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INFORMATION FOR POTENTIAL DONORS OF CONSERVATION RESTRICTIONS TO THE BELMONT LAND TRUST

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What is a Conservation Restriction? A conservation restriction is a legal agreement by which scenic and natural areas are permanently protected from residential, commercial and industrial development, road construction and other undesirable uses. This is accomplished by the grant of a conservation restriction from the landowner to a qualified public agency or non-profit organization (such as the Belmont Land Trust), which in turn agrees to monitor and enforce the terms of the conservation restriction. Title to the property remains with the grantor. While private deed restrictions and covenants can also be used to control the future use and

development of land, conservation restrictions offer a number of advantages. Conservation restrictions may be (and usually are) granted in perpetuity, while private restrictions and covenants cannot be. Generally tax benefits are only available for the donation of conservation restrictions. Finally, conservation restrictions are very difficult to amend or release, offering to donors greater confidence that the terms will be respected and enforced.

State approval requirements The Massachusetts Conservation Restriction Act (Mass. General Laws Chapter 184, sections 31-33) authorizes the conveyance of perpetual conservation restrictions and protects them from some of the problems that afflict other types of restrictions and covenants. In return for their special status under the law, the Act requires that conservation restrictions further the public interest and be subject to local and state review and approval. Following execution by the donor, and prior to its placement on record at the Registry of Deeds, a restriction (if conveyed to a non-profit organization such as the Belmont Land Trust) must be approved first by the governing body of the town or city in which the land is located, and then by the state's Secretary of Environmental Affairs following review by the Division of Conservation Services. The latter agency's will review information provided in the Conservation Restriction Application Form (available from the Division of Conservation Services at 617-626-1012) and will focus on evidence that the restriction achieves a valid public purpose.

Belmont Land Trust approval requirements A Conservation Restriction is accepted by the Belmont Land Trust only after careful analysis, followed by Board approval. The landowner's willingness to partner with the Belmont Land Trust in the process on implementing the Conservation Restriction is an important consideration. Equally important is the landowner's acceptance of the guidelines for a contribution to the Stewardship Fund whose purpose is to insure the monitoring and enforcement of the Restriction once it is in place. The Board review will also focus on evidence that the restriction will have a valid benefit for the town of Belmont and its citizens.

Considerations in drafting a conservation restriction While a typical conservation restriction has provisions related to its administration, enforcement and other matters, the essence of its restriction is contained in its statement of purpose and two lists: types of activities that are prohibited, and specific activities that, although otherwise prohibited, are permitted because they are appropriate uses of the land and do not detract from its conservation values. In working with the Belmont Land Trust to draft a conservation restriction, the landowner should keep several considerations in mind: The terms of the restriction should protect the physical and natural features that give the land its special values and that provide sufficient public benefit to justify approval by the state and I.R.S. The terms should reflect the objectives and needs of the current landowner. The terms should provide for the reasonable needs of future landowners. It is especially important to allow flexibility for future landowners and to try to anticipate possible uses of the property under changing conditions. Except in instances where the resources to be protected require virtually complete preservation, the restriction should not be so stringent as to preclude any activity of economic value to a future landowner. The terms should reflect the goals and objectives of the recipient organization (e.g., the Belmont Land Trust).

Tax consequences The donation of a conservation restriction to a qualified recipient such as the Belmont Land Trust is likely to have beneficial income, gift, estate and property tax consequences for the donor. Whether and to what extent a donation will provide such tax advantages will depend on the terms of the restriction, the donor's tax status, and other factors. Competent legal

