
APPENDIX D

**INFORMATION RE:
CONSERVATION EASEMENTS**

JUL 25 2003

Question 6: Easements

Background on communication/marketing contact calls—Prepared 7/21/03

The teleconference call that took place on December 4 2002, was one of the update calls that the communications department at the Worldwide Office regularly hosts for the approximately 115 Conservancy staff on the Worldwide Office maintained e-mail distribution list of communications/marketing contacts. There is no regular teleconference schedule and the frequency of these calls increased during the months before the Washington Post articles ran.

The purposes of the December 4 2002 call was to keep the communication contacts apprised of the status of the *Washington Post* series so that Conservancy staff in the field who deal with the media were informed. For the teleconference call on December 4, 2002, the Acting Director of Media Relations, Jordan Peavey, sent an e-mail on December 2, 2002 to the communications/marketing contacts e-mail distribution list to inform them about a mandatory conference call to discuss the upcoming Washington Post series. (A copy of this e-mail invitation is attached)

Despite the mandatory attendance suggested, the usual practice for these calls is that whoever is available will dial in at the appointed time. During the first few minutes of the call an informal roll call is taken as people sign on to the call. The communications department does not maintain a record of the people or states that are on the call.

If a communications contact is not available he or she might ask someone else from the state office to listen in on the call. Likewise, if a state does not have a designated communications contact someone else from the state office might listen in on the call.

The people on the call may or may not take handwritten or typed notes for their information or to distribute to other people in their offices. The Worldwide Office does not collect their notes but does send a summary of the call to the communication/marketing contacts e-mail distribution list that is invited to the call.

Teleconference of December 4, 2002

The Director of Conservation Marketing, David Williamson, who had been the point of contact for working with the Washington Post reporters, led the call. He spent approximately an hour going over a wide-range of issues relating to the *Washington Post* in a very conversational and informal manner. He gave a chronology of the interaction between the Washington Post reporters and Conservancy staff and gave a few examples of some of the issues materials that the reporters examined.

The Conservancy was concerned at this point in time and in our interactions with the reporters that the article would not be a fair and accurate representation of the organization. Thus, Mr. Williamson detailed potential themes that the Conservancy staff

thought the Post may run, despite our conviction that they were not an accurate portrayal of the situation.

As one of these themes Mr. Williamson explained that someone could see the valuation of conservation easements as subjective and a tool to inflate our income. He was not in any way implying that this was the practice of the Conservancy. In fact, it is TNC's practice to advise donors that it is their own responsibility to secure "qualified appraisals" to substantiate the value of their contribution and that TNC takes no position on the value of the donated land or easements claimed by donors.

Mr. Williamson also relayed the Conservancy's estimate on the likely timing of the article and the preparation materials the media relations department was gathering to help the state offices prepare for likely questions from key constituencies such as donors, members or the media. He also took questions from the people on the call.

After the conference call, Ms. Peavey sent the communication/marketing contacts e-mail distribution list the official notes of the call from the Worldwide Office. (A copy of the e-mail with the notes as an attachment and a copy of the official notes as they were sent out are attached).

"Memo" Referenced in the Washington Post

The "memo" referenced in the *Washington Post* article came from Chandra Gordon, donor relations manager, for the Kentucky chapter of The Nature Conservancy. Kentucky is one of the states without a designated communications contact and neither the state director, Jim Aldrich, nor the then director of philanthropy, Logan McCulloch, was available at the time of the call. Ms. Gordon and the assistant to the state director, Tonya Courtney, debated who would sit in on the call to take notes. They decided that Ms. Gordon would sit in on the call as a note-taker for Kentucky. The "memo" is Ms. Gordon's notes that she took based on the discussion that she heard on the call. On December 6, 2002, she sent these notes to Mr. Aldrich, Mr. McCulloch and Ms. Courtney. The state director, Mr. Aldrich, asked a development assistant, Marsha Sims, to send these notes to the Kentucky staff. (A copy of Ms. Gordon's notes and the e-mail sent by Ms. Sims to Kentucky staff are attached.)

QUESTION 6: Conservation Easements

JUL 25 2003

“In addition, for all easements above \$25,000 (as valued by the donor or purchaser price) please provide a list valuing all easements purchased by or donated to TNC since January 1, 1998, including the dollar amount of the easement, where the land was located, and the identity of the donor or seller. Please note all easement purchased or donated that involved officials, governors, or trustees of TNC or its state affiliates.”

It will not be possible to fully complete the request to supply information about the value of all easements above \$25,000 acquired by TNC since January 1, 1998 because of the way in which such information is obtained and collected by TNC. The value of easements donated by individuals where a tax deduction is claimed will be substantiated by an independent qualified appraisal and accompanied by Form 8283; in those cases we will be able to provide the required valuation information. Similarly, for easements that were purchased by TNC, either as a bargain-sale or for full value, we will have an appraisal or other information to substantiate the values involved because it is TNC practice to obtain such valuation information as a basis for and prior to entering into such purchases. However, there are cases in which the donor did not claim a tax deduction in which event TNC may or may not have relevant appraisal information. In addition, in cases where a corporation is the donor of the easement, since there is no legal requirement for such donors to use Form 8283 which would require an appraisal to be attached thereto, TNC may or may not have the relevant appraisal information. TNC uses our own appraisal information as the basis for book value in cases where an easement has been purchased. In cases where an there has been a donation and the donor supplies TNC with an appraisal, TNC uses that valuation as the basis on which to establish the value for such easements on TNC's books. Where no appraisal exists, TNC carries such interests on the books at an estimated value where there is a reasonable basis for such valuation. TNC has been advised by its external

April 15, 2004

Responses

to

Senate Finance Committee Questions on Conservation Easements

This memorandum responds to 12 of the questions concerning conservation easements set forth in Part VI of the letter dated March 3, 2004 to The Nature Conservancy (the "Conservancy") from Senators Grassley and Baucus on behalf of the Committee on Finance of the United States Senate (the "Committee").¹ Part I of this memorandum contains a brief overview of the use of conservation easements by the Conservancy; Part II identifies the Conservancy's key policies and procedures with respect to conservation easements and describes the steps taken by the Conservancy from and after June 13, 2003 to strengthen those practices and procedures; and Part III provides detailed responses to the Committee's specific questions with respect to the application of the Conservancy's policies and procedures.

I.

Use of Conservation Easements by the Conservancy

The mission of the Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the land and waters they need to survive. The Conservancy has developed and uses a strategic, science-based process called "Conservation by Design" to identify lands and waters for inclusion in the Conservancy's conservation programs.

¹ The remaining five questions contained in Part VI of the Committee's letter (i.e. Questions 10, 11, 13, 14, and 17) request data or documents that do not require explanation or elaboration. Responses to those requests, and the data and documents requested in connection with the questions addressed in this memorandum, are being provided to the Committee separately. The Committee is also being provided with all documents referred to in this memorandum.

In the United States, the Conservancy traditionally has used land acquisitions as a principal tool to accomplish its mission and today owns and manages more than 1,500 preserves throughout the United States. In many instances, however, the Conservancy's conservation mission may be accomplished in other ways. In such cases, the Conservancy employs a broad range of alternatives to the "purchase and hold" strategy. Conservation easements are one such alternative.

A conservation easement is a voluntary agreement by a landowner to surrender irrevocably certain rights that are otherwise inherent in the ownership of the land (e.g., the right to subdivide and develop the land or the right to use the land for certain purposes). The easement is then sold or donated by the landowner either to a private organization, such as the Conservancy, or a public agency, which agrees to hold the right to enforce the terms of the easement in perpetuity. Even where the current landowner has no intention of taking actions prohibited by the conservation easement (e.g., subdividing and developing the land), the conservation easement still serves important conservation purposes. This is because a conservation easement "runs with the land" and thus is binding on the current and all future owners of the land. In essence, valuable rights surrendered in a conservation easement are forfeited permanently and effectively no longer exist.²

Land that is subject to a conservation easement remains in private ownership. It is subject to State and local property taxes and available for those human uses (including job-producing economic activities) that are compatible with the conservation objectives of the easement. Conservation easements are carefully structured by the Conservancy to encompass only those rights that are necessary to ensure that specific conservation values are achieved. As a result, many types of private land use, such as farming, ranching and timber harvesting, can continue under the terms of a conservation easement subject to

² Treas. Reg. § 1.170A-14(g)(6)(i) states: "If a subsequent unexpected change in the conditions surrounding the property [that is the subject of a conservation easement] . . . can make impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if the restrictions are extinguished by a judicial proceeding"

suitable restrictions protect land and water resources to ensure that the underlying conservation objectives are achieved on a permanent basis.

Conservation easements are used in the United States by more than 1,200 other conservation organizations, including many local and regional land trusts, and in some locations easements may be the only viable option for achieving conservation objectives. The Conservancy has used conservation easements for more than four decades for a broad range of purposes. For example, conservation easements have been and continue to be used to provide buffers for core conservation areas, including national parks and other public lands; preserve critical habitats; conserve watersheds and aquifers, thus helping to ensure clean drinking water; and protect open space in rapidly growing urban and suburban areas. Given these public benefits, nearly all States have enacted laws specifically authorizing the creation of conservation easements in land and these laws are generally modeled on the Uniform Conservation Easement Act adopted in 1981 by the National Conference of Commissioners on Uniform State Laws. Federal tax incentives to promote conservation easements were first provided by Congress in 1976. A number of States now also provide tax benefits as do other countries such as Canada and Australia.

II.

