

**Statement of Steven J. McCormick  
On Behalf of The Nature Conservancy  
Hearing before the Committee on Finance  
United States Senate  
The Tax Code and Land Conservation  
June 8, 2005**

Mr. Chairman, Senator Baucus and members of the Committee, thank you for the opportunity to present the views of The Nature Conservancy at this hearing on tax incentives for land conservation and on your report on our organization and our conservation practices. I am Steve McCormick, the President and CEO of The Nature Conservancy.

The Nature Conservancy is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Our on-the-ground conservation work is carried out in all 50 states and in 27 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million acres with local partner organizations globally.

The Conservancy owns and manages approximately 1,400 preserves throughout the United States—the largest private system of nature sanctuaries in the world. We recognize, however, that our mission cannot be achieved by core protected areas alone. Therefore, our projects increasingly seek to accommodate compatible human uses, and especially in the developing world, to address sustained human well-being.

The past two years have been a challenging time for The Nature Conservancy. Having just run the triple gauntlet of a newspaper series, a Senate committee investigation and an IRS audit, I want of all my colleagues at the Conservancy to know how proud I am of the way they have responded to the challenge. Thousands and thousands of actions and transactions conducted by the people in our organization over the past decade have been held up to the closest scrutiny and, based on that examination, I am confident in saying that all of our work is, and has been, in compliance with the applicable laws and regulations and motivated by the sincerest commitment to our

mission. Not everything we tried has succeeded and on occasion we made mistakes, but all of our work was done in good faith.

During this period, we have come to realize that we must hold ourselves to a higher standard—one beyond mere compliance with the law and service to our mission. In this spirit, over the past two years we have conducted an extensive and rigorous internal review to strengthen our governance, increase accountability to our mission and make our actions more transparent to our donors and the public. Therefore, I can also tell you with confidence this morning that, today, we consistently meet higher standards of ethical conduct and organizational efficiency than we did two years ago.

These internal reforms have not been easy. Our structure is highly decentralized with the work and the responsibility located principally in the state and country programs. We have thrived on a culture that provided freedom for risk-taking and celebrated bottom-up innovation. These changes have challenged us.

It takes a real commitment of resources and diligence to train thousands of employees and volunteer trustees in new policies and procedures, so that a new standard of conduct is actually reflected in every day practice.

And we have had to realize that, occasionally, we must turn away from attractive opportunities that would be in full compliance with the law and would provide highly valuable land or water conservation because the deal cannot be made to reach the highest ethical standards.

So, it's been tough work. But we are doing it. And we will need to continue to work at it, because we have learned along the way that our efforts to reach for the very best practices will never be fully completed. An organization truly committed to the highest ethical standard must never think that the goal has been reached.

Now that the inquiry conducted by the Finance Committee staff has finally come to a conclusion, it is with some sense of commitment honored that we tell the Committee that we have fully complied with every information request made by your staff over the past two years. From the outset we made every effort to meet all deadlines and address all of the concerns that you have raised. In addition to supplying the requested information, we have also provided narrative and background material to enable the Committee to better understand the often complex transactions that are sometimes needed to protect highly-threatened biodiversity on lands that are privately owned.

It has not been easy. People all across our organization added nights and weekends to their workloads in order to carry on with the mission and at the same time provide the thousands of documents necessary to inform your oversight. I cannot thank the many, many Conservancy staff involved in this effort enough. I especially want to acknowledge the work of Karen Berky, our Chief Compliance Officer, and Phil Tabas, our General Counsel, who led the effort from inception and gave most of their professional lives over the past two years to this inquiry, for the meticulous work they have done in proving our record. We at the Conservancy owe them our deepest gratitude, respect and admiration.

I would also like to thank the thousands of donors, trustees and members of the Conservancy who have never flagged in their commitment and generosity during this period. It has been truly rewarding to have their friendship and to know that their support for our work has been sustained over these many months.

