Land Letter
THE NATURAL RESOURCES WEEKLY REPORT

8. CONSERVATION: Federal court upholds favorable tax ruling for habitat easements

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A federal appeals court has ruled in favor of a Michigan couple that claimed tax deductions for two conservation easements negotiated with a local land trust. Initially, the Internal Revenue Service cited the couple, Charles and Sharon Glass, with a tax deficiency notice for more than $116,000 over a four-year period from 1992 through 1995, claiming that two of three easements did not qualify as being "exclusively for conservation purposes." Although a tax court sided with the Glass family in the matter, the IRS Commissioner appealed the ruling.

The IRS also challenged the market valuation for the Glass properties, which the Glass family declared to be over $340,000, although they had purchased in 1988 for $283,000 for use as a vacation home, but the tax court did not take up the issue of valuation. The couple eventually moved to the property as a full-time residence, although some Lake Michigan shoreline bluff portions were maintained under permanent easement restrictions according to their agreement with the Little Traverse Conservancy.

The conservancy had actively sought conservation easements with local property owners to promote habitats for bald eagles, kingfishers and piping plovers, as well as for such plants as the Lake Huron tansy and pitcher's thistle.

At issue was interpretation of IRS rules that did not allow for charitable deductions on a portion of a property, unless three specific conditions were met to consider the gift a "qualified conservation contribution." These are that a qualified property interest is gifted to a qualified organization "exclusively for conservation purposes." The agency had argued that the contributions failed the third test for several reasons, including that the land was not specifically set aside to protect habitats for rare, endangered or threatened species.

In a Dec. 21 **order**, however, a three-judge panel of the 6th U.S. District Court of Appeals upheld the tax court's determination that the deductions were legitimate. In essence, the court held that significant habitats are not necessarily limited to endangered species [*Glass v. Commissioner of the IRS*; No 06-1398].

According to Rand Wentworth, president of the Land Trust Alliance, "The decision is an important one, as it rejects arguments the IRS made that could have restricted deductions for conservation easements to only those properties with endangered species." Had the IRS position prevailed, he said, it would have led to an extremely narrow interpretation of when deductions for habitat conservation would be allowed.

New law still murky

Separately, the Land Trust Alliance has asked the IRS for clarification of several aspects of Section 1206 of H.R. 4, which passed last year and increases tax incentives for conservation easements (*Land Letter*, Oct. 26, 2006). According to Russell Shay, director of public policy for LTA, "as conservation nonprofits, landowners, and their financial and legal advisers have examined the new provisions, they have uncovered many issues that, if not resolved in a timely way, could frustrate the intent of the new law."

In a Jan. 4 **letter** to IRS Commissioner Steven Miller, Shay detailed seven issues, ranging from restrictions on gifts of historic preservation easements to gross income definitions, plus certain requirements for farm or ranch properties to remain available for agricultural or livestock production.

Although the number of conservation easements donated each year is small -- about 2,400 in the year 2003 -- Shay noted, the "value of these donations is extraordinary," and the process of entering contracts "can, and should take time." But because the new provisions of Section 1206 will expire at the end of 2007, he urged the IRS to provide timely guidance to help prospective donors.