

301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

301 CMR 14.00: Conservation Land Tax Credit

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14:01: Introduction

Authority. The Executive Office of Energy and Environmental Affairs (EEA) pursuant to its authority under M.G.L. c. 21A, § 2A, St. 2008, c. 509 §§1 through 4, as amended by St. 2010, c. 409 §§ 4-13, is authorized to define the circumstances under which interests in real property shall be eligible for certification as a Qualified Donation under M.G.L. c. 62, § (6)(p) and M.G.L. c. 63, § 38AA.

Purpose. These regulations seek to define real property interests eligible for state tax credits for those property interests deemed to have sufficient natural resources in the public interest which qualify for the Massachusetts Conservation Land Tax Credit Program (CLTC) when protected in perpetuity. The regulations establish criteria and implement conditions, limitations, and exclusions for certification for the CLTC. If EEA determines that proposed land qualifies for a CLTC, EEA shall issue a Land Identification Number (LIN) to the landowner and the Massachusetts Department of Revenue (Department) to the effect that the donated portion of the real property interests under the CLTC have sufficient natural resource values in the public interest and meet the requirements for perpetual protection

Effective Date. 301 CMR 14.00 takes effect upon promulgation.

The Name of the Program. The program shall be referred to as the Massachusetts Conservation Land Tax Credit (“CLTC”) Program.

14.02: Definitions.

Agency means any of the agencies under the Massachusetts Executive Office of Energy and Environmental Affairs whose authority and purposes, include, but are not necessarily limited to, the care, custody and control of property interests for Article 97 purposes.

Applicant means a Massachusetts Taxpayer, who on or after January 1, 2011, applies to EEA for certification that the Taxpayer's Property Interest has sufficient natural resources and is in the public interest if protected in perpetuity to be deemed a Qualified Donation.

Bargain Sale means the sale of a real property interest at a cost below fair market value as evidenced by a Qualified Appraisal.

Certified Land means a Property Interest, including a Restriction, the donation or bargain sale of which has been certified by EEA to have sufficient natural resources to qualify to be in the public interest for perpetual natural resource protection. Land that may qualify as Certified Land may include the following resources: drinking water supplies, wildlife habitats and biological diversity, agricultural and forestry production, recreational opportunities, or scenic and cultural values, of statewide or regional significance as defined in 301 CMR 14.02 and 830 CMR 62.6.4(2) and which meets the conservation purpose requirements of Section 170(h)(4)(a) the Internal Revenue Code ("IRC") as in effect for the taxable year.

Department means the Department of Revenue.

EEA means the Executive Office of Energy and Environmental Affairs.

Internal Revenue Code ("IRC") means, with respect to personal income taxation under M.G.L. c. 62, the Internal Revenue Code, as defined in M.G.L. c. 62 sec. 1(c); and with respect to corporate excise taxation under M.G.L. c. 63, the Internal Revenue Code, as amended and in effect for the taxable year, as more fully defined in M.G.L. c. 63, § 1.

Massachusetts Conservation Land Tax Land Identification Number (LIN) means a unique Land Identification Number issued by EEA verifying that the Certified Land is a Qualified Donation.

Natural Resource Protection means the perpetual protection and conservation of land having significant natural resource qualities, pursuant to a clearly delineated Federal, State, or regional governmental conservation policy with qualities including, but not limited to, those defined by Article 97 of the Amendments to the Massachusetts Constitution, M.G.L. c. 184 §§31-33 and Section 170(h)(4)(A) and 170(h)(5)(A) of the IRC, when protection of such land will yield a significant public benefit in the public interest.

Perpetual Protection means Certified Land protected in perpetuity for Natural Resource Protection purposes by a Restriction, or Certified Land held in fee by a Public

Conservation Agency and subject to Article 97 of the Amendments to the Massachusetts Constitution.