## **The Importance of Land and Easement Donations as Conservation Tools**

The subject of your hearing this morning, the federal tax incentives encouraging the donation of conservation lands and easements, is of vital importance to the environmental health of our country. I would dare say that, today, conservation easements are the principal tool that is advancing the cause of environmental protection in the United States. Our nation experienced a very public revolution in its view of the natural environment in the 1970s and Congress responded with a series of laws from the Clean Air and Clean Water Acts to the Endangered Species and the Fisheries Management and Conservation Acts. The government agencies and regulatory programs they launched allowed us to make significant progress improving the quality of our environment through the early 1990s. But in the minds of many, that approach seems to have reached the limit of its effectiveness and for the last decade and a half the nation has been searching for new tools that are market-based and landowner-friendly.

A second environmental revolution is underway right now, and conservation easements are a principal tool in that work. Easements are one of the most powerful and effective means available for the conservation of private lands and the biodiversity they support. Easements are successfully protecting millions of acres of wildlife habitat, natural areas and a way of life for many farming and ranching families in the United States and many other countries.

A conservation easement is a restriction placed on a piece of property to protect its ecological or open-space values. It is a voluntary, legally-binding agreement that limits certain types of uses or prevents development from taking place in perpetuity. The easement is an agreement between a landowner, who voluntarily agrees to donate or sell certain rights associated with his or her property (such as the right to subdivide and develop) to a private organization or public agency that agrees to hold the landowner's promise not to exercise those rights.

As public policy is becoming more sensitive to the rights of private property owners, and we appreciate the need to provide financial incentives for the contribution they make through their wildlife stewardship practices, the many attractive features of conservation easements as a public policy tool are clear. Under conservation easements:

- Property remains privately owned and landowners often continue to live on the property;
- Many types of private land use, such as farming, ranching and timber harvesting, can continue;
- The land can remain productive, generating jobs and tax revenues to support local government services; and
- The tax benefits are a flexible financial incentive for good stewardship that a landowner can tailor to meet his or her own needs.

There has been dramatic growth in the use of easements as a conservation tool since the beginning of the 1990s. This growth is supported by the tax incentives that Congress, under the leadership of this Committee, has thoughtfully enacted, by the support of similar incentives in the tax laws of many states and by the success that easements have realized in practice.

- There are now more than 1200 land trusts in the United States and more than 600 accept and manage easements as one of their activities;
- As of 2000, local and regional land trusts had protected nearly 2.6 million acres of lands through easements—a fivefold increase since 1990; and
- Between January 1997 and June 2003, the easement holdings of The Nature Conservancy grew from 645,000 acres to more than 2 million acres.

The Nature Conservancy is an organization dedicated to the protection of biodiversity pursuing its work by protecting the lands and waters that provide habitat for

the plants and wildlife that share our Earth. We are a charity. We do that work using the tools that this Committee has enacted. We want you to know how very important the tax incentives for conservation land and easement donations are to the future environmental health of our nation. They are the foundation for a second generation of environmental protection—a new era of biodiversity conservation on private lands is underway because of these incentives.

## **The Nature Conservancy's Mission and Method**

How do we apply these tools in our work?

The Nature Conservancy was first incorporated as a nonprofit organization in 1951 and has grown to be the world's largest private land conservation and biodiversity protection organization with operations in all 50 states and 27 other countries. The Conservancy launched the first biological inventory of the United States in 1970 that became the basis for the Natural Heritage data system now maintained in each state and has been a leader in the science of biodiversity protection ever since.

The Conservancy takes a systematic, science-based approach to identifying sites for protection. Called *Conservation by Design*, this approach begins by identifying distinct divisions in the natural landscape defined by climate, geography and species – known as ecoregions. For each ecoregion, the Conservancy identifies a portfolio of high priority sites – those places that collectively capture the biological diversity of the region. The Conservancy then develops customized conservation strategies, ranging from outright acquisition, to environmental education, to working in partnership with private landowners to ensure lasting protection of these target sites.

