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December 13, 2007

Mr. Stephen T. Miller
Commissioner, Tax Exempt and Government Entities
Internal Revenue Service
1750 Pennsylvania Ave NW
Washington, DC 20006

Dear Mr. Miller:

This is to follow up on our meeting earlier this fall, in which we discussed the concerns of our two organizations (and our constituent members) related to the current audit environment with respect to charitable contributions of conservation easements on historic structures. We greatly appreciate your taking the time to discuss these issues with us.

To address further the issues we discussed in that meeting, we would ask you to confirm in writing several points that you and your colleagues made during our conversation, so that we will be in a position to inform current and potential donors about the views of the IRS on this subject.

First, as we indicated during the meeting, we have heard concerns from a number of our constituent members that the Service may be using a zero-based “rule of thumb” in its examination of charitable contributions of conservation easements on historic structures. We understand from our discussions with you that this is not the case, and we believe that it would be reassuring to current and potential easement donors to know that it is the position of the Service that each contribution under examination will be reviewed on its own merits. *Consequently, we would ask that the IRS confirm that there is no general policy or practice within the IRS of directing or encouraging its staff, on examination, to find a zero or de minimis value for conservation easement contributions for historic structures.*

Second, during our meeting we also discussed concerns raised by our constituent members that public statements made by the IRS in the past have suggested that easement donations on historic structures in locally-regulated historic districts are *per se* valueless because they do no more than replicate local regulatory controls. Specifically, over the past several years, the IRS has made a number of statements (including in past annual listings of its “Dirty Dozen Tax Scams”) suggesting that taxpayers who donate easements on historic structures already subject to local landmarks or zoning laws are claiming unjustified deductions because

they are not giving up rights that they had in the first instance. While we do not question the IRS's statement that it has found instances of taxpayer abuse in this area, our experience is that the level of local regulatory controls varies considerably—from very weak to very strong—and that in many cases easements are far more restrictive than local regulatory controls. We believe that generalizations in this area may be extremely misleading, and we understood from our meeting that you and your colleagues recognize that the valuation impact of local regulatory controls may vary from case to case. *Consequently, in order to correct any mistaken impression resulting from previous statements in this area, we would ask that you clarify that it is not the view of the IRS that conservation easements on historic structures in locally regulated historic districts are per se valueless—but that, instead, the valuation of each easement must be determined on a case-by-case basis through a qualified appraisal that considers the specific terms of the easement and the specific nature of restrictions imposed by local land use or similar laws.*

Finally, we would ask you to confirm that, although the Service is undertaking a compliance initiative with respect to conservation easements, *the IRS compliance initiative is not intended to deter donations of legitimate conservation easements on historic structures made by taxpayers who comply with the applicable requirements of the Internal Revenue Code (including the changes made by the Pension Protection Act of 2006), Treasury Regulations, and IRS Notices, and who claim a reduction in value of the historic structure attributable to the imposition of the conservation easement that was donated to a qualified donee organization.*

We believe that the IRS's clarification of these issues would help to reassure current and potential donors of conservation easements on historic properties that the IRS will evaluate easement donations on their individual merits and continue to respect individual easement donations that follow the requirements of the code and regulations.

Thank you again for your attention to this matter.

Sincerely,



Paul W. Edmondson

Vice President & General Counsel
National Trust for Historic Preservation



Peter Bell

Executive Director
National Housing
& Rehabilitation Association

cc: Nancy Todd, Office of the Senior Technical Advisor, TEGE