Pre-CLTC means preliminary approval by EEA that the proposed donation has sufficient natural resources that its Perpetual Protection would be in the public interest, and that the anticipated transfer of the landowner's property interest will in fact protect the Certified Land in perpetuity.

Property Interest means any deed or instrument conveying any right in real property in the commonwealth, with or without improvements thereon, that has been duly recorded in a Registry of Deeds.

Public Conservation Agency means a governmental body described in M.G.L. c. 184, § 32 with authority to hold property interests in the Commonwealth of Massachusetts for Natural Resource Protection purposes.

Qualified Appraisal means an appraisal as defined in Treas. Reg. § 1.170A-13(c)(3) and Internal Revenue Service (IRS) Notice 2006-96 that is less than one year old and meets EEA's Appraisal Standards, dated September 1, 1995.

Qualified Appraiser means a qualified appraiser as defined in Treas. Reg. § 1.170A-13(c)(5) and IRS Notice 2006-96, who has been licensed or certified by the Massachusetts Board of Registration of Real Estate Appraisers for the land that is being appraised.

Qualified Donation means a donation or the donated portion of a bargain sale of Certified Land which is made in perpetuity of a Property Interest, including a Restriction, provided that donation meets the requirements of qualified conservation contributions under section 170(h) of the IRC and 301 CMR 14.00.

Qualified Organization means a private nonprofit corporation organized for the purposes of land conservation that meets the requirements of M.G.L. c. 184, § 32, St. 2008, c. 509, and any amendments thereto, and:

- (a) Is authorized to do business in Massachusetts and is duly qualified as a charitable organization under section 501c(3) of the IRC;
- (b) Meets the requirements of Treas. Reg. Sec. 1.170A-14(c), and therefore has the power to acquire, hold, or maintain interests in land and carry out Natural Resource Protection in the Public Interest; and
- (c) Has provided suitable evidence such as a corporate or other organizational vote showing that the Qualified Organization has adopted the Land Trust Alliance's *Land Trust Alliance Standards and Practices* or similarly acceptable standards and practices as guidelines for the organization's operations, and commits to making continual progress toward implementation of the standards and practices;

Restriction means the conveyance of a qualified Property Interest in the form of a conservation restriction, watershed preservation restriction or agricultural preservation restriction duly established under M.G.L. c. 184, §§31 and 32.

Taxpayer means an individual or entity subject to taxation under M.G.L. c. 62 or M.G.L. c. 63 and entitled to take a credit under M.G.L. c. 62, § 6(p)(1) or M.G.L. c. 63, § 38AA, as applicable.

Title Examination means a title examination performed by an individual qualified to perform title examinations in Massachusetts that meets conveyancing standards, and identifies all owners of an interest in the Real Property to be donated and separately identifies those owners and their percentage interest whose signatures are necessary to convey the Certified Land and protect it in perpetuity.

14.03: Applications for Pre-CLTC and LIN

The application for Pre-CLTC is a three part process. 14.03: Part I, (1) – (4) is the review of the documents listed and focused on the quality of the donation for an initial determination of the eligibility of a proposed Property Interest or Restriction as Certified Land. If the first part results in a determination of eligibility, Part II (5) requires the Applicant to provide EEA with an opinion of value of the Certified Land to be donated, based on a Qualified Appraisal. EEA will then issue the Applicant a notice to proceed based on a determination that the annual tax credit limit will not be exceeded. Part III (6)-(11) requires the Applicant to complete the application.

In tax year 2011 only, there will be a public lottery to establish the order of applications received. This lottery will be held two weeks after the publication date of the regulations, on the next occurring Tuesday at 10:00 a.m. All applications received by 5:00 p.m. the previous day will be considered.

In tax year 2011 only, Applicants who conveyed their Property Interest between January 1, 2011 and the effective date of these regulations may apply for Pre-CLCC.