The following principles describe The Nature Conservancy's approach to land conservation:

- The Nature Conservancy works collaboratively with partners – communities, businesses, government agencies, multilateral institutions, individuals and other nonprofit organizations.
- We employ the best available scientific information and practices to guide our conservation actions.
- We pursue non-confrontational, pragmatic, market-based solutions to conservation challenges.
- We tailor our conservation strategies and tools to local circumstances.

- We work across landscapes and seascapes at a scale large enough to conserve ecological processes and to ensure that protected lands and waters retain their ecological integrity.
- We work with willing sellers and donors, both public and private, to protect plants and wildlife through purchases, gifts, exchanges, conservation easements and management agreements and partnerships.
- Outside the United States, we work with government agencies and like-minded partner organizations to provide scientific information, infrastructure, community development, professional training and long-term resources.

The Conservancy has protected nearly 15 million acres of wildlife habitat in the United States. Some of these lands are in the more than 1,400 preserves owned and managed by the Conservancy. Other protected lands have been left in private ownership with permanent conservation easements or transferred to government agencies for management.

The Conservancy is a decentralized organization with its conservation activities focused in chapters in each of the 50 states and more than 400 offices around the world. The Conservancy employs more than 3,000 people, including 700 scientists engaged every day in research and management activities to improve habitat functions at high priority sites.

The work of the Conservancy is legally governed and guided by a 21-member national Board of Directors. The Conservancy also benefits from more than 1,500 unpaid, volunteer trustees who provide leadership and guidance to our programs.

The Conservancy has grown to be the largest conservation organization and one of the largest charities in the United States with assets of more than \$3 billion (reflecting primarily the value of the land we own and manage) and a 2003 budget of nearly \$350 million. By far, the most significant source of support and revenue to the Conservancy comes from its approximately one million members and other individual supporters. In fiscal year 2004, individuals contributed 64 percent and foundations 22 percent to the Conservancy's donated revenue. Business donations were 6 percent of our contributions and 8 percent came from other sources. In addition to gifts, the Conservancy receives funding from a wide variety of sources including government grants, investment income, and contracts.

Recently, the Conservancy launched a series of five initiatives reflecting the principal threats to important wildlife habitat at our sites including programs to address

invasive species, global climate change, impairment of freshwater quality, threats to marine life, and the alteration of natural fire regimes.

For several decades the Conservancy has worked closely with federal, state and local government agencies to assist them in acquiring key conservation lands for the benefit of the public. These projects help public agencies meet their mandate to conserve key natural resources and wildlife habitat. These projects also significantly help advance the Conservancy's mission. The Conservancy has had in place for nearly a decade a specific written policy of "no net profit" on sales of conservation lands to governmental entities. Over the years, the Conservancy has spent substantially more on land sales and associated costs on land transactions with the government than it has received in return.

The Nature Conservancy's work has resulted in gains not only for the natural world but for communities, private landowners and the public:

- In Maine's Katahdin Forest, our conservation approach led to the protection of core wilderness surrounded by ecologically compatible timber harvesting – and the preservation of local forestry jobs.
- In the Malpai Borderlands of New Mexico, Arizona and Mexico, it led to the creation of a public-private partnership that has effectively protected 800,000 acres from development and helped re-establish the natural fire regime across huge swaths of public and private lands.
- In the Blackfoot Valley of Montana, the Conservancy accepted the state's first conservation easement on 1,800 acres in the mid-1970s. Today, more than 50 river miles and 85,000 acres in the Blackfoot are covered by easements and it is one of the most intact landscapes in all of Montana.
- In Northwest Florida, The Nature Conservancy, the Department of Defense and the State of Florida have joined in a formal partnership to protect a 100-mile corridor of forest, rivers and wetlands that will buffer military bases and military flight paths while preserving the plant and animal life of these undeveloped lands. The first conservation easement fostered by this partnership, for more than 18,000 acres on the Nukose Plantation, was purchased in February 2005.
- And, in the Big Woods of Arkansas, as we all have recently learned, The Nature Conservancy's conservation approach led to the protection of essential habitat for the ivory-billed woodpecker, heretofore presumed extinct. There, more than 20

years ago, The Nature Conservancy began working with duck hunters, legislators and state and federal agencies to conserve rapidly disappearing bottomland hardwood forest – the shelter and lifeline into the 21<sup>st</sup> century for this extraordinary bird on the brink of extinction.

