



Dovefield Plantation

# Final Report Conservation Easement Working Group

April 29, 2004

## INTRODUCTION

For more than 25 years The Nature Conservancy and other public and private conservation organizations have used conservation easements as an important tool for protecting a variety of public values of land. During this time the Conservancy has participated directly or indirectly in the donation or purchase of more than 2,000 easements and has adopted policies and procedures intended to ensure that those transactions were conducted in conformance with the law, that they achieved real conservation benefits, and that easements were appropriately monitored and enforced following acceptance by the Conservancy.

In its series of articles on The Nature Conservancy published in May 2003, *The Washington Post* highlighted several conservation projects in which questions were raised about the use of easements by the Conservancy. At its meeting of June 13, 2003, the Board of Governors of The Nature Conservancy adopted three new policies on land transactions and management that related to the use of conservation easements. These policies were in addition to the existing policies on easement documentation, amendments to easements, documentation of value, stewardship funding, and compliance with IRS standards. At its meeting of March 15, 2004, the Board of Governors specified in a refreshed policy of ownership of land and water that easements should be monitored and enforced and established operating guidelines to implement the related IRS Forms 8282 and 8283 policy.

Several 2003 articles by Steven Small, Esq., a noted expert on the use of easements, have cautioned land trusts on the small but increasing abuse of easements and related provisions of the tax code. (*The Journal of the Land Trust Alliance*, Spring and Fall 2003). In addition, in state and federal legislative forums, the concept of permanent easements were being questioned by some landowner groups.

Given such concerns and the adoption of the new policies by the Conservancy's Board of Governors, the Conservancy's Executive Leadership Team (ELT) decided that the Conservancy should look more deeply into how easements had been acquired, used, monitored and enforced by the Conservancy.

A Conservancy Easement Working Group (EWG) was appointed in the late fall of 2003 to frame questions about the future use of easements and to propose actions to further ensure the appropriate, consistent, ethical and effective use of this important conservation tool by the Conservancy and its partners. At the same time, through its representation on the Board of the Land Trust Alliance, the Conservancy began participating with the Alliance on evaluating standards for conservation easements along with overall evaluation of the Standards and Practices for Land Trusts.

The original working group consisted of 11 Conservancy staff from a diversity of positions and backgrounds. Two members of the Board of Governors subsequently joined the EWG. (See Appendix 1 for a list of members and their positions.) Taken together, these staff and board members have extensive experience with conservation easements within and outside The Nature Conservancy.

In preparation of this report, the EWG has:

- Compiled a list of the most important policy questions.
- Reviewed this list with the Executive Leadership Team and Division Directors.
- Divided into sub-groups to provide preliminary answers to the questions.
- Reviewed existing Conservancy easement policies and practices and examples of the application of these practices.
- Reviewed the Land Trust Alliance's draft Standard on Conservation Easement Stewardship and Administration and discussed draft recommendations with Alliance staff.
- Completed a draft report dated December 14, 2003, which was circulated to Conservancy staff and partner organizations for review and comment.
- Discussed the draft report at the Conservation Practices Committee of the Board of Governors at its meeting on January 30, 2004, and with other members of the board.
- Revised the initial draft recommendations for discussion at a Senior Managers and Chapter Chairs meeting in Atlanta on February 18, 2004, after which additional policy changes were adopted by the Board of Governors in March 2004.
- Reconvened in subcommittees to draft the final recommendations presented in this report.

## **BACKGROUND**

Conservation easements are restrictions placed on real property to protect its natural resource values or those of ecologically related properties. Easements are either voluntarily sold or donated by the landowner and constitute legally binding agreements that limit certain types of uses or development in perpetuity. Conservation easements can protect the natural values of land for future generations while allowing owners to retain certain property rights and to live on and use their property.

A central attribute of easements is that their restrictions and terms can be designed to fit the needs of the underlying fee owner and the easement holder so long as they retain a public purpose or intent. While this flexibility has facilitated their use, it has also meant that easements vary widely in their terms and conditions thus making their interpretation and enforcement far more complex than the defense of fee ownership of land and water. In addition, states and countries have a range of laws enabling the use of easements; this adds to the complexity of interpretation and enforcement, particularly following ownership changes.

Conservation easements are a permanent obligation not only for the landowners, but also for the easement holder, since it may not be easy to convey easements, and their responsibilities for monitoring and enforcement, to other organizations.

While these attributes describe what conservation easements are, they do not convey their profound importance in protecting the conservation values of land while continuing private land ownership and stewardship, sustaining rural economies, avoiding public costs, enlisting long-term community support for conservation, and protecting rights of property. In some areas of the United States and other countries the capital and management costs and the economic and social impacts of large-scale outright public land acquisition limit the use of outright conservation purchases. Easements provide a significant conservation option in such locations. In other places they have been used in tandem with outright purchases to protect whole landscapes while sustaining appropriate and traditional rural land uses.

Outside of the United States, conservation easements have been used less frequently in part because of differences in the legal foundations of land tenure in other countries. However, easements are now being used in some other places (particularly in the Caribbean and Latin America).