and tax advice is critical in this area and it is highly recommended that such advice be obtained by the owner. Estate and gift taxes. A properly drafted and approved conservation restriction should remove the monetary value of the conservation restriction from the donor's estate and exempt the donor from paying any gift tax on the transfer. The reduction in value of the taxable estate is the principal motivation for many donors who are seeking means to reduce federal and state estate tax burdens that would otherwise force their heirs to sell the family's lands. In order for the gift of a conservation restriction to qualify as a charitable deduction for federal gift and estate tax purposes, the law requires that: The restriction be granted in perpetuity. Since foreclosure on a pre-existing mortgage may extinguish a conservation restriction, the I.R.S. requires that existing mortgages be subordinated to the restriction for the latter to be considered perpetual. The restriction be granted to a qualified public agency or non-profit organization, such as the Belmont Land Trust. Income tax. A donor of a conservation restriction may be eligible to claim the value of the restriction as a charitable deduction on his or her federal (but not Massachusetts) income tax return. To qualify for a deduction, the conservation restriction must meet I.R.S. eligibility criteria, which require, in addition to the requirements listed above for federal estate and gift tax deductibility, that the restriction be donated "exclusively for conservation purposes." These purposes are spelled out in detail in the tax regulations, but generally speaking they include public recreation, public education, protection of significant natural systems, scenic preservation, and the preservation of open space pursuant to a governmental conservation policy. It is essential in drafting a conservation restriction to build a case for the significant public benefits that the restriction will provide in one or more of these areas. Failure to do so could result in disallowance of the charitable deduction. The tax benefit to the donor will depend on the restriction's appraised value, the donor's tax bracket, the limits on deductions that can be taken in any one year, the donor's tax basis and appreciation in the property, the effect of the Alternative Minimum Tax, and other factors. Deductions not used in the year of donation may be carried forward for up to 5 additional years. Property tax. Massachusetts law requires assessors to consider the impact of a conservation restriction in determining a property's assessment, a requirement that was affirmed in a recent Supreme Judicial Court decision. Practice, however, varies widely from town to town. In Belmont assessors review restricted land on a case-by-case basis. In the case where a landowner feels the assessment does not take into account the restriction, the landowner's only recourse may be to file for an abatement, and in the event of an unfavorable decision by the assessors, to appeal the assessment to the state's Appellate Tax Board.

Appraisal requirements Whether or not a donor intends to take a charitable deduction on his or her income tax return for the value of a donated conservation restriction, the restriction must be appraised. When the value of the restriction is more than \$5,000 (as it is in almost all cases), the donor will need to obtain what the I.R.S. calls a "qualified appraisal" and report the value on I.R.S. Form 8283 (to be filed with the donor's 1040). I.R.S. standards for such appraisals are very exacting, and donors should be sure their appraisers understand and can comply with these standards. Land Trusts can usually suggest appraisers familiar with these standards. In addition, the I.R.S. requires that donors maintain certain records regarding such gifts, and every donor should review these requirements with his or her tax accountant or attorney. Under I.R.S. rules, the appraisal may be completed as early as 60 days prior to the date of donation; it must be completed and delivered by the filing deadline (including extensions) for the return on which the deduction is first claimed. Except in rare instances, the restriction will be valued as the difference between the fair market value of the property before the restriction and the fair market value of the restricted property. The I.R.S. requires that the appraiser value all contiguous property owned

by the donor and his/her family, not just the restricted parcel; if the restriction enhances the value of the donor's adjacent, unrestricted land, the appraiser must reduce the restriction's value for tax purposes accordingly. An appraisal may be useful as a basis for estate planning or for dealing with local assessors.

Survey requirements The restriction must accurately describe the area(s) to be restricted. If the restriction applies uniformly to a parcel or parcels that have been described in previous deeds and plans on record at the Registry of Deeds, a simple reference to these earlier descriptions will often suffice. More often, the restrictions will apply only to portions of parcels, or to different portions of a parcel in different degrees. In these cases, it is generally necessary to have a registered land surveyor prepare a recordable plan to accompany the conservation restriction. Belmont Land Trust Board members can work with donors to determine their survey needs.

Title It is important for the recipient of any conservation restriction to be informed as to the condition of title to the property, including pre-existing easements and potential title disputes. Donors of conservation restrictions to the Belmont Land Trust will be asked to obtain title information sufficient to satisfy the Belmont Land Trust as to the status and condition of their title in the property. If the donation of a conservation restriction is to be taken as a charitable deduction on the donor's federal income tax return, I.R.S. regulations require that any existing mortgage be subordinated "to the right of the [conservation organization] to enforce the conservation purposes of the gift in perpetuity." (Treas. Reg. 1.170A-14(g)(2)) In the event of foreclosure, such subordination will prevent the restriction from being extinguished. While banks and other lenders frequently need to be educated on the subject of conservation restrictions, most will eventually agree to subordination, though they may require an appraisal for assurance that the restricted property retains sufficient value to protect the loan. If the property to be restricted is currently mortgaged, the Belmont Land Trust will work with the donor to obtain subordination.