(1) For conveyances to an Agency:

- (a) The Applicant must apply to EEA and secure the assignment of a number showing the receipt of the application. The Applicant must comply with 301 CMR 14.03(2) Part II(5). The Applicant is also subject to the notice to proceed, 301 CMR 14.03(2), (6) – (11);
- (b) The Applicant is responsible for applying to the Agency and complying with the requirements of that Agency, including due diligence standards, statutory and regulatory requirements, and protocols;

- (c) The Applicant and the Agency must notify EEA of the satisfactory completion of the grant of the Certified Land and satisfaction of all requirements of the Agency;
- (d) The Applicant shall provide documentation of the recorded deed, appraisal, title, plan or metes and bounds description;
- (e) The Applicant must notify EEA as soon as it appears that the Property Interest is not certifiable in the current tax year, or if the Applicant withdraws the Property Interest from consideration; and,
- (f) The Applicant and the Agency will notify EEA by October 1 of the progress of all pending Pre-CLTCs, an explanation of the reason each application is still pending, and whether any are anticipated to close before December 31st of the tax year. If it appears that the application will not be certified by the end of the tax year, EEA, in its sole discretion, may require that the application be withdrawn, or carried over to the following year.

(2) For all other donors, application forms for Pre-CLTC may be obtained from EEA. EEA will track the order in which the applications are received.

Part I

Applicants must submit a Pre-Certification application that consists of the following documents:

1. Evidence that the Applicant holds an ownership interest sufficient to entitle the Applicant to convey clear and marketable title and ensure the perpetual protection of a potentially eligible Property Interest;
2. Proof that a Qualified Organization or Public Conservation Agency is willing and able to hold the Property Interest;
3. A survey or sketch plan showing the subject land and its attributes, with a locus map;
4. A proposed Restriction which may be recorded after the deed by the donee, and, where applicable, a complete draft of the instrument proposed to convey the Property Interest, which instruments shall be in a form that meets conveyancing standards for the interest to be conveyed and that would be recordable when fully executed.

If Part I, steps 1-4 are satisfactorily completed, the Applicant will be notified of EEA's determination that the Property Interest and documents as proposed are either ineligible or eligible for Pre-CLTC. If eligible, the Applicant must provide within 30 days of notification:

Part II

5. A duly certified opinion by a Qualified Appraiser of the value of the donation of the Property Interest must be provided to EEA. The opinion of value shall state what regulatory, environmental, frontage, access, topographical, and other constraints were considered. This will allow EEA to determine how many Applicants will be able to receive the CLTC in each tax year.

EEA will then issue the Applicant a notice to proceed based on a determination that the annual tax credit limit will not be exceeded. Within 60 days following the notice to proceed, the Applicant must complete the following steps:

Part III

6. Subordination or release of all lien holders;
7. A survey or metes and bounds description, shown on a plan or sketch plan, labeled appropriately to reflect its protected status;
8. Exclusions, if any, defined by metes and bounds or survey plan;
9. A satisfactory title certification evidencing capacity to convey a clear title. In cases where title insurance would satisfactorily cover a defect in title that would otherwise make the Applicant ineligible for the CLTC, the parties may seek approval from EEA to obtain title insurance in favor of the Grantee(s) to cure said defect;
10. A listing all of the interests in the Real Property as disclosed on the Title Examination and any other interests in the Real Property that the Applicant or Owners are aware of, with a certification that each of the owners of an interest in the Real Property have agreed to the Qualified Donation; and,
11. Upon request, a copy of the Qualified Appraisal.

(3) If the annual limit on the cost of approved tax credits as provided under 830 CMR 62.6 (6) has been reached, Applicants potentially eligible for the tax credit will be notified that the tax credit cost limit has been reached, and they will be eligible for Pre-CLTC as funding becomes available, whether it occurs in the year of the original application, or the following year(s).

(4) Review of Pre-CLTC Applications. Upon review of the completed Pre-CLTC application, EEA will determine whether or not the proposed donation adequately and perpetually protects the Natural Resource interests and deemed Certified Land.