We are proud of this record.

## **Governance, Accountability and Transparency Reforms**

The Conservancy has been and remains committed to carrying out this mission in accordance with the letter and spirit of all applicable laws and its organizational values, which speak to “integrity beyond reproach.” In recent years, the Conservancy has grown substantially, both in absolute size and in the number and complexity of the transactions it undertakes to carry out its conservation mission. During this same period, policymakers and others have properly focused increased attention on the governance and activities of nonprofit organizations, including the Conservancy. We recognized a need to review and update our governance and accountability policies and procedures. We had undertaken that effort well before the series of reports on the Conservancy appeared in the *Washington Post*. Needless to say, our efforts to improve governance and accountability procedures within the Conservancy were accelerated by that examination and the inquiry of this Committee.

In June 2003, the Conservancy initiated a comprehensive effort to strengthen its general governance and its specific policies and procedures, including those applicable to its conservation programs. We convened a panel of independent experts to assist us with our governance review. The Governance Advisory Panel began its work in September 2003 and completed its review the following March. The panel presented a set of far-reaching recommendations to the Conservancy’s Board of Directors. The Board and the Conservancy’s management acted quickly to adopt and implement virtually all of the panel’s recommendations. The panel’s distinguished chairman, Ira Millstein, has just completed a one-year audit of the measures we have taken to implement the panel’s recommendations. We are pleased that he is here this morning to describe that work to you.

The recommendations of the Panel and the changes we have made are intended to achieve the following goals: (1) enable the Conservancy’s Board of Directors to provide increased strategic guidance and undertake more active oversight; (2) incorporate many of the governance principles contained in the Sarbanes-Oxley Act; (3) promote tax law



compliance by all parties to conservation transactions in which the Conservancy is a participant; (4) address on a comprehensive and consistent basis issues involving actual or potential conflicts of interest; (5) provide more specific rules guiding key conservation programs such as easements, conservation buyer transactions and sales to governments; and (6) ensure high-level advance review of transactions that may present financial, legal, ethical or other reputational risk to the Conservancy as a whole.

The Conservancy is proud of the results of its efforts. The organization believes it has significantly raised the bar, both in terms of governance and specific policies and procedures. We have communicated these new policies and procedures to the Finance Committee staff and welcome the positive treatment these reforms received in the Committee's report.

**Board structure and role.** The Board of Directors has been reduced in size from 41 to 21 members and has increased its day-to-day organizational oversight of the Conservancy by creating a more active Executive Committee and by restructuring its other committees to provide strategic guidance; to conduct active oversight; and to define and manage the relationships with the chapters.

New Board committees are addressing financial and governance issues while the entire Board considers conservation strategies. This new management and Board structure also enhances the Board's ability to carefully and thoroughly assess and manage organizational and reputational risks, as well as financial risks.

**Trustees.** Governance issues arising from the Conservancy's decentralized structure have been addressed through a new Trustee Council, written standards for trustee boards and a comprehensive set of operating principles for trustee boards.

**Sarbanes-Oxley.** The Conservancy has adopted aspects of the Sarbanes-Oxley Act of 2002 that are relevant to nonprofit organizations: the Conservancy has audited financial statements; auditors are selected by the Board's Audit Committee; and the lead audit partner is rotated at least every five years. Under the supervision of the Audit Committee the scope of internal audits has been expanded and internal auditors are authorized to perform investigatory functions similar to those performed by governmental inspectors. The Conservancy recently enacted procedures to ensure that internal audit findings are acted upon. The Board is involved in executive compensation issues. No loans can be made to directors, officers or employees. The Conservancy has implemented a whistleblower policy.