Baseline documentation I.R.S. regulations require that for any conservation restriction in which the donor reserves rights, "the exercise of which may impair the conservation interests associated with the property," the donor must make available to the recipient organization, before the donation, sufficient documentation to establish the condition of the property at the time of the gift (Treas. Reg. 1.170A-14(g)(5)). Although the I.R.S. has not yet provided firm guidance as to which reserved rights this regulation applies, it is prudent to assume that any reserved right that may involve a substantial alteration of the landscape, such as timbering rights or the right to construct additional buildings, would subject a donor to this requirement. The question of exactly what form the documentation should take is left up to the donor, but the I.R.S. suggests that documentation may include annotated site plans, U.S.G.S. survey maps, and aerial and ground level photographs. At the time of donation of the restriction, the donor and donee must also sign a statement attesting to the accuracy of the documentation. During the course of preparing a conservation restriction, Belmont Land Trust' officers will discuss documentation requirements with the donor. In most cases a Land Trust member is able to assist the donor in compiling the material. Donors are expected to defray out of pocket expenses incurred by BLT in compiling the baseline documentation.

Stewardship Fund To provide a reliable source of funds for the monitoring and enforcement of conservation restrictions, the Board of Directors of the Belmont Land Trust in 2003 established the Stewardship Fund, a pooled income fund. Donors of restrictions are asked to contribute to

this Fund based on the guidelines outlined below. Annual income from the Fund is available to pay the costs of three related activities: Monitoring responsibilities, including annual site visits, and documentation of the condition of the property; Restriction administration expenses, including responses to requests for interpretation and approval; and Enforcement expenses, including initial follow-up with the landowner, review and inspection of remedial measures, and legal, engineering and other professional services. Unused income is added to the principal of the Fund. The Board of Directors may authorize the use of principal, as well as income, to meet the costs of legal action to enforce or defend a restriction. Although gifts to the Stewardship Fund may vary in size according to the responsibilities imposed by the restriction, no one donor is necessarily expected to provide funds enough to meet all the costs, legal or otherwise, which may be associated with his or her property alone in the event of a major enforcement dispute. Thus each conservation restriction held by the Belmont Land Trust receives the benefits of this pooled Fund. Guidelines: The amount of the donation requested by the Belmont Land Trust is based on our best estimate of the normal monitoring and enforcement costs of the restriction. Factors involved in the determination include the size and accessibility of the parcel, the number of abutters and types of adjacent land uses, and the terms of the restriction, including permitted uses and anticipated frequency of review and approval. As a general guideline for donors and the Belmont Land Trust to use in initial planning, the requested donation is usually close to 2% of the value of the unrestricted property, with a minimum of \$6,000. Once the terms of the restriction are finalized, an officer of the Belmont Land Trust Board will suggest a specific figure. Contributions to the Fund are tax deductible.

Importance of competent advice In pursuing a conservation strategy that involves placing permanent restrictions on the use of land, donors are strongly advised to obtain competent legal and financial guidance. While Belmont Land Trust officers are knowledgeable in many of these areas and may be able to offer suggestions and advice, the interests of the Belmont Land Trust on some matters may at times diverge from those of the donor. It is in the donor's best interest to retain experts who can provide advice on the legal and tax implications of the proposed gift. Though this bit of common sense may seem obvious, its importance cannot be over-emphasized. Donors should also be aware of the valuable services a professional land planner can provide. These individuals bring their expertise in environmental science, land use planning and landscape design to bear on the question of how land can best be used to meet a landowner's conservation and other objectives. Particularly for landowners considering the reservation of future building sites, the insight a professional land planner can offer is usually well worth the fee.

Monitoring and enforcement Conservation restrictions are only effective if they are monitored and enforced; this is a responsibility the Belmont Land Trust takes very seriously. When a restriction is accepted by the Belmont Land Trust, monitoring becomes the responsibility of the Belmont Land Trust. The Belmont Land Trust contacts owners annually for an on-site visit and inspection by a representative of the Belmont Land Trust; conditions are noted, pictures taken, and the property compared with earlier photographs. This visit also gives owners an opportunity to review the terms of the restriction with a Land Trust officer or representative and to discuss future plans for the land. Should a violation be detected, the Belmont Land Trust will first contact the landowner and try to reach agreement on how the problem can be resolved. When agreement cannot be reached, legal means may be taken to correct the violation, including court action if necessary.