(5) The Applicant will be notified of approval for the Pre-CLTC by letter within 30 days of receipt of Parts I, II and III of 14.03.

(6) EEA will not reject Pre-CLTC applications once the notice to proceed has been issued unless the application:

- (a) is incomplete,
- (b) is incorrect,
- (c) does not meet the definition of Natural Resource Protection in the Public Interest,

- (d) includes a prohibited double benefit with respect to the same land under 830 CMR 62.6 (7),
- (e) is submitted by an Applicant that has received a CLTC within 3 years prior to the application date, unless waived by EEA,
- (f) includes land that has been subdivided a part of which has been the subject of the receipt of a CLTC within 3 years prior to the application, unless waived by EEA,
- (g) includes land under existing perpetual protection, unless waived by EEA, or
- (h) that has unapproved or unacceptable changes.

(7) If EEA finds an application ineligible or rejects the Pre-CLTC application, the Applicant may submit revised or corrected information for consideration within 15 business days of the postmarked date of the notice. EEA may, at its sole discretion, authorize additional time for good cause. If the applicant is unable to satisfactorily resolve the reasons for rejection, the application will be denied.

(8) EEA will issue an LIN for Certified Land that was Pre-Certified only after the property transaction has been recorded or registered with the appropriate Registry of Deeds and the applicant provides proof of satisfactory recording to EEA within 30 calendar days of the Pre-CLTC approval letter from EEA unless extended in writing. EEA will issue an LIN after the applicant has submitted the following documents to EEA:

- (a)(i) A copy of the Pre-CLTC from EEA, ii) an instrument granting to an Agency, a Qualified Organization, or a Public Conservation Agency a Property Interest in Pre-CLTC land that meets EEA's criteria and conveyancing standards which perpetually protects the Qualified Donation and is recorded or registered at the appropriate Registry of Deeds;
- (b) A recorded or recordable survey showing the subject and/or metes and bounds description referencing a recorded instrument or a sketch plan containing a metes and bounds description. The subject land must be clearly labeled to appropriately reflect its protected status and recorded with the instrument(s) granting the Property Interest. Excluded areas shall be described in the same manner, with permanent boundary markers in place or provided for in the Qualified Donation Instrument;
- (c) Baseline documentation sufficient to establish the condition of the property at the time of the donation;
- (d) Votes authorizing the transaction, and attested copies of votes granting authority, if applicable;
- (e) Satisfactory evidence that all liens affecting Certified Land have been released or subordinated;

(f) If there is an encumbrance or interest affecting the Certified Land, EEA may require an agreement from the holders of said encumbrances or interest that they will exercise their rights only in a manner consistent with Natural Resource Protection, duly recorded with the registry of deeds;

(g) The instrument granting Certified Land authorizes the right of entry to the Grantee(s) to monitor and enforce the Restriction;

(h) A Title Examination and certification of title that complies with EEA title specifications and standards verifying all necessary signatories to the instruments conveying the Property Interest and that the Qualified Donation will have a first lien position;

(i) A copy of any final opinion of value of the proposed Certified Land extracted from a Qualified Appraisal; and

(j) Upon request by EEA or DOR, a copy of the Qualified Appraisal by a Qualified Appraiser.

(9) Upon satisfactory receipt, an LIN will be issued to the Applicant, which verifies to the Department the Certified Land's eligibility for the tax credit.

(10) The Applicant shall be responsible for all communications with other parties and owners, including providing copies of the application and required documents.

14.04: Monitoring and Enforcement Requirements

The Public Conservation Agency or Qualified Organization(s) shall commit to protecting the conservation purposes of the donation.