The Conservancy's Practices and Procedures

As described more fully in Part III of this memorandum, the Conservancy has over the years adopted a broad range of policies and standard operating procedures governing the use of conservation easements to carry out its mission. Many of these policies and procedures were formally established in 1996, based on then existing unconsolidated policies and practices.³ Specifically, since 1996, the Conservancy has had written policies or standard operating procedures that govern when easements will be accepted or purchased by the Conservancy; require preparation of a detailed "baseline" report at the time of acquisition to facilitate future monitoring and enforcement; and provide for the

³ A number of these "existing unconsolidated policies and practices" were reflected in memoranda, etc., and in 1996 the Conservancy completed a comprehensive project to codify its policies and procedures.

establishment of stewardship funds to finance monitoring and enforcement. In addition, in 2001, the Conservancy established a comprehensive standard operating procedure governing proposed modifications to the terms of easements. The current procedure requires that any decision by the Conservancy to accept a proposed easement modification must be submitted to the relevant State authorities.

At its meeting on June 13, 2003, the Board of Governors of the Conservancy reaffirmed the importance of conservation easements to the Conservancy's mission and, in its review of conservation buyer transactions,⁴ adopted three new policies that relate to conservation easements and build upon prior policies and procedures. *First*, a scientific assessment must be completed for all conservation buyer transactions to determine the easement terms that are necessary to achieve the desired conservation objective. *Second*, community values and input will be integral in determining proposed land uses under a conservation easement. *Third*, all conservation buyer transaction easements must include a monitoring plan that will ensure that the conservation goals will be met and the easement terms will be enforced.

Immediately following the Board's meeting, the Conservancy's senior management commissioned a comprehensive internal review of the processes by which the Conservancy acquires, uses, monitors and enforces conservation easements. A draft report, with specific recommendations, was published on December 14, 2003 and circulated for comment to senior managers within the Conservancy, volunteer leaders, outside experts and partner organizations. The draft report was also posted on the Conservancy's web site for public comment. Following review of the comments received, and with the concurrence of the Executive Committee of the Board of Governors, additional policies and procedures with respect to conservation easements were adopted in a series of actions culminating on March 12, 2004. The internal review is continuing and a final report is expected to be

⁴ The Conservancy's conservation buyer program is described more fully in a separate memorandum (the "Conservation Buyer Memorandum") provided to the Committee in response to the Committee's questions on conservation buyer transactions, as set forth in Part I of the Committee's letter dated March 3, 2004.

issued in June 2004, at which time additional changes to the Conservancy's policies and procedures concerning conservation easements may be adopted.

One set of changes already adopted is intended to foster compliance by donors with all applicable tax law requirements. Under the Internal Revenue Code, it is the obligation of the donor of a conservation easement to establish whether a tax deduction is allowable with respect to the donation and, if so, to substantiate the amount of that deduction. The Conservancy has, however, adopted policies and procedures designed to foster compliance with all applicable tax law requirements governing the valuation of gifts of land and conservation easements (including easements imposed under the Conservancy's conservation buyer program). As approved by the Executive Committee of the Board of Governors on March 12, 2004, it is stated Conservancy policy to encourage donations of conservation easements and other interests in land ". . . in a way that such donations will conform to the letter and spirit of the law."

Under a new standard operating procedure published to implement this policy, the Conservancy will henceforth execute an IRS Form 8283⁵ proffered by a donor only if: (a) the form, as presented to the Conservancy, contains all information required by applicable Internal Revenue Service procedures; (b) the donor provides the Conservancy with a copy of the appraisal to be used by the donor to establish the tax valuations shown on the form; and (c) the donor provides to the Conservancy a written statement by the donor's appraiser attesting that (i) the appraiser is State-certified under procedures established by Congress in the Financial Institutions Reform, Recovery and Enforcement Act of 1989; (ii) the appraiser has used generally accepted professional appraisal standards in making the appraisal, including those established for qualified conservation contributions under section 170(h) of the Internal Revenue Code; (iii) the appraisal otherwise satisfies all of the requirements for a "qualified appraisal" prescribed by the Internal Revenue Service, (iv) the appraiser has the requisite expertise and experience to

⁵ Form 8283 must be executed by donee organizations such as the Conservancy to verify the receipt of a gift of land or an interest in land such as an easement. The form is also used by donors to provide the Internal Revenue Service with information concerning the valuation of the gift.

make appraisals of conservation easements and conservation lands; (v) the appraiser is not barred from practice before the Internal Revenue Service or Treasury Department or other administrative bodies; (vi) the appraiser has accounted for any value enhancements to other property of the donor or parties related to the donor; and (vii) if the appraisal is being made for a person who is a “related party” or “major donor” with respect to the Conservancy, as defined in the Conservancy’s conflicts of interest policy, the appraiser is aware of the relationship and attests that it did not influence the appraiser’s valuation.⁶

The Conservancy’s strengthened policies and procedures for conservation easements incorporate a number of other important changes. *First*, conservation easements generally will be accepted or purchased by the Conservancy only if the easement contributes directly or indirectly to the conservation of “portfolio sites” identified through planning processes that are based on the Conservation by Design methodology⁷ and prospective donors must be informed of the Conservancy’s policies and procedures to ensure a clear understanding of mutual expectations and obligations with respect to the easement. *Second*, while many decisions with respect to the appropriate terms and conditions, monitoring and enforcement of easements will continue to be made by the Conservancy’s on-site personnel at the State and local level, increased central oversight and guidance will be provided.

Third, the Conservancy will accept gifts of easements from related parties and major donors only if two special requirements are satisfied. The gift will be subject to advance review and approval under the Conservancy’s strengthened conflicts of interest procedures. In addition, the appraiser retained by the related party or major donor to value the easement for tax purposes must certify that (a) the appraisal satisfies all of the

⁶ Under the Conservancy’s policies, “related parties” include members of the Board of Governors, State Trustees, and employees, together with close members of their families and business organizations in which they have a specified equity interest. (Sales or purchases of land, and of interests in land, involving related parties were prohibited in June 2003.) “Major donors” include contributors whose support totals \$100,000 or more during a five-year period.

⁷ As described more fully in the Conservation Buyer Memorandum, Conservation by Design is a strategic, science-based planning process adopted by the Conservancy in 1995 to identify lands and water for inclusion in its various conservation programs.

requirements of a “qualified appraisal” prescribed by the Internal Revenue Service, and (b) the appraiser is aware of the relationship between the related party or major donor and the Conservancy and that relationship did not influence the appraiser’s opinion as to the value of the easement. *Fourth*, all proposed modifications to easements involving related parties or major donors be subject to advance review and approval under the Conservancy’s strengthened conflicts of interest procedures and, as appropriate, to further advance review by a new Risk Assessment Committee.

III.

Finance Committee Questions on Specific Practices and Procedures

1. State the number of conservation easements held by your organization as of December 31, 2003. As of December 31, 1993.

Under the Conservancy’s computer database containing information about the Conservancy’s interests in land, easements are tracked on a parcel by parcel basis. As of December 31, 1993, the Conservancy had 1,065 parcels of land under protection through conservation easements. The comparable figure for December 31, 2003 was 1,608 parcels.⁸ The Conservancy also carries out its mission by securing conservation deed restrictions.⁹ There were 52 such cases as of December 31, 1993 and 145 as of December 31, 2003.

2. Is there on file with your organization a copy of each deed or other legal document that grants or establishes the conservation easement granted in favor of TNC? If so, describe how they are maintained. For example, is there a central file or are the files held in local offices? Are there any properties for which a copy of the conservation easement deed is missing or not immediately available to TNC? If so, state how many.

The Conservancy maintains a central file for key legal documents, including documents related to the acquisition of land or interests in land, such as conservation

⁸ It is possible that more than one parcel of land may be protected by a single conservation easement.

⁹ Deed restrictions typically contain only limitations that are general in nature (e.g., a prohibition on subdividing) and, under the laws of some States, such restrictions can be enforced only by those in the chain of title with respect to the land. Conservation easements are more suitable if detailed and comprehensive restrictions are required to achieve the conservation objective and they may be enforced by the Conservancy even if it is not in the chain of title.

easements. With respect to conservation easements, the original documents (including the documents that grant or establish the easement) are maintained in secure files in the Conservancy's central office in Arlington, Virginia. The files are organized on a State by State basis in the case of land located within the United States. In addition, copies of these documents are maintained as appropriate in State offices and in other regional and district offices where members of the Conservancy's legal staff are located.

The Conservancy has a specific procedure for processing legal documents. All original legal documents related to land (including conservation easements) are sent to the Conservation Information Management ("CIM") department in the Conservancy's central office from the field offices where they were generated. When the documents are received in the central office, they are date stamped and entered into the Conservation Land System (the "CLS"), a computer database containing information about the Conservancy's transactions in and holdings of land. "Hard copy" files are also made. As described above, these files contain the original documents and all related correspondence. In the case of files for conservation easement projects, the Baseline Documentation Report (described elsewhere in this memorandum) is also included in the hard copy file. CIM specialists verify the accuracy of the database by comparing the information in the hard copy files with the information in the database.

The Conservancy's staff believes that the central files are complete, but recognizes that there may be isolated cases where this is not the case. To minimize such occurrences, files are reviewed periodically for completeness and a report on missing documents is sent to the appropriate field offices approximately every six months. If documents are determined to be missing from the central files, duplicates are sought (and typically obtained) from other Conservancy offices or from repositories of official land records.