## **CURRENT ISSUES AND CLIMATE**

Conservation easements have become commonplace and well-established in many regions of the country, but now several significant issues have emerged concerning their use.

As the use of easements has matured, the Conservancy, other land trusts and governments have made them increasingly complex, tailoring them to the needs of landowners, adjusting provisions to achieve agreement, and using them to control management of activities such as grazing and forestry. While these refinements may seem appropriate, at least in theory, they:

- Sometimes push the envelope of whether a significant conservation benefit is being achieved in comparison to the benefits being retained by the owners. This is in part because owner benefits are immediate and conservation benefits are measured in the long term.
- Make interpretation, monitoring, and enforcement complicated and difficult over time.

Proper monitoring of the terms of easements requires careful organization and documentation. While new tools, such as remote sensing, are available for monitoring, it appears that not all easement holders, including the Conservancy, have adequate monitoring and data storage systems and practices.

Easements have now been used for a long enough time that more land encumbered by them is being conveyed through inheritance or sale to new owners who may have less understanding, appreciation and commitment to the restrictions than the original owners, especially when the immediate economic benefit of changing easement restrictions is greater than the potential litigation costs. This contributes to two kinds of compliance issues — those stemming from lack of understanding and those from willful decisions to challenge easement provisions.

When an easement is challenged or violated, enforcement is time consuming, expensive and can provoke hard feelings between the parties engaged in such actions. Not all the public and private organizations that hold easements may have the will or the resources to enforce easements in a way that will sustain their long-term viability.

While their number may be small in proportion to the total, given the large number of conservation organizations and the much larger number of conservation transactions, there are some badly drawn and poorly enforced easements around the country that do not meet public benefit tests, exploit the use of income tax deductions, and have the potential to discredit the legitimate use of easements as a conservation tool. Valuing easements can be difficult; inappropriate values can lead to the conclusion that tax deductions are being provided too liberally to landowners. The Senate Finance Committee is examining these issues.

Easements are just beginning to be used in countries outside the United States. Further use will require the establishment of an effective legal and administrative framework in those countries where they are used to support the viability of these easements over the long run.

Easements have been employed as part of “conservation buyer transactions”; such easements can further increase the complexity of ensuring the appropriate balance between conservation and benefit to the landowner.

## **NATURE CONSERVANCY POLICIES AND PRACTICES**

To guide the use of easements over the years the Conservancy has adopted formal policies covering:

- Documentation reports
- Amendments
- Evaluation of Private Benefits
- Documentation of Value
- Conservation Buyer Transactions
- Related Parties
- Stewardship Funding
- Compliance with IRS Standards for Documentation of Charitable Gifts
- Conflicts of Interest

(These policies and procedures are found in Appendix II, including revised policies and procedures recently adopted by the Conservancy’s Board of Governors.)

The Conservancy's state and country programs working with its legal and conservation staffs have added procedures for project selection, monitoring, enforcement, record-keeping and landowner contact.

The Conservancy's policies and procedures have guided the conservation of more than 1.5 million acres of land through conservation easements, but the articles in *The Washington Post* in May 2003, discussions with the Land Trust Alliance and other conservation organizations, efforts by some landowner groups to oppose the use of permanent easements, and a growing emphasis on the use of Conservation by Design and related scientific approaches to conservation within the Conservancy, have caused the organization to compile the recommendations set out in this report for revised easement policies and practices.

This report addresses a wide range of issues including:

- How sites where easements should be used are selected
- How easements should be drafted
- Questions of valuation and appraisal
- Amendments
- Transfers
- Monitoring and enforcement
- The use of easements outside the United States
- How the Conservancy can work cooperatively with other conservation organizations to support the effective use of easements to achieve conservation goals

## **PRINCIPLES**

The Easement Working Group identified principles for the use of easements by the Conservancy:

- Easements should be accepted or purchased by the Conservancy or by the organization in cooperation with a public agency or other organizations only when they contribute directly or indirectly to the conservation of portfolio sites identified through the planning processes set out in Conservation by Design. (Conservation by Design is the Conservancy's approach for determining conservation priorities.)
- The acquisition and management of easements should conform to the spirit, intent and letter of relevant local, state and national laws
- Landowners and donors should be treated fairly and openly in negotiations and agreements; the Conservancy expects to be treated fairly and openly by landowners.

- Easements should be drafted, acquired and monitored with long-term concern for the health of the landscapes in which they are located, including the protection of large-scale sites that retain, insofar as possible, their natural functions

## **RECOMMENDATIONS**

Based upon these principles, the working group proposes the following actions for the acquisition, administration and management of conservation easements at the Conservancy. Each recommendation includes a summary statement followed, where relevant, by additional detail including implementation steps.

### **1. Cooperate with other organizations on improving policies on the use of conservation easements**

The Nature Conservancy should work cooperatively with other groups such as the Land Trust Alliance (LTA), regional land trusts and other easement holders in refining its own easement policies and in sharing ideas and proposed policies with others. The Conservancy should continue to keep the conservation community informed about how it is addressing issues, such as valuation, amendments, monitoring and enforcement through regular communications with the LTA and major conservation groups, such as the American Farmland Trust, Trust for Public Land, Conservation Fund and Ducks Unlimited. In addition the Conservancy should continue to work closely with LTA both by serving on its Standards and Best Practices Task Force and by actively participating in training forums such as LTA Rally. Working with LTA to establish a land trust accreditation program will help address this issue.