**Compliance officer.** The Conservancy has created a new position of a Chief Compliance Officer, independent of the General Counsel, who is responsible for organization-wide compliance and training programs. The Chief Compliance Officer has created an ethics and compliance program. All key managers attend training and execute an annual certification saying that they and their staff have complied with the Conservancy's policies and procedures and certifying that any conflicts of interest have been disclosed.

**Transparency.** The Conservancy has taken important steps to improve the transparency and public understanding of its Form 990 filings. The Conservancy's Form 990 for Fiscal Year 2003 included more information about the Conservancy's governance and its direct charitable programs and accomplishments. Key examples of increased transparency include: a complete list of every grant the Conservancy awarded; expanded reporting of executive compensation; extensive information about the Conservancy's performance including its approach to projects, the work performed and conservation results; and information about the Conservancy's governance structure and new policies and procedures that were put in place over the last year.

The Conservancy adopted a policy requiring Board approval for the formation and operation of any related organizations to ensure that the related entities are consistent with the Conservancy's goals and objectives and that related risks are identified and appropriately managed.

**Risk assessment committee.** The Board created a new Risk Assessment Committee in early 2004 to supplement the Board's review process and specific policies and procedures applicable to programs and operations. The Risk Assessment Committee has 10 members from senior staff representing all relevant disciplines. The purpose of the Committee is to provide advance review from a legal, ethical, and reputational perspective of proposed transactions, projects, and other matters that are exceptionally complex or that are precedent setting.

The Committee is patterned after similar committees used by many financial services organizations and reflects the fact that, to accomplish its mission, the Conservancy engages in a broad range of complex projects and joint ventures, as well as integrating compatible human uses on conservation lands. The staff Committee reports directly and regularly to the Conservation Practices and Projects subcommittee of the Audit Committee of the Board of Directors.

**Conflict of interest policy.** The Conservancy's long-standing conflicts policy has been strengthened in several respects that go well beyond legal requirements, including expanding the definition of who is considered a related party to include major donors, and the immediate families of Board members, trustees and staff.

Some classes of transactions have been prohibited completely (e.g., purchases and sales of land, including easements, involving related parties such as directors, officers, trustees, employees and their families, and cause related marketing agreements between the Conservancy and Board members or their companies).

Land and other transactions involving major donors are subject to advance review and approval under the conflicts procedure. A Board member or his/her company may not claim a tax deduction for a gift of land unless the transaction is independently reviewed, scrutinized and approved by the Board.

The process for reviewing conflicts has also been expanded beyond the General Counsel's office to involve review by a high-ranking staff Conflicts Committee. Cases involving Board members and major donors require review and approval from the Board's Audit Committee.

Training programs have been initiated to enable staff to spot and properly address cases that involve even the appearance of a conflict.

**Conservation easements.** The Conservancy accepts conservation easements only on lands that fall within scientifically-identified, ecologically-important priority landscapes. Based on a thorough review of our practices by our Conservation Easement Working Group, the Conservancy is strengthening its policies and procedures on the documentation, monitoring and enforcement of easements.

New policies and procedures regarding conservation easements include: standardized decision-making on location, terms and conditions of easements; a stricter set of standards for approving easement modifications involving related parties; particularly large, risky or potentially controversial easement donations will be referred to the Risk Committee for review; and the Conservancy will inform prospective donors of the terms and conditions for acceptance of easements to ensure a clear understanding of mutual expectations and obligations.

Continuing its long standing policy, the Conservancy will not agree to a substantive modification of an easement unless the original conservation purpose of the

easement is not compromised, the General Counsel's office determines that the modification does not result in a net private economic benefit and approval is granted from the relevant state authority.