Like many large organizations, the Conservancy has an ongoing microfiche process in which completed project files that are more than three years old are microfilmed. In this process, files are obtained from the field offices, combined with the appropriate central office "hard copy" files and then transmitted to a microfiche contractor. Upon return, the correspondence is destroyed and the original legal documents are sent to a third party

storage facility for permanent safekeeping. Original microfiche files are also sent to storage. One copy of the microfiche is sent to the appropriate regional or district office and one copy is kept at the central office.

3. State in detail your practices, policies, and procedures for monitoring landowner compliance with the terms of an easement granted to TNC. Include in your answer how frequently you inspect the property or contact the landowner. Does your policy on monitoring the easement vary with respect to the size of the property subject to easement or the importance of the easement for conservation of the environment? Attach copies of TNC reports to monitor conservation easements for the ten largest and the ten smallest conservation easement properties in each of Ohio and California since 1998.

Under the Conservancy's 1996 policy entitled "Ownership and Management of Land and Waters", the Conservancy only "owns and/or manages those lands and waters and interests therein that are important to accomplishing the . . . Conservancy's mission." This policy has been consistently interpreted to encompass the ownership of a conservation easement and, in accordance with this policy, the Conservancy has from time to time declined to accept offers to donate conservation easements.¹⁰ The Conservancy's policies and procedures have also contemplated that the Conservancy will monitor and enforce the easements it holds. On March 12, 2004, the Executive Committee of the Board of Governors approved revisions to the policy on "Ownership and Management of Lands and Waters" to state explicitly that ". . . in the case of conservation easements or other interests in land held by the Conservancy, [the Conservancy] will monitor and enforce those easements or interests in land to achieve their conservation objectives."

Effective monitoring requires in the first instance that the terms of the conservation easement be drafted with care and precision to ensure that the easement terms are both sufficient to ensure achievement of the conservation purpose on a permanent basis and expressed clearly enough to permit monitoring and enforcement. All easements are subject to advance review and approval by the Conservancy's law department to ensure that this is

¹⁰ As noted elsewhere in this memorandum, the Conservancy will today accept or purchase an easement only if it contributes directly or indirectly to the conservation of a portfolio site identified in accordance with the Conservation by Design methodology.

the case and the law department has prepared model conservation easement documents and texts for special provisions that may be included in an easement as appropriate (e.g., if some form of forest harvesting rights are to be retained).

Under a 1996 procedure, a detailed "Baseline Documentation Report" must be prepared at the time an easement is acquired by the Conservancy. This report, which is generally prepared by the Conservancy field office accepting the easement, documents the condition of the property at the time the easement is acquired and is thus essential to the monitoring process. The Baseline Documentation Report is signed and attested to by the current owner of the property and is used to measure and monitor future changes in the condition or use of the land.¹¹

Effective monitoring also requires a commitment of financial resources. To ensure that sufficient resources are available to meet the burdens of holding conservation easements, the Conservancy has a policy on Stewardship Funding. This policy was established in 1996 and is based on a Board of Governors' directive issued in 1989. Under this policy, whenever the Conservancy acquires a conservation easement, or any other legal interest in conservation lands, that it intends to hold, funds must be set aside for the perpetual management of that interest. Funds may be raised from the donors themselves or from others. If funds cannot be raised immediately through donations, they must be "borrowed" by the relevant local office from the Conservancy's Land Preservation Fund in an amount sufficient to fund stewardship "start-up" costs and establish a stewardship endowment that will generate income to cover at least half of the projected annual stewardship needs for the Conservancy's management responsibilities for the foreseeable future.¹² If the appropriate amount of funding is difficult to determine, an acceptable estimate is 20 percent of the land interest's fair market value.

¹¹ While applicable tax requirements permit such reports to be prepared by the landowner, Conservancy procedures require that it be prepared by Conservancy personnel. See Treas. Reg. § 1.170A-14(g)(5).

¹² The maximum internal borrowing from the Land Preservation Fund for stewardship start-up and endowment funding is an amount equal to 25 percent of the fair market value of the land interest.

Under the Conservancy's procedures, a plan for monitoring the property is to be established when the easement is accepted. The Conservancy's procedures for monitoring conservation easements do not and have not varied "with respect to the size of the property . . . or the importance of the easement for conservation" purposes. The plan for monitoring a particular easement will vary based on a variety of factors, including the biological resources being protected; the specific terms and conditions of the easement; and the degree to which a threat to the biological resources is likely to occur.¹³

Because each parcel of land is unique, the Conservancy's policies and procedures have traditionally reflected an expectation that the appropriate State or local unit will develop and implement a suitable monitoring plan to ensure that the conservation goals and objectives of the easement are being met and the terms of the easement are being honored by the landowner. Thus, in prior years, the Conservancy generally has relied upon its field offices to develop and implement their own monitoring plans. Each monitoring plan was expected to be tailored individually and address the goals and standards for monitoring the specific parcel of land involved. All State Chapters employ Directors of Science and Stewardship whose responsibilities include monitoring conservation easements. As appropriate, these employees have staffs to assist them in their responsibilities.

As noted above, on March 12, 2004, the Executive Committee of the Board of Governors approved revisions to the policy on "Ownership and Management of Lands and Waters" to make explicit the Conservancy's expectation that the relevant operating unit will develop and implement appropriate monitoring plans. As part of the continuing internal review discussed earlier in this memorandum, the Conservancy's easement working group is developing a recommendation for new centralized procedures to supplement and strengthen the necessarily decentralized and local monitoring process.

¹³ The Conservancy distinguishes between compliance monitoring to ensure that specific easement terms are met, on the one hand, and ecological monitoring, on the other, which seeks to determine whether the plants, animals or natural communities that are the conservation target of the easement continue to be viable on the property. Unfortunately, in some cases, whether these biological targets are able to survive may be unrelated to the degree of easement compliance as determined through the compliance monitoring process.

These procedures will include a new centralized easement management electronic database that will record all easements held by the Conservancy and the terms and conditions of each easement. When fully operational, the protocol will: (a) notify operating units of appropriate monitoring dates for each easement; (b) provide a standardized monitoring checklist; (c) require that all records of monitoring, property transfer notices, regular owner cultivation, periodic verification of the baseline, and enforcement actions be entered into the system; and (d) while not requiring a report of annual monitoring activities, be subject to internal audit of monitoring activities and record keeping. The Conservancy estimates that this system-wide monitoring process will be placed in service early in its next program year.

4. State how often TNC has engaged in litigation to enforce a conservation easement granted to it over the past ten years. For each such instance, describe the litigation briefly and discuss the outcome of such litigation.

See the response to Question 5.

5. Does TNC have a written policy or a general rule of thumb (written or unwritten) regarding when it will engage in litigation to enforce a conservation easement granted to it? If so, please attach a copy of the written policy, or describe any unwritten policy.

As the preceding discussion illustrates, the Conservancy takes seriously its monitoring and enforcement obligations under the terms of the easements it holds. As a first step in the enforcement process, the Conservancy generally makes a strong effort to build good partnerships and open lines of communication with the landowners who own land subject to the conservation easements that the Conservancy holds. Such relationships are often sufficient in and of themselves to prevent or avoid violations of the terms of easements. In situations where there is a violation, however, it is the Conservancy's practice to seek corrective action in the first instance by negotiation with the landowner.

If a reasonable resolution cannot be reached by agreement, the Conservancy will pursue litigation to enforce the conservation easement pursuant to its standard operating procedure concerning litigation. This procedure was established in 1996 based on then existing practices. Litigation is costly, problematic and (even when successful) involves

delays that may in some cases compromise conservation objectives. The Conservancy has been able to resolve most instances of actual or alleged easement violations without resorting to actual litigation. The specific instances in which actual litigation has been required are summarized in Annex A to this memorandum.

6. Explain the practices, policies, and procedures of TNC for granting a modification or amendment of a conservation easement held by or for the benefit of TNC. If there is a written policy, please attach a copy.

As explained earlier in this memorandum, the Conservancy has a formal written procedure with respect to the amendment or modification of a conservation easement. The procedure was established in 2001. At that time, there was little or no official guidance from the Internal Revenue Service with respect to the modification of easements. The 2001 procedure was reviewed in proposed form by independent counsel¹⁴ and was adopted following informal discussions with representatives of the National Office of the Internal Revenue Service and other conservation organizations.

The procedure applies to all conservation easements held by the Conservancy (including, but not limited to, easements with respect to which a taxpayer received a tax deduction for contributing the easement). The procedure applies to all proposed amendments or modifications except where the proposed changes (1) only impose additional conservation restrictions; (2) are clearly *de minimis*; or (3) merely clarify, rather than change, the substantive terms of the easement.

In cases where this procedure is applicable, a four part analysis must be undertaken by the Conservancy upon receipt of a request for a proposed modification. *First*, the Conservancy's conservation staff must determine that the proposed changes will not diminish the overall conservation goals and objectives of the original easement in any way. *Second*, the Conservancy's legal staff must determine that the proposed changes will not result in a violation of the "private benefit" rule set forth in section 501(c)(3) of the Internal Revenue Code. This determination generally is based on independent appraisals

¹⁴ A memorandum dated March 15, 2001 containing the views of the law firm of McCutchen, Doyle, Brown and Enersen, LLP on the then-proposed procedure is being provided separately to the Committee.

of the value of the benefit (if any) to the landowner and the value of the conservation rights being provided. *Third*, in the case of proposed modifications to an easement that was acquired by donation, the donor must be contacted to confirm he or she has no objection. *Fourth*, the Conservancy's legal staff must determine that the proposed change complies with all applicable State law requirements.¹⁵

If these four conditions are satisfied, two further steps are required. *First*, the proposed changes must be approved by the Conservancy's President and its General Counsel. *Second*, the Conservancy and the landowner must submit the proposed modification by the relevant State authority that provides oversight of charitable organizations and, where appropriate, by a court.

