting the preservation of land” -- too vague, need to speak directly of acquisition.

I see Purposes emphasizing education and scientific research as Purposes—not enough of that going on in any organization, let alone on any specific parcel of land.

I see a laundry list of the types of lands a group is interested in seeing protected—but what happens if you want to acquire a parcel not fitting those habitat types?

I believe most land trusts should include a clear and explicit clause in the Purposes section that says its **primary mission is to acquire land (and interests therein) for open space protection to further the goals of natural resource protection enumerated by federal law and Article 97 of the Amendments to the Mass. Constitution.** While this statement may seem too vague for some, it would enable land trusts to accept the full range of lands (uplands or wetlands, small or large, working or unproductive, rare or common habitat) that we see them owning.

And by tying it to governmental standards of resource protection and enjoyment of clean air and water, we show an intent to provide work to complement the efforts of government in this realm—that is, to *lessen the burden of government*, a phrase right from exemption case law. Article 97 does not guarantee public access to the environment, but rather that the citizens have a right to a healthy environment. Enjoying clean drinking water does not mean we have a right to wander up to the municipal wellhead. And there are parts of federal wildlife land off-limits to the public.

Next steps: I hope we might activate the MTC Attorneys Referral Panel to take up this issue of the Purposes clause and promote some adherence to a broader principle of why we acquire land, while recognizing the niches each land trust might inhabit. Parenthetically, I met the Legal Referral Director<sup>i</sup> of the Lawyers Clearinghouse at the MLCC workshop on tax exemption who said her group would be willing to research this further for us. Thanks all for your thoughts.

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