In addition, we have recently enhanced the policies and procedures for monitoring and enforcement of Conservancy easements to ensure that conservation goals are met and easement terms are enforced. Now as part of routine audits, the Conservancy's internal audit staff checks to see if easements are being monitored and that monitoring site reports are being filed.

**Form 8283.** To promote tax law compliance by donors, the Conservancy will not sign IRS Form 8283 certifying receipt of a land contribution, such as an easement, unless the Conservancy receives the 8283 with all required information filled out, a copy of the appraisal to be used by the donor in establishing tax values is included, and there is a written certification by the appraiser that IRS "qualified appraisal" standards have been followed. Additionally, in situations involving donations from members of the Board of Directors, trustees, staff, the immediate family of those three groups, and major donors the appraiser must also certify that the relationship did not influence his or her appraisal. (These policies contrast with existing tax law that requires only that the Conservancy certify receipt of the gift.)

The Conservancy will not participate in transactions in which the appearance of the transaction is suspect or unreasonable, or where the transaction does not conform to the 8283 policy.

**Tax compliance.** Other than providing general tax information, the Conservancy has consistently prohibited its staff from making any oral or written statement to any third party concerning the tax consequences to that person of a specific contribution to the Conservancy. That policy was strengthened to provide that any new type of land transaction must be approved in advance by the Legal Department, that the Conservancy will not participate in tax shelters, and that the Conservancy will not provide tax indemnities.

**Land sales to governments.** The Conservancy's long-standing "no net profit" policy is designed to ensure that the organization recovers only its costs, even if the land has increased in value while held by the Conservancy. The organization strengthened this policy to better account for the direct and indirect costs associated with acquiring, holding, and managing land pending a sale to the government. The policy also was strengthened to ensure that the value of a gift received and restricted to the property, any

government funding related to the acquisition of that property, and any other significant income derived from the property are passed on to the government.

**Conservation buyer transactions.** Conservation buyer transactions are designed to keep conservation lands in private hands. In these transactions, the Conservancy acquires a piece of property and sells it to a private buyer subject to a conservation easement designed to permanently preserve the land's ecological values. The easement reduces the value of the land and the Conservancy sells the property for its new fair market value reflective of the easement encumbrance. All of the Conservancy's conservation buyer transactions serve important conservation purposes and comply with all applicable laws. Of the 10,000 Conservancy land transactions conducted over the past 10 years, 169, or less than two percent, were conservation buyer transactions. Of those 169, only 19 were with trustees or employees of The Nature Conservancy. All of these properties were sold for fair market value and subjected to conflict of interest reviews. Nevertheless, the Conservancy no longer engages in conservation buyer transactions with related parties. In order to ensure that there is a conservation benefit to the public, all conservation buyer properties must be in a priority site as identified by Conservancy scientists. The organization now widely advertises each property to provide a fair purchase opportunity to all, relies on independent appraisals to ensure it receives fair market value and follows specific procedures to make transactions more transparent and to promote appropriate tax treatment.

**Compatible human uses.** The Conservancy continues to take steps to ensure that human uses on lands it owns or manages are compatible with conservation objectives. This includes review of available scientific studies in consultation with the U.S. Fish and Wildlife Service and surveys of existing uses of Conservancy lands based on the recommendations of independent scientists. Although mineral exploration on Conservancy property was extremely rare, in 2003 the Board prohibited new oil, gas or hard-rock mineral activities on lands the Conservancy owns (unless required by contract or law). In addition, innovative, large-scale or untested human uses are subject to advance review by the Conservancy's new Risk Assessment Committee.

**Better Business Bureau Standards for Charity Accountability.** On April 4, 2005 the Better Business Bureau Wise Giving Alliance completed a comprehensive review of The Nature Conservancy's governance, financial and accountability policies and procedures and determined that the Conservancy meets all of its Standards for Charity Accountability. The Better Business Bureau Wise Giving Alliance is a national charity watchdog affiliated with the Better Business Bureau system. The Alliance and its predecessor organizations have over a century of combined experience in charity

evaluation. Unlike other charity monitoring groups that focus solely on a review of charity finances, the Alliance completes comprehensive, in-depth evaluations of the charity's governance, fundraising practices, solicitations and informational materials, as well as how it spends its money.