7. The easement modification chart submitted December 11, 2003, suggests that a number of conservation easement amendments or modifications would appear to benefit the landowner. Please describe in detail the easement adjustments provided for items, 3, 4, 5, 6, 7, 8, 13, 14, 19, 20, 21, 26, 28, 29, 39, 44, 51, 56, 60, 61, 64, 65, 67, 70, and 74 of such chart. Discuss how TNC views such modifications as either benefiting or not benefiting the landowner. For each item, attach a copy of the easement before amendment and a copy of the easement after amendment, and provide a narrative discussion of the changes made.

The Conservancy has separately provided the Committee with its responses with respect to the 25 easement modifications identified in the Committee's question. As the preceding discussion in this memorandum indicates, the Conservancy's procedures require that strict scrutiny be given to all proposals for easement amendments and the 2001 procedure specifically requires an examination of the potential application of the "private benefit" rules. The policy states:

"... if the landowner receives any value attributed to the change, then the landowner must compensate the Conservancy in an amount that is at least equivalent to value enhancement. While the Conservancy should prefer to take back compensation in the form of additional conservation lands or

¹⁵ The requirement that proposed easement modifications be submitted to the relevant State authorities was added to the Conservancy's policy in 2003 following additional consultations with representatives of the National Office of the Internal Revenue Service. It replaced the original requirement of review by the Service. State review was considered by the Service to be more appropriate since resolution of the relevant tax law issues was controlled by the interpretation of State law.

conservation restrictions, there may be instances where the Conservancy will receive monetary compensation.”

8. Does TNC monitor and record changes in ownership of property subject to conservation easements granted in favor of TNC? If so, does TNC contact the new owner by letter or otherwise and impress upon such owner the obligations under the conservation easement? Please attach a copy of (a) any recorded effort to track such changes in ownership, and (b) any notice to new owners regarding easement obligations.

The Conservancy does record changes in ownership of property subject to conservation easements that it holds. A clause in the Conservancy’s standard form of easement document requires that notice be given to the Conservancy by the grantor of a conservation easement when the grantor transfers the land to a new owner. Successor owners are subject to the same notice requirement if they re-transfer the land since they are subject to the terms of the easement. When fully operational, the centralized easement database discussed earlier in this memorandum will capture information concerning transfers of ownership and thus provide a system-wide mechanism for timely notifications to new owners and other appropriate action.

As noted elsewhere in this memorandum, responsibility for the management and administration of conservation easements traditionally has resided with the Conservancy’s State Chapters. Some State Chapters, such as California, Texas, and various States in the Northeast, hold a large number of easements and have developed detailed procedures and forms which are used to contact new landowners and track changes in ownership. Those States often have organized systems and databases to keep track of such information. In other locations, easements are not a significant component of a State Chapter’s conservation activities or projects and the process of tracking ownership changes has been less structured and more dependent on other means, such as actual site visits during monitoring inspections. In addition, where the Conservancy conservation staff is located in small, rural communities, they become aware of changes in land ownership by virtue of their presence within the local community. Finally, in some cases, new owners, who are often as conservation minded as the original owner, initiate contact with the Conservancy directly. Thus, the Conservancy typically is aware of changes in ownership and generally

contacts new owners to inform them of the easement obligations and conservation importance of the property.¹⁶

9. *Please respond to assertions or concerns regarding conservation easements as follows:*

(i) *How many easements has TNC written off as unenforceable or of little value?*

The Conservancy has not “written off” any easements because they were regarded as unenforceable or of little value.

(ii) *Please provide a list of any such write-offs including the name of the owner of the property subject to the easement and the location of the property.*

To the best of the Conservancy’s knowledge, there have been only three easement projects in which the original conservation purposes for holding the easement changed and the Conservancy or the landowner sought to modify the management of the easement in light of those changed conservation circumstances. These are described in Annex B to this memorandum.

(iii) *Does TNC fail to enforce easements where it is aware of violations because of the cost of litigation relative to the worth of the easement in question? Please discuss your answer.*

As noted elsewhere in this memorandum, litigation is a last resort in the Conservancy’s hierarchy of enforcement methods. The Conservancy does not, however, “fail to enforce easements” merely because of the litigation cost. As also discussed previously in this memorandum, the Conservancy establishes and maintains a stewardship endowment fund for each conservation easement and these funds can be used to defray the cost of litigation where litigation is necessary.

The decision to pursue legal action to redress an easement violation generally would be made without regard to the “worth”, in *economic* terms, of the easement. Such a decision generally would be made based on the “worth” of the easement in *conservation* terms. In the few cases in which the Conservancy has been involved in easement

¹⁶ Samples of notices, letters, and forms have been provided to the Committee.

litigation, if an adverse court decision has been rendered, the Conservancy will assess all relevant facts and circumstances, including the likelihood of prevailing on appeal and the costs to be incurred, in determining whether to proceed with an appeal.

(iv) Is TNC concerned that over time, with change in ownership, new owners not having conservation goals may violate easements in large numbers? Please discuss.

In principle, there is a risk that a new owner will not understand, or be as committed to, the conservation purposes of the easement as was the owner who placed the easement on the property. As noted above, owners are required by the terms of an easement to notify the Conservancy when they transfer title. The Conservancy generally seeks to develop constructive relationships with new owners and provide information about the conservation features and importance of their property, as well as the mechanics and shared obligations of a conservation easement. In the Conservancy's experience, most landowners will not knowingly violate the terms of an easement when properly apprised of the importance of their land from a conservation perspective and the relationship of the easement's terms to achievement of the conservation objective.

(v) How does TNC defend its conservation easements on small tracts (from less than one acre to up to 2 or 3 acres) where monitoring and enforcement of easements is more difficult economically? Please discuss.

The size of the acreage of the tract is not a factor in the Conservancy's decision-making with respect to monitoring and enforcement. Indeed, in some respects, it is easier and simpler to monitor a small easement tract than a large one. The Conservancy implements its obligations for stewardship and oversight of such properties based on ecological and conservation priorities. In point of fact, the Conservancy does not hold many easements over tracts of the size described.

12. Does TNC use easement valuations to minimize book losses, or enhance book gains? Please explain how TNC's financial statement treatment with respect to valuation of easements (whether acquired by purchase or by donation, or by other means such as by TNC creating the easement as a part of an acquisition, or disposition of property by TNC) complies with accounting standards applicable to TNC and to non profit conservation organizations.

The Conservancy maintains its books and records, and prepares its published consolidated financial statements, in conformity with accounting principles generally accepted in the United States. The Conservancy's financial statements are audited by PricewaterhouseCoopers LLP ("Pricewaterhouse"). For its fiscal year ended June 30, 2003, the report of Pricewaterhouse states:

"In our opinion, the accompanying consolidated statements of financial position and the related consolidated statements of activities and of cash flows *present fairly, in all material respects*, the consolidated financial position of The Nature Conservancy (The Conservancy) at June 30, 2003 and 2002, and the changes in their net assets and their cash flows for the years then ended *in conformity with accounting principles generally accepted in the United States of America.*" (Emphasis supplied.)

The Conservancy's specific method of accounting for easements is set forth in the published notes to its financial statements (Note 2, "Summary of Significant Accounting Policies") as follows:

"The Conservancy records conservation easements at cost or fair market value, which is usually determined by appraisal if the easement was donated, at the date of acquisition. Conservation easements may subsequently be transferred to government and others. The proceeds from any such transfers are reflected as revenue. The carrying cost, and any losses arising from such dispositions, are accounted for as the land sales and donations component of program expenses (see Note 14)."¹⁷

This method of accounting for conservation easements has been approved by three different independent auditors who have rendered unqualified opinions on the Conservancy's financial statements since 1988: Pricewaterhouse; Arthur Anderson & Co.; and Coopers and Lybrand.

The Conservancy's accounting for conservation easements is transparent. In addition to disclosing the policy clearly in the footnotes to its audited financial statements, conservation easements have in recent years been presented as a separate line item in the Conservancy's consolidated statement of financial position to ensure that any user of the Conservancy's financial statements would understand the nature of this specific class of

¹⁷ Copies of the Conservancy's audited financial statements are available on the Conservancy's web site.

asset and the basis for the recorded accounts.¹⁸ To illustrate the Conservancy's policy, if an easement having a fair value of \$100 is donated to the Conservancy, the revenue component of the statement of revenues is increased by that amount as are the Conservancy's balance sheet assets. In this connection, it should be noted that, under the Conservancy's method of accounting, all gifts (whether cash or in kind) are recorded as revenues. In the case of the purchase of an easement for its fair value of \$100, the cash account is reduced by the \$100 purchase price and balance sheet assets are increased by \$100. If the easement is subsequently transferred or sold by the Conservancy, any sales proceeds are reflected as revenues and an increase in cash on the balance sheet.. In addition, "Cost of conservation land and easements sold to government and others" is charged as an expense and balance sheet assets are reduced appropriately to record the disposition of the conservation easement asset.

The Conservancy believes its method of accounting is consistent with accounting standards applicable to nonprofit conservation organizations. There is at present no specific guidance in the literature of "generally accepted accounting principles" that mandates a single method of accounting for conservation easements by nonprofit conservation organizations. The Conservancy's independent auditors have provided references that serve as the basis for the conclusion that the Conservancy's method of accounting for conservation easements as having value is a proper method.¹⁹ The Pricewaterhouse audit letter (as quoted above) is consistent with this position and Pricewaterhouse has recently affirmed this treatment to the Audit Committee of the Conservancy's Board of Governors.