14.05: Evaluation Criteria

(1) EEA will use valid statewide, regional and local natural resource maps, policies and plans to analyze land for CLTC. The protection of natural resources in the public interest and of statewide or regional significance may be evidenced by how well the proposed donation substantially protects the resources described by one or more of the following statewide or regional maps, policies and plans or two or more of the following local maps, policies and plans:

- (a) Zone I and II and Zone A and B and high and medium yield aquifer drinking water maps,
- (b) state, regional and local Water Supply Protection Plans,
- (c) the State Wildlife Action Plan,
- (d) BioMap2 or any succeeding versions, including various upland and aquatic resource maps,

- (e) Priority Habitat delineated by the Department of Fish and Game (DFG) pursuant to M.G.L. c. 131A,
 - (f) regional water supply and wildlife habitat maps and plans,
 - (g) prime or important agricultural and forest soils,
 - (h) Department of Agricultural Resources APR blocks,
 - (i) priority areas in the Department of Conservation and Recreation's state forest assessment and strategy,
 - (j) various focus areas for EEA and federal natural resource agencies,
 - (k) specific priority resources in the Statewide Comprehensive Outdoor Recreation Plan,
 - (l) state or regional natural resource, greenway or park priority plans,
 - (m) state and regional scenic plans and designations,
 - (n) federal, state or local natural resource designated areas such as Areas of Critical Environmental Concern or federal Scenic Byways;
 - (o) areas mapped by the Massachusetts Historic Commission as important for cultural resource protection;
 - (p) specific priority resources in local Open Space and Recreation Plans that are consistent with and substantially advance statewide or regional policies or plans;
 - (q) other valid natural resource maps, plans and policies; and
 - (r) land that is located in an environmental justice area as identified and designated on state environmental justice plans.
- (2) Land that may qualify for state, regional or local Natural Resources Protection in the Public Interest may include, but is not limited to the following:
- (a) Water quality protection for rivers, streams, and lakes, including reduction of erosion especially for land contributing directly to the protection of public drinking water supplies, Maps used to define and mapped as Zone I or II or Zone A or B for the protection of drinking water;
 - (b) Protection of significant wetlands;
 - (c) Protection of riparian buffers and wildlife corridors for native plant and animal species, especially species listed by DFG as "species of special conservation concern" in the Massachusetts Statewide Wildlife Action Plan and the BioMap2 or other state wildlife policy documents;
 - (d) Protection of prime agricultural and forestry lands and lands necessary for viable agricultural and forestry production including land with prime and important soils for farm and forestry production;
 - (e) Working landscapes that are in compliance with a Farm Conservation Plan or a Forestry Plan by a licensed forester that protects the natural resource values of the Certified Land;
 - (f) Protection of plant and animal life and habitat especially for species listed by DFG as "species of special conservation concern" in the Massachusetts Statewide Wildlife Action Plan, the BioMap2 or other state wildlife policy documents;
 - (g) Protection of cultural sites, heritage corridors, and archaeological and historic resources including those listed by the Massachusetts Historical Commission;

- (h) Scenic protection for land with regional or statewide significance including lands listed in DCR's scenic inventory documents;
- (i) Provision of significant passive recreation via non-motorized activities consistent with the protection of conservation values including land in and near environmental justice neighborhoods; or
- (j) Property in an environmental justice area, or a similar densely populated area with a significant lack of adequate open space and protected land. Consideration will be given to areas identified as environmental justice areas, or that are heavily populated and underserved by open space, availability of passive recreational opportunities, urban gardens, habitat areas unique within the community or needed buffer areas, particularly to protect water quality, or protected lands.

(3) Advice of other agencies. EEA may consult with other agencies in pre-certifying or finally certifying applications for the CLTC.

14.06: State law controls

If there is a conflict between state and federal law, Massachusetts law shall control except where St. 2008, c. 509 requires that federal law controls.

14.07: EEA certification

EEA reserves the right, in its sole discretion, to determine whether to certify land or issue an LIN for a Qualified Donation.

14.08: Severability

The provisions of 301 CMR 14.00 are severable. If any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity will be severed and will not affect the remainder of 310 CMR 14.00 et seq.

14.09: Regulatory Authority

St. 2008, c. 509, §§1 through 4, amended by St. 2010, c. 409 §§ 4-13.