**A one-year review.** To get an independent assessment of our progress to date, we asked Ira Millstein, the chairman of our Governance Advisory Panel, to come back a year after the delivery of the panel's report to review our progress. Mr. Millstein has attached the results of his one-year review to his testimony for this hearing today and we are pleased that he is here to testify before the Committee on his work with the Conservancy.

His one-year review concluded that the Conservancy has made a significant, good faith effort to consider and implement the panel's recommendations. The report praises the changes the Conservancy has made and the progress we continue to make to strengthen our organization. Mr. Millstein's assessment found that the Conservancy's Board and senior leadership are more engaged in the oversight and management of the organization, are paying greater attention to managing risk and conflicts of interest and are making solid progress in enhancing transparency and accountability. He recognized our commitment to ongoing improvement and noted that while work remains to be done, significant advancement has been made implementing systems that will enable the Conservancy to promote and track compliance with policies and procedures, such as those governing conservation easements.

The Conservancy is grateful to Mr. Millstein for his commitment to help us achieve our goal—making the Conservancy a recognized leader in the areas of nonprofit governance, accountability and transparency. He has given generously of his time and has provided a great service to our organization.

As Mr. Millstein noted in his report, there remains work to be done. We've learned that governance, accountability and transparency require perpetual diligence and review. We have made these areas an organizational priority, and they will remain so in the years ahead.

## **Tax Code Reforms for Conservation Easement and Land Donations**

Conservation easements are one of the most cost-effective and important tools available for the permanent conservation of private lands. Conservation easements are protecting millions of acres of critical wildlife habitat and natural areas, keeping these lands in private hands and generating significant public benefits.

A conservation easement is a voluntary agreement between a landowner and a conservation organization or government entity in which the landowner promises to limit the use of his or her lands to activities that are consistent with conservation purposes. The Nature Conservancy strongly supports conservation easements and targeted tax incentives designed to encourage their use.

Although the vast majority of conservation easements protect important natural areas and produce significant public benefits, as with any charitable endeavor, there have been limited, but clear, cases of abuse. To eliminate the opportunity for abuse, to ensure conservation easements are used only in the manner intended by Congress and to ensure that every easement produces significant conservation and public benefits, some of the laws governing conservation easements and related tax incentives should be strengthened.

To that end, on April 6, 2005, The Nature Conservancy submitted to Congress a series of recommendations for specific reforms. These reforms are designed to address potential areas of abuse, while preserving the flexibility and integrity of the existing laws that have helped make conservation easements such a valued option for private landowners. I believe that our proposed reforms effectively address all of the concerns that have been raised by members and staff of the Committee in our visits as we prepared for this hearing.

**Issue: Appraisals.** A donation of a conservation easement or land may entitle the donor to a significant tax deduction; therefore it is imperative that the public is assured that the value of a land-related gift eligible to be claimed as a tax deduction is fair and appropriate. Determining the value of a donation of a conservation easement or land requires a thorough, experienced appraiser, one who is well-versed in the complexities of conservation easements, understands how protected land may affect the value of adjacent properties and is properly certified and uses uniform appraisal standards.

To strengthen and improve the valuation process for gifts of easements and land, Congress should enact reforms that:

- Require appraisers to be state certified.
- Require appraisers to follow the highest professional appraisal standards.
- Create penalties for appraisers who produce inflated appraisals.

- Codify the “value enhancement” rule, the existing IRS rule that requires appraisals to consider whether an easement donation increases the value of neighboring property owned by the donor.
- Require two appraisals to substantiate the value of a large conservation land gift.
- Increase penalties for donors who submit inflated appraisals to the IRS to justify tax deductions taken for gifts of land or conservation easements.