¹⁸ Conservation easements appear as a separate line item on the Conservancy's *balance sheet* and are included within the category entitled "Land and easements contributed for conservation" on the Conservancy's *statement of revenues and expenses*. Finally, in the Conservancy's *statement of cash flows*, there are separate line of items for "Land and conservation easements contributed for conservation", "Proceeds from sale of conservation land and easements," and "Purchases of conservation land and easements."

¹⁹ See FASB Statement of Financial Accounting Concepts No. 6, paragraphs 26 and 28; EITF 02-7, Example 1 (March 20-21, 2002); and FASB Statement of Financial Accounting Standards No. 116, paragraph 130.

15. Your response to our letter of July 16, 2003, included a chart of "Conservation Easement Purchases and Donations" greater than \$1 million. Item 14 of the chart lists a site name of "San Joaquin Hills Portfolio" with a listed fair market value of the easement of \$2,016,100. Item 15 of the chart, the same site, lists a fair market value of the easement of \$16,376,300. Item 16, the same site, lists the fair market value of \$17,685,000. Item 17, the same site, lists the fair market value of the easement as \$89,415,400. All four easements were provided by the same company. As to all four items please provide all information in your files relating to these transactions including, but not limited to, appraisals, identification of the grantor, identification of the property, the charitable donation claimed, a copy of forms 8283, copy of deeds, copy of e-mail, letters, memos, and provide a narrative description of the transfers and the environmental purpose and significance of the property.

The conservation easements acquired by the Conservancy within the Irvine Ranch Land Reserve are designed to ensure the long-term protection of three portfolio sites identified by the Conservancy in its 1990 South Coast Ecoregional Scoping.²⁰ The materials and documents requested by the Committee, together with a narrative description of the transfers, are being provided to the Committee separately. The discussion in this memorandum is limited to a description of the environmental purpose and significance of the property.

The lands protected under the conservation easements include approximately 171 acres within the Laguna Canyon Area (part of our 20,000-acre San Joaquin Hills Portfolio site) and 11,500+ acres in the Central/North Irvine Ranch (within the Western Slope portion of our Santa Ana Mountains Project Area). The Central and North Irvine Ranch areas contain two Conservancy portfolio sites: Limestone Canyon and Fremont Canyon, which total approximately 24,000 acres. Limestone Canyon has been largely protected through the National Communities Conservation Plan (NCCP) program; however, the NCCP did not address the protection or connections to larger core areas such as the North Ranch or connections to the Cleveland National Forest.

²⁰ The parties originally contemplated that there would be a total of seven easement contributions. Four such contributions were made during the time period encompassed by the Committee's question. A fifth contribution was made subsequent to this period and the two additional contributions are expected to be made in the future.

The donation by The Irvine Company of the 171-acre Laguna Laurel conservation easement in the San Joaquin Hills provides an important “missing link” in a habitat linkage that is being planned to connect Orange County’s south coast wilderness (Crystal Cove State Park, Laguna Coast Wilderness Park) northward to Limestone Canyon Wilderness and the Cleveland National Forest. The donation of the four northernmost of the conservation easements (East Orange, Fremont, SilMod, and Anaheim), which are located in the Central/North Irvine Ranch area, will ensure the protection of the entire North Irvine Ranch, and the protection of connections from Limestone Canyon to the North Ranch and beyond to the Cleveland Forest. Fremont Canyon is considered by local conservation interests as an important core habitat area, supporting large carnivores and deer as well as many unique plant and animal associations not represented on other Irvine Company open space holdings or in the National Forest (golden eagle foraging/nesting areas, Tecate cypress, transitional Venturan sage scrub, chaparral bear grass, 11 species of bats, San Diego fairy shrimp).

In its 2000 Santa Ana Mountains Project Update, the Conservancy conservatively identified approximately 8,000 acres of the North Ranch that we would like to see protected; these conservation easements will ensure protection of the *entire* 10,000 acre North Ranch, *and* 1,500 acres of important connector lands, thereby ensuring not only the full protection of the North Ranch but also ensuring the long-term ecological integrity of the adjacent Limestone Canyon portfolio site.

16. An example of a small conservation easement is the conservation easement placed on 1.62 acres on land transferred to David and Laura Milliken with respect to New Mexico – Santa Fe Canyon Preserve. Is an easement appropriate since the Millikens were encroaching on the land? How much of the driveway and fence were an encroachment on the land? Could TNC have sold a sliver of land outright that covered the area of encroachment? Does this easement serve a conservation goal?

The question asks whether, in lieu of a conservation easement, the Conservancy could have “sold a sliver of land outright that covered that encroachment...” and the conservation purposes served thereby. In fact, as explained more fully below, the

transaction *was* actually structured as a sale of the land outright subject to deed restrictions and did not involve a donation or conveyance of a conservation easement.

On April 14, 2000, Public Service Company of New Mexico (PNM) donated a 190-acre tract of land to The Nature Conservancy. This tract became the Santa Fe Canyon Preserve. In the course of establishing the Preserve, the Conservancy learned that a portion of Mr. David Milliken's driveway, and landscape retaining walls associated with Mr. Milliken's residence, were located on a very small portion of the donated property. Mr. Milliken agreed to rectify the situation by purchasing a 1.67-acre parcel of the donated 190-acre property on which the driveway and walls were located, such tract to be located between his home and an adjacent utility easement access road.

The property is located in the mountain special review district of the extra-territorial zoning authority area of the City of Santa Fe located outside of the city in Santa Fe County. The minimum lot size for a single family residence in this zone is twenty acres. The sale to Mr. Milliken was further limited by restrictions in the deed of conveyance from the Conservancy to Mr. Milliken which prohibit subdivision or building or construction of improvements, except for landscaping and perimeter fencing whose design and any subsequent modification must be approved prior to construction by the Conservancy. Due to zoning and these deed restrictions, the highest and best use of the property as determined by Jane Plimpton Trusty, an independent appraiser and a member of the Society of Real Estate Appraisers, was "as buffer for privacy and enjoyment of open space in association with the site located at 1710 Upper Canyon Road", owned by Mr. Milliken. Ms. Trusty placed a value on the tract of \$75,000. The property was subsequently sold to Mr. Milliken for \$100,000 on April 29, 2002.

The sale of the tract posed no threat to or adverse impact on the conservation values on the Santa Fe Canyon Preserve and allowed for a lot line adjustment which resolved driveway and landscape encroachment conflicts. The land will not be further developed, serves as a buffer to the Preserve and is subject to the deed restrictions. It also allowed funds to be obtained and used for the management of the Preserve.

The Conservancy treated the transaction with Mr. Milliken in accordance with its conflict of interest procedures in effect at the time. Prior to executing a purchase agreement for the sale on November 29, 2001, the potential conflict that might appear (because of one of Mr. Milliken's relatives serving on the Conservancy Board of Governors and because of Mr. Milliken's service as a trustee of the Utah chapter of the Conservancy) was disclosed and approved by Conservancy management.

* * *

The Conservancy stands ready to respond to any additional questions the Committee may have with respect to conservation easements.

Annex ASummary of Enforcement LitigationFlorida: Koreshan Unity Preserve

On April 14, 1966, The Conservancy accepted the donation of a 76± acre tract, located in Lee County, Florida, from the owners, the Koreshan Unity Foundation, Inc. (KUF). This tract, which established the Conservancy's Koreshan Unity Preserve, was donated with the intention that the property be held in its natural state. On August 23, 1978, the Conservancy transferred the property back to KUF, with the mutual agreement that the property be subject to deed restrictions requiring that it be held as a nature preserve for scientific, educational and aesthetic purposes, and kept entirely in its natural state.

The Koreshan movement was established in the late 1800's in Estero, Florida as a Utopian Community. Approximately 305 acres of the original KUF property, located adjacent to the 76± acre tract originally donated to the Conservancy in 1966, was transferred to the Florida Board of Parks and Historic Memorials in 1961, creating the Koreshan State Historic Site. The original Koreshan members, whose intentions were that the property be maintained in its natural state, are all now deceased. Over the years, the Conservancy has received requests from the successors of the original Koreshan members to have the restrictions held by the Conservancy on the 76± acre tract released. Since this tract is adjacent to the Koreshan State Historic Site, the Conservancy consulted with the Florida Park Service, which consider the 76± acre tract an important buffer to the State site and requested that the restrictions remain in place. The Conservancy has consistently refused to lift or release the restrictions.

In September, 1995, KUF filed a lawsuit to obtain release of the restrictions, so that the property could be developed. The Conservancy vigorously defended the easement and the litigation received significant coverage in the local press. The final judgment was rendered in favor of the Conservancy in June 1997, upholding these restrictions as an enforceable conservation easement. The judgment was affirmed in October, 1998, the District Court of Appeals affirmed the Circuit Court's ruling.

Georgia: Southeast Timberlands

On January 14, 1983, the Conservancy accepted a donation of a conservation easement on approximately 3,965 acres of land located in Chatham County, Georgia. The property owner-grantor under the easement, Southeast Timberlands, Inc., engaged a third party timber company to do a timber cut on land adjacent to the land encumbered by the easement. Although the third party was made aware of the existence of the easement, the third party cut timber within the boundaries of the easement. The cutting within the easement appeared to have been accidental. Southeast Timberlands, Inc. was paid approximately \$14,000 for the value of the timber cut from the CE area. The Conservancy filed suit in May, 2001 to enforce the terms of the CE.

The CE document provides that the measure of damages in case of a violation is the cost of restoring the land to the condition in which it existed prior to the violation. Since natural reforestation was already in progress, restoration was not necessary in the opinion of Georgia Chapter conservation staff.

Although the land owner did profit from the CE violation, the CE document does not allow us to recover that profit. Since the cut was apparently accidental and not in bad faith, the Conservancy decided to settle the case and dismiss the lawsuit in exchange for a \$5,000 payment from the property owner.

Maryland: Myrtle Grove

In 1998, The Nature Conservancy joined a Motion to Intervene in a suit brought by the Attorney General of the state of Maryland to enforce a conservation easement that had been created in 1975. The property subject to the conservation easement had been transferred from the easement grantor to a subsequent landowner, and the new owner asked the easement holder, The National Trust for Historic Preservation, if some of the easement terms could be changed to permit increased development of a portion of the property. The Trust agreed at first, but then shortly thereafter denied the request. The landowner sued the Trust for breach of contract in the Superior Court of the District of Columbia.

Subsequently, the Maryland Attorney General sued the landowner in Maryland state court to prevent any weakening of the easement provisions and to enforce the "charitable trust on behalf of the people of Maryland." The Nature Conservancy, the Eastern Shore Land Conservancy, and five other neighboring landowners moved to intervene in this action. These parties asserted that the conservation easement should not be modified to permit any additional development. Shortly thereafter, the Trust and the landowners reached a settlement that recognized the validity of the easement and left it unchanged.

Montana: Shining Mountain

The Nature Conservancy on June 21, 1982 sold, subject to covenants, the property commonly referred to as Shining Mountain Ranch to Baker Boone Ranch, d/b/a/ Bitter Root Cattle Company. Shining Mountain Ranch was eventually purchased by George R. Madden. On January 30, 1992, the Conservancy sent Madden notice of violations of the covenants and servitudes that the Conservancy held over the property. Madden then brought a Complaint for Declaratory Relief against the Conservancy in the USDC for the District of Montana – Missoula Division on March 5, 1992. In his complaint Madden asserted that the covenants were not binding on him or the property and, therefore, not legally enforceable. He further asserted that the actions alleged in the notice of violations were done to prevent erosion of the property, remove fire hazards, increase the vigor and health of forested portions of the property, and, therefore, were not violations of the covenants. The Conservancy filed an answer and counterclaim on June 9, 1992. The counterclaim essentially sought injunctive and preventive relief to require Madden to restore property to its state prior to the alleged violations and enjoin Madden from further activities in violation of the covenants. Both parties filed motions for judgment on the pleadings. On December 8, 1992 the Court issued its opinion and order finding that the Conservancy held a valid conservation servitude on Shining Mountain Ranch pursuant to Section 70-17-102(7) M.C.A. which was enforceable against Madden. Therefore Madden's motion for judgment on the pleadings was denied and TNC's motion for judgment on the pleadings was granted.

On December 23, 1992 the Conservancy filed a Motion for Preliminary Injunction which was subsequently denied. Thereafter, numerous discovery requests and motions were filed by the parties. Settlement discussions between the parties also occurred and eventually resulted in a mutually satisfactory disposition of this matter. During the course of this litigation, Madden had placed his property on the market for sale and a potential buyer appeared. Based on the advice of outside counsel that the Conservancy had engaged to represent us in the litigation, the Conservancy entered into discussions with the potential buyer of the Shining Mountain Ranch and reached agreement on the terms of a conservation easement to encumber the property in the event the potential buyer was successful in purchasing the property from Madden. The Conservancy's outside counsel was of the opinion that while the covenants and servitudes encumbering the property had been found valid, the Court had expressed its views in several of the hearings that the provisions were ambiguous at best and the Conservancy's outside counsel believed it would be to the Conservancy's benefit to use a conservation easement that more clearly expressed prohibited uses to encumber the property. Madden and this buyer reached agreement on the sale of the property and, therefore, the matter was settled with the Conservancy signing a Deed of Termination and Reconveyance of Covenants and Servitudes. The new owner of the property, J.R. Miller Ranches, L.L.C., conveyed a conservation easement to the Conservancy upon purchase of the property from Madden.

Madden and TNC signed a Mutual Release of All Claims. The Court entered an Order of Dismissal with prejudice on July 6, 1998.

New York: White Lake Swamp

In a case in which the Conservancy sought to enforce deed restrictions (which are quite similar to conservation easements) in 1997, the Conservancy entered into litigation on behalf of the Central & Western New York Chapter of the Conservancy to defend a 450-acre property on which the Conservancy held a deed restriction. The deed restriction, which the property became subject to at the Conservancy's request in the early 1980s, required the property to remain in a "natural state". The Conservancy had an adjoining Preserve, the White Lake Swamp Preserve. In 1997, a private individual purchased the property, with full knowledge of the deed restriction and announced his intention to build a housing development. Litigation was commenced to enforce the deed restriction and prevent the development of the property. In 1998 and after the Conservancy had spent \$70,000.00 in outside counsel fees, a Court ruled that the deed restriction was invalid. The Conservancy withdrew from the litigation, but a group of adjoining property owners successfully appealed the decision. As adjoining landowners, they also had standing to enforce the deed restrictions. The restriction was ultimately upheld by the NYS Appellate Division and the property remains undeveloped. By reason of the decision of the other litigants to appeal, there was no need for the Conservancy to incur the additional expense of joining in the appeal.

Annex BSummary of Easement Write-OffsRoanoke Island Marshes (Guthrie) NC

This easement was donated by Shirley and Cecil Guthrie on December 10, 1984 and covered 34.34 acres, of which 28.34 acres were marsh and 6 acres were "upland loblolly pine/myrtle hammock". The easement is adjacent to the home of the Guthries, but does not cover the land on which the home is located. At the time the easement was accepted it was thought that the Conservancy would acquire additional easements on the marshes on the west side of Roanoke Island. For various reasons this never happened and the conservation area today only covers the 34.34 acres. There are a few monitoring reports, but staff at the Nags Head Preserve about 25 miles from this easement, say they have responded to various questions over the years from Mrs. Guthrie and tried to visit the property every five years or so. In 1998 staff at Nags Head Woods responded to call from Ms. Guthrie and her son about trimming some trees along a driveway that runs to her home. Staff told them that nothing in the easement would prevent the trimming. In November of 1999 we received a letter from an attorney representing Ms. Guthrie. He stated that Ms. Guthrie had brought the easement to him to review and that Ms. Guthrie claimed that the easement was supposed to only cover the marsh acreage and not affect the uplands. The easement was drafted by the Conservancy. The attorney goes on to state that the Guthries did not claim a deduction for the gift. Ms. Guthrie wanted the easement to apply only to the marshland. The Conservancy stated that it thought it was clear that by the Guthries' own correspondence that the Guthries understood the concept of the easement and the land it was to cover. The Conservancy communicated with the Guthrie's attorney and reported that there was nothing in the files that would lead the Conservancy attorney to make a recommendation to reduce the coverage of the easement. Later, the Conservancy staff went by the site and noticed that some loblolly pines had been cut on the uplands, which would be a violation of the easement. Staff sent Ms. Guthrie a letter in care of her attorney notifying Ms. Guthrie of the possible violation and offering to set up a time to inspect the property. It was later learned that Ms. Guthrie had the trees cut on the advice of a forester from the NC Division of Forestry because of pine bark beetle infestation. About the time that the Conservancy discovered the possible violation, the Conservancy also learned that Ms. Guthrie had agreed to sell her property to a developer for \$100,000 who was going to combine it with adjacent land to construct a marina. The sale was conditioned on the Conservancy agreeing to amend the easement to restrict it to the wetlands. The developer offered to grant the Conservancy an easement over some adjoining marsh. For the next two years staff discussed a possible transaction, which finally evolved into a proposal whereby the Conservancy would agree to limit or remove the restrictions on the uplands in exchange for title to a much larger area of marsh and marsh islands. However, the Conservancy could never get final agreement on the transaction, even though an independent scientific assessment commissioned by the Conservancy said the transaction would have a positive conservation benefit for the

marshes, which were the conservation target. Also, at some point in 2001, the Conservancy came to the conclusion that it would not be a good idea for the Conservancy to bring suit against an elderly home town widow of moderate means because she cleaned out a few acres of diseased loblolly pines on the advice of a state forester – particularly since the possible violation was only discovered when she contacted us through an attorney contesting the coverage of the easement and alleging undue influence. The Conservancy also felt that the main reason for the easement was to protect the marshes and that was being accomplished.

Foulweather Bluff (Pennell) WA

This easement was granted in 1975. The Conservancy Washington program has generally defended the Foulweather Bluff (Pennell) conservation easement in the same manner it has defended other conservation easements (e.g. periodic monitoring and follow up conversations or letters to the owner). This easement is unusual however, in that the owner requested a release of the easement. In 1995, the Conservancy Washington program concluded, based on an ecological evaluation of the property, that the easement provided no protection for this property above and beyond that which was being provided under the Draft Bald Eagle Management Plan prepared by the Department of Fish & Wildlife. Concluding that there was no ecological reason to retain the easement, in 1995, the Conservancy offered to release the easement in exchange for the fair market value of the easement. However, the owner declined to pay for a release of the easement and the conservation easement remains in effect today. The property has subsequently been transferred to a new owner. Pursuant to a letter dated October 4, 2001, the Washington program of the Conservancy approved the removal of some tree limbs, and the topping and removal of some of the dying or dead trees on the property.