**Issue: Conservation purpose and public benefit.** Congress enacted tax incentives to encourage the use of conservation easements with a requirement that easements must serve significant conservation purposes and provide public benefits.

To ensure every conservation easement serves a conservation purpose and provides public benefits, Congress should enact reforms that:

- Require public disclosure on a charity’s annual IRS Form 990 of donated easements for which a donor takes a tax deduction.
- Prohibit tax deductions for specific types of conservation easement transactions, such as easements on golf courses.
- Permit the Secretary of the Treasury to select a private organization that will establish and manage a formal, uniform and voluntary system for accrediting organizations holding conservation easements.

**Issue: Monitoring and enforcement.** Conservation easements are designed to remain in effect in perpetuity, as are the conservation purposes they serve and the public benefits they produce. To ensure a conservation easement continues to achieve its desired conservation and public outcomes, easement terms must be followed, regularly monitored and enforced.

To ensure landowners and conservation organizations fulfill the obligations that come with donating and accepting a conservation easement, Congress should enact reforms that:

- In cases where a donor intends to take a tax deduction for a conservation easement gift, prohibit any modifications to the easement that reduce the conservation values the easement was designed to preserve. In cases where a modification’s effect on the conservation value of an easement is neutral or improves the conservation value, the modification must be approved by a third party and any financial benefit to the landowner must be addressed.



- Require easement-holding charities to annually certify on their IRS Form 990s that they have an appropriate easement compliance and monitoring program in place.
- Create penalties for donors and donees that violate the terms of conservation easements.

Further, Congress should provide additional resources to the IRS to support conservation easement and land donation oversight activities.

**Issue: Additional incentives to encourage donations.** The Nature Conservancy strongly supports passage of additional incentives for private landowners who voluntarily choose to protect their land for conservation purposes. Such incentives have been sponsored by Senators Grassley and Baucus and are included in the current version of the CARE Act (S. 6, introduced by Senator Santorum in the 109<sup>th</sup> Congress). These incentives are needed to ease the landowners' financial burden and to enhance the net after tax return to the typical 'land-rich, cash-poor' private landowner for whom the current set of incentives is not meaningful.

These incentives would reduce the capital gains tax on sales of land or interests in land for conservation purposes and would enable the landowner who makes a living from his/her land to use all of the available tax benefits from a gift of an easement against his/her income.

President Bush has included the proposal to reduce the capital gains tax on sales of land or interests in land for conservation in the Administration's current budget proposal, as he has done since he was elected President.

## Conclusion

As the Conservancy has responded to close public scrutiny and strengthened its internal governance, we have learned some lessons that may be valuable for others in the charitable sector to consider:

- Governance must keep pace with growth. Every charity must have an active, engaged board committed to continuously reviewing, adapting and strengthening its oversight to meet the changing needs of the organization.

- Charities need individuals on their boards that bring specific professional skills and expertise beyond the traditional and almost exclusive roles of door-opening and fundraising. In today's world, board expertise in areas such as the law, government policy, accounting and management are not a luxury—they are a necessity.
- Because charities trade on their reputations, it's not enough to simply meet minimal levels of compliance. For charities, perception is everything, and charities can't afford even the appearance of impropriety.
- Openness and transparency must be organizational priorities for nonprofits. Since the performance of charities can't be judged on quarterly earnings statements, the public must have access to information to help them make judgments about the effectiveness of the charities they may support.
- Senior leadership and boards at nonprofits must be attentive to the full range of potential risks with policies and procedures in place to assure that we thoroughly respond promptly to challenges before they become crises that undermine public trust.

A sector-wide commitment to this approach will ensure that charitable institutions remain among the most trusted elements of our society.

Mr. Chairman and members of the Committee, The Nature Conservancy has made such a commitment. I firmly believe that the changes we have implemented over the last 20 months have made the Conservancy a far stronger institution and brought our organization into full alignment with expectations befitting a trusted nonprofit institution.