Plantation Pond (Bowater North American Corporation) TN

This conservation easement was granted to the Conservancy on November 22, 1982 over land in Sequatchie and Grundy Counties, Tennessee. The easement encumbered 4.15 acres and was granted expressly to protect a colony of white fringeless orchid (Platanthera integrilabia). In approximately 1994, as a result of monitoring the property, no more specimens of this plant could be located on the property. The easement has not been monitored since that time. No formal action has been taken in this regard and the easement continues to remain in effect.

November 23, 2004

October 27, 2004
Senate Finance Committee Letter

Question 1

Please explain the meaning of footnote 15 to the letter dated April 15, 2004, page 14. Did TNC (or the donor) receive private letter rulings from the Internal Revenue Service for any conservation easement modification prior to the time that TNC adopted the new procedure? If so, attach a copy of all private letter rulings received. Also, did TNC receive approval for a modification of a conservation easement from a state authority that provides oversight of charitable organization after the new procedure was effective in 2003? Please attach a copy of all such state approvals (including any court approvals).

Footnote 15 in the TNC letter dated April 15, 2004 refers to the provision in TNC's conservation easement amendment procedure that requires approval of such modifications by the state authority that provides oversight of charitable organizations. This requirement was included to ensure that a determination is made that the proposed amendment complies with applicable state laws, including but not limited to the state's enabling legislation for conservation easements as well as state laws providing for oversight of the disposition of assets controlled by charitable organizations.

As described in footnote 15 to the TNC letter of April 15, 2004, TNC did consult with representatives of the Internal Revenue Service since the prior TNC procedure had contemplated review of easement modifications by the Service itself. The consultations indicated that this earlier requirement was not considered by the Service to be feasible since the questions typically involved interpretations of State law. The consultations were informal in nature and to the best of our knowledge no private letter rulings were sought by TNC (nor any donor) from the IRS for any conservation easement modification prior to the time TNC adopted this procedure.

Since the new procedure became effective, TNC has not received approval for a modification of a conservation easement from a state authority that provides oversight of charitable organizations for any of the easement modifications covered by the Committee's request for the time period FY98-FY02 (July 1, 1997 – June 30, 2002). Of the easement amendments previously submitted to the Committee, the only conservation easement amendment that was made subsequent to the adoption of the new procedure, was an amendment to an easement to correct errors in a property description. This amendment made no changes to the substantive conservation provisions of the easement and thus, did not require state agency approval.

October 27, 2004
Senate Finance Committee Letter

Question 2

TNC's answer to question VI.6 mentions "informal discussions with the IRS" and "additional consultations with representatives of the National Office of the IRS." Generally, guidance by the IRS to individual organizations or taxpayers is in the form of private letter rulings or nonbinding "general information letter." Please discuss the nature of the discussions or consultations with the IRS.

Question VI.6 in the TNC letter dated March 3, 2004, discusses TNC's procedure with respect to the amendment or modification of a conservation easement and the basis for its development.

The new procedure for easement modifications was developed by TNC after TNC sought and obtained informal opinions and advice from a wide variety of sources including, but not limited to independent attorneys, conservation practitioners, other conservation organizations and officials at the IRS. As noted in the response to Question 1, the new procedure substituted State review for IRS review and was considered appropriate by TNC and those with whom TNC consulted since the questions involved typically involved interpretation of State laws. No private letter rulings or "general information letters" were sought. The "informal discussions with the IRS" consisted of occasional meetings with attorneys at the IRS where technical issues were discussed and where TNC was simply seeking informal guidance as to best practices that TNC might adopt in this area, where no official rules or regulations exist. In effect, these meetings may be thought of as what would be similar to a pre-submission conference for a letter ruling request under IRS Revenue Procedure 2004-4, Section 12.07. Following discussions with the IRS and others, the TNC General Counsel and his colleagues within TNC concluded that a letter ruling was not required.

October 27, 2004
Senate Finance Committee Letter

Questions 3, 4, and 5: Narrative Re: Stewardship Endowments and Easements.

Question 3

Is the stewardship fund of TNC established for the enforcement of easements held in an account bearing the name or other identifying feature of the easement to which it relates, or is the fund simply one or several large funds covering all or many of the TNC easements? Please discuss your answer.

As described more fully in TNC's letter dated April 15, 2004, the Conservancy has a policy on Stewardship Funding that is intended to ensure that sufficient resources are available to meet the burdens, including enforcement as required, of holding conservation easements. The current policy was established by the Board of Governors in 1996 and is based on a directive issued by the Board in 1989. A copy of this policy is attached. In pertinent part, the policy states:

“When The Nature Conservancy acquires any legal interests (fee and less than fee) in conservation land that it intends to hold, funds must be set aside for the perpetual management, or stewardship, of that interest.”

The phrase “any legal interests” encompasses conservation easements and the phrase “funds must be set aside” is generally implemented by placing appropriate funds in an “endowment” which is designated as such on the Conservancy's books of account. Consistent with the Conservancy's general practices, these endowments typically are not physically segregated in separate bank accounts or otherwise.

The Conservancy currently maintains over 400 endowments that are separately identified as such in its books of account and the aggregate of the balances in these accounts is in excess of \$700 million. These endowments fall into one of two categories: (1) endowments that are subject to perpetual restrictions imposed by donors and from which only the earned investment income may be expended, and (2) endowments established by the Conservancy which are not subject to donor-imposed restrictions with respect to the expenditure of principal, but which are administered by the Conservancy as though such a restriction had been imposed. As a result, all of these endowments are expected to continue in perpetuity.

These endowments provide the principal source of funding for the enforcement of conservation easements and thus obviate the need for a separate endowment limited to enforcement activities with respect to any specific conservation easement. In the Conservancy's view, this approach is more compatible with the broad interpretation of

the term "stewardship" applied by the Conservancy with respect to the conservation easements it holds.

In terms of the purposes for which a particular endowment may be used, the endowments generally fall into one of four categories.

1. Specific to a Particular Parcel of Land or Easement. These endowments generally are established with respect to large projects, which typically have separate operating budgets in the Conservancy's financial accounting system, and have the specific project name in their description. In such cases, funds may be disbursed as appropriate to enforce the terms of any easements that are part of the project to which the endowment relates.

2. Donor-Restricted. Investment income earned with respect to these endowments may be expended only for the purposes specified by the donor, which may, where specified by the donor, include providing stewardship (including enforcement) for conservation lands, or interests in land such as easements, held by the Conservancy.

3. General Stewardship. These endowments generally are comprised of funds set aside pursuant to the Stewardship Policy for a variety of projects within a specific geographic area, such as the Alabama Stewardship Endowment. The investment income from such endowments generally is used to fund stewardship operating costs, including enforcement of easement terms, with the geographic area to which the particular endowment is dedicated.

4. Other. The Conservancy also has endowments that either impose only general restrictions on the use of the income (e.g., to fund the ongoing operating costs of a particular chapter) or impose no restrictions. In such cases, the Conservancy remains free to use the income for enforcement of easements.

Question 4

How much money is deposited in a stewardship fund of a conservation easement?

As discussed in the Conservancy's response to Question 3, the funds used by the Conservancy for the enforcement of easement terms are generally taken from stewardship endowments and these endowments are intended to encompass the full range of stewardship activities and not merely enforcement activities. Thus, it is not feasible to identify a specific portion of the \$700 million in stewardship endowment funds which is allocable as such to the enforcement of easements. In this connection, of the 400 endowment funds with some \$700 million in assets, funds with assets totaling in excess of \$200 million are identifiable as stewardship funds. The amounts expended from these funds annually for stewardship is approximately equal to five percent of the principal balance and, as noted elsewhere, funds from other endowments are also used as appropriate for stewardship purposes. On balance, the Conservancy is thus satisfied that

its endowments are adequate to fund enforcement activities for the easements it now holds.

Question 5

What formula does TNC use for providing or establishing a stewardship fund for a conservation easement?

As also discussed in the response to Question 3, the Conservancy's long standing policies require that a stewardship fund be created (or an existing fund increased) whenever a new conservation easement is acquired. The policy itself appropriately does not specify the dollar amount of the fund required since the level of expense that may reasonably be anticipated will vary from property to property. The policy provides that an amount equal to 20 percent of the value of the property be set aside where the circumstances are such that a more precise estimate of needed funding is impractical.

Stewardship Funding

POLICY:

When The Nature Conservancy acquires any legal interests (fee and less than fee) in conservation land that it intends to hold, funds must be set aside for the perpetual management, or stewardship, of that interest.

PURPOSE:

To ensure that The Nature Conservancy is able to fund the stewardship of its conservation interests in the conservation land.

ORIGIN:

Approved by the Board of Governors on March 15, 1996. The policy was formerly an existing Board directive - Board of Governors Resolution 1419 - approved 9/23/89. The policy also reflects the February 6, 1991 memorandum "Stewardship Endowment Funding Changes" from Bill Weeks and Will Murray.

REFERENCES, RESOURCES, and EXPLANATORY NOTES:

Funds will be raised or borrowed from the Land Preservation Fund in an amount sufficient to cover stewardship "start-up" costs, and to fund a stewardship endowment such that the income generated will cover at least half of the projected annual stewardship needs for the foreseeable future. If the appropriate amount of funding is difficult to determine, an acceptable estimate is 20% of the land interest's fair market value. The maximum Land Preservation Fund loan permissible for stewardship start-up and endowment funding is an amount equal to 25% of the fair market value of the land interest.

Refer to the Conservation Region Managing Directors for additional information

October 27, 2004
Senate Finance Committee Letter

Question 6: Narrative Re: Easement Modifications

Which of the 75 conservation easement modifications were requested by the landowner and which were requested by TNC?

Attached please find a chart indicating, to the best of the Nature Conservancy's knowledge, the party that initiated the request to modify the conservation easement modifications previously reported to the Committee. The chart shows that approximately 50% of the modifications were initiated either by TNC or by the landowner to add additional land for conservation protection under the easement. Approximately 18% of the modifications were made by mutual agreement to correct a mutual mistake. Approximately 28% of the easement modifications were initiated by the landowner or a subsequent owner. Finally, less than 4% of the modifications were initiated at the request of a third party, such as a state or local agency of government.

Question 8: Narrative Re: Milliken Easement

You failed to answer part of question VI.16. Is the easement appropriate since Mr. Milliken was encroaching on the land? How much of the driveway and fence (and landscaping) were encroaching on the land (discuss area of these improvements as to the total area 1.67 acres)? Please respond.

The Milliken driveway/landscape encroachment on the 190 acre Public Service Company of New Mexico (PNM) land donation was approximately 2,160 square feet (120 feet long by 18 wide, 1/20th of an acre) which represents 3% of the 1.67 acre tract. The other portion of the 1.67 acre tract (not being impacted by Mr. Milliken) was the land between Mr. Milliken's property and the utility easement access road. This land is comprised of a very steep, shale escarpment that rises from the utility road up to a small plateau on which Mr. Milliken's house is located and where the driveway and landscape encroachment occurred.

After reviewing all of the legal options, the Conservancy's internal general counsel and his professional staff concluded the most effective way to resolve the encroachment issue was to sell a small parcel of land to Mr. Milliken. From a conservation standpoint, the shale escarpment was not integral or important to the Preserve design or management. The potential costs of litigating over the property lines and taking legal action to force Mr. Milliken to reposition his driveway and landscaping were significant. Moreover, the funds from the sale of the small parcel would be used for the management of the Preserve. On balance, selling this small piece of land was a good resolution to the encroachment.

With regard to the easement, the Conservancy decided to place an easement on this sliver of land prior to selling it to Mr. Milliken to ensure no further development occurs on this land. This easement was appropriate given the original purpose of the gift of land from PNM, which was to protect the property from development, and consistent with the Conservancy's desire to keep this land as a buffer area for the Preserve.

One final note, in our original response we mistakenly stated that Mr. Milliken had been a trustee of the Conservancy's Utah Chapter. In fact, it was Mr. Milliken's brother, not Mr. Milliken, who served as a Utah Chapter trustee. Mr. Milliken has never been a trustee of any chapter of the Conservancy.

October 27, 2004
Senate Finance Committee Letter

NOV 23 2004

Question 9:

Did TNC send the Committee the memorandum of March 15, 2001 from the firm of McCutcheon Doyle, described in footnote 14, page 13 of the letter dated April 15, 2004? If not, please provide it.

The March 15, 2001 memorandum from the firm of McCutcheon, Doyle, Brown and Enerson, LLP was previously transmitted to the Committee on April 23, 2004. For the Committee's convenience, enclosed is an additional copy of the March 15, 2001 memorandum.

NOV 23 2004

PRIVILEGED AND CONFIDENTIAL

Date: March 15, 2001

Direct: (415) 393-2436
pmorrisette@mdbe.com

To: Michael Dennis
General Counsel
The Nature Conservancy
1815 N. Lynn Street
Arlington, VA 22209

Laurel Mayer
California Regional Counsel
The Nature Conservancy
201 Mission Street, 4th Floor
San Francisco, CA 94105

From: [REDACTED]

Re: Amending Conservation Easements

As you requested, we researched the issue of whether a conservation easement can be amended without jeopardizing its tax-deductible status. In addition, we reviewed the memorandum that you prepared on procedures for The Nature Conservancy ("TNC") to follow when amending conservation easements. We have the following observations and recommendations regarding the amendment of conservation easements.

As you know, the grant of a conservation easement cannot be deducted for federal income tax purposes unless the easement is granted in perpetuity. We understand that in TNC's informal discussions with the Internal Revenue Service (the "IRS"), the IRS has expressed the view that when a conservation easement is amended in a way that reduces the scope of the easement, the easement no longer satisfies this perpetuity requirement and thus loses its tax deductibility. Although we are not aware of any case or ruling directly addressing this issue, we believe that if such an amendment were made to a conservation easement, the IRS would most likely be successful in challenging the tax deductibility of the easement if (i) the amendment was contemplated at the time the easement was originally granted and/or (ii) the landowner did not fully compensate TNC (in cash or other consideration such as additional conservation easements on other property) for the increase in the value of the land to the landowner as a result of the amendment and for any diminution in the value of the conservation easement to TNC as a result of the amendment.

ATTORNEYS AT LAW

Three Embarcadero Center
San Francisco, California 94111-4067
Tel. (415) 393-2000 Fax (415) 393-2286
www.mccutchen.com

San Francisco
Los Angeles
Walnut Creek

Palo Alto
Taipei

In both of these instances, the IRS would have solid grounds for arguing that the original grant of the easement was not made in perpetuity. Furthermore, in the latter instance, TNC would run the risk of violating the tax-law prohibition against conferring a private benefit, and even if the applicable statute of limitations had run with respect to the original grant of the easement, the landowner might nevertheless have to recognize income under the so-called "tax benefit" rule.

We believe, however, that so long as an amendment reducing the scope of a conservation easement (for example, to permit the construction of an additional dwelling on a property) was not contemplated at the time the easement was granted, such an amendment should probably not affect the tax deductibility of the original grant of the easement provided that (i) the landowner fully compensates TNC for the increase in the value of the land to the landowner as a result of the amendment and for any diminution in the value of the conservation easement to TNC as a result of the amendment and (ii) TNC determines that the amendment will not have a significant adverse effect the conservation interests associated with the property.

Provided that full compensation is paid, this approach prevents the landowner from receiving a financial windfall with respect to the original grant of the easement (i.e., because the landowner has fully compensated TNC for the amendment, the landowner has not, in retrospect, received the benefit of an inflated charitable deduction) and also enables TNC not to run afoul of the prohibition against conferring a private benefit. Moreover, as discussed below, we believe this approach also is consistent with the approach taken in the Treasury regulations for dealing with extinguishments of easements and with easements involving the retention by the landowner of certain rights that may impair the conservation interests associated with the property.

The Treasury regulations provide that under certain conditions, a conservation easement can be extinguished without causing the original grant of the easement to fail the perpetuity requirement and thus lose its tax deductibility. One of these conditions is that upon an eventual sale of the property, the donee organization receive a portion of the sales proceeds equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the property as a whole at the time of the gift. See Treas. Reg. § 1.170A-14(g)(6). If the donee organization is entitled to be so compensated, then extinguishment of the easement does not cause the perpetuity requirement to be violated.¹ We believe the fact that the Treasury regulations permit extinguishments so long as, among other things, the donee organization is ultimately compensated for the value of the original easement supports the approach we have recommended above for the amendment of conservation easements.

¹ We understand that in TNC's informal discussions with the IRS, the IRS has been receptive to the idea of a partial extinguishment. A partial extinguishment might be a useful alternative to an amendment if the Treasury regulations did not require a judicial proceeding to extinguish a conservation easements. We believe this "judicial proceeding" requirement clearly limits the practical use of partial extinguishments (as well as complete extinguishments).

The Treasury regulations also permit a landowner granting a conservation easement to retain rights the exercise of which might impair the conservation interests associated with the property. See Treas. Reg. § 1.170-14A(g)(5). For example, a landowner may retain the right to build additional homes or roads on his property (i.e., rights whose exercise might impair conservation interests) without jeopardizing the tax deductibility of the conservation easement he is granting (though such retained rights could reduce the amount of his tax deduction). Before exercising a retained right, the landowner is required by the Treasury regulations to notify the donee organization in writing. Moreover, the donee organization must have the right to inspect the property to verify compliance with the conservation restrictions, and the right to enforce the conservation restrictions by appropriate legal proceedings. We believe the approach we have recommended for the amendment of conservation easements (i.e., requiring TNC to determine that the amendment will not have a significant adverse effect on the conservation interests associated with the property) is consistent with the approach taken in the Treasury regulations regarding the exercise of retained rights.

When negotiating future conservation easements, TNC may in certain instances want to go to considerable lengths to encourage landowners to consider carefully what specific property rights they want to reserve. Reserving rights at the time of the original gift could avoid the need to amend a conservation easement later. The reserved rights should of course be consistent with the conservation purpose of the easement, and the landowner should understand that retaining rights may reduce the amount of his tax deduction.

Finally, your memorandum states that it is TNC's position that an amendment that places an additional restriction on a property already protected by a conservation easement is no different than placing an additional conservation easement on the property. A recent U.S. Tax Court decision supports this position. In *Strasburg v. Commissioner of Internal Revenue*, the court held that an amendment to an existing conservation easement where the donor was giving up the right to build an additional home on the property constituted a qualified conservation contribution for which the donor was entitled to a deduction. 79 T.C.M. (CCH) 1967 (2000). Under *Strasburg*, a landowner who retained rights at the time of the granting of the original conservation easement should be able to receive an additional tax deduction if he later relinquishes those retained rights to the donee organization.

We hope these observations and suggestions are useful. Please call us if you have questions, and please keep us informed on your discussions with IRS regarding amendment of conservation easements.