#### **Details, Notes and References**

Conservancy staff should provide a copy of this report to staff to the LTA and relevant government agencies and should meet with them to discuss its content. Similarly, Conservancy staff should participate in completion of the revision of the Standards and Practices of LTA. Sessions discussing the issues and actions contained in this report should be scheduled for the LTA Rally in Providence, Rhode Island, in the fall of 2004.

#### **Impact**

While such exchanges of information may produce initial tensions because of different perspectives on these issues, it should lead to better cooperation and more uniform and uniformly defensible easement policies and practices in the long run.

#### **Who will implement**

Mike Dennis, as the Conservancy's representative on the LTA board, should be on point for interaction with LTA and other conservation organizations.

#### **How will it be implemented**

Through ongoing discussion with other groups and at special sessions at the LTA Rally in the fall of 2004.

**Costs**

Not significant.

**2. Compile all current and new policies**

The EWG identified 29 policies and procedures, including new policies recently adopted by the BOG, that apply to easements. They are listed in Appendix II. With so many policies and procedures affecting the Conservancy's use of easements as a conservation tool, training must be established to assist staff in understanding and applying Conservancy policies and procedures related to easements. (See, also, Recommendation #14.)

**Details, Notes and References**

The EWG also recommends that policy #21 "Perpetual/Forever Protection Language" be amended to clarify that it does not conflict with Treasury regulation 1.170A-14(a)(2) "Perpetual Conservation Restriction."

**Impact**

The compilation of policies and procedures is not a complex task, but familiarizing all staff who do easement negotiations will consume some time.

**Who will implement**

The EWG has already compiled the policies.

**How will it be implemented**

This task has been implemented with the assistance of legal staff.

**Costs**

Not significant.

**3. Standardize decision-making on the appropriate location, terms and conditions of easements**

If the Conservancy is to achieve greater consistency in the acquisition and administration of conservation easements, it must standardize decision-making on easement location and design as follows:

- Building on existing policies and practices, the Conservancy should develop a list of best practices and a checklist based on and consistent with Conservation by Design that uses the results of ecoregional and conservation area planning, assessment of threats, feasibility of long-term success, leverage and benefits to adjacent areas, management costs, and an evaluation of expected conservation benefits compared with retained landowner rights to guide and assist state chapters and country programs in making decisions about when, where and from whom conservation easements should be accepted or purchased. Use of the checklist should be a prerequisite of acceptance of an easement, but except in very large projects or those that present unusual risks, the decision to proceed should remain with the operating

unit and the division. While this checklist is not intended to be a scoring system, the process of decision making should clearly take into account the factors set out in the checklist. Exceptionally large or risky projects should be referred to the Risk Assessment Committee (RAC) described below.

- Similarly, the Conservancy must develop a checklist for constructing the terms and conditions of easements to ensure a positive long-term balance between conservation benefits and retained rights. This checklist, also based on Conservation by Design, should include tests or warning signals to identify when conservation benefits may not measure up to actual or potential costs to the Conservancy. The checklist should provide specific guidance on how to evaluate the relationship of ongoing extractive uses on the land, such as timber management and grazing, to the conservation benefits to be obtained through the easement.
- In the use of easements within and outside the United States where partner organizations are to hold title, these checklists should also include tests to assist in evaluating whether the partner organization has the financial and organizational capacity to manage, monitor and enforce the easement over time.
- The Conservancy should select a sample of easement sites characteristic of the wide range of easements within the organization to evaluate the operational and ecological impacts of easements over time. The results of this evaluation should inform the content and use of the easement location and the terms and conditions checklists.

### **Details, Notes and References**

The last sentence of the first bullet, above, calls for referral of “exceptionally large or risky projects” to the new Risk Assessment Committee. That committee should move quickly to develop a set of standards, thresholds, or best practices that guide practitioners in knowing when referral is appropriate.

The Easement Decision-Making Checklist should then incorporate a section on risk factors to help practitioners address key issues, including referral to the Risk Assessment Committee. This checklist should be reviewed periodically and updated based on identified best practices. It should also parallel or be integrated with the ongoing Project Review Process. Finally, the checklist should include a standardized easement template that can serve as a starting point and guide for scientists and practitioners in designing individual easements.

The Chief Conservation Officer (CCO) should immediately charter a small team composed of four to five staff representing a diversity of geography, disciplines, and functions (e.g., legal, science, protection, WO, forestry, grazing, etc.) to develop a “Prototype Easement Checklist” and to test its practical application in the field. This preliminary work should be completed before the end of FY04 and full implementation and use of the checklist should begin in FY05.

There are other sources that should be accessed in developing the checklist, including the Conservancy’s California and Vermont Chapters and the Land Trust Alliance.

As to the last bullet, above, this task should be treated as a peer-reviewed, publishable study to assess the characteristics of easements and their effectiveness in achieving the intended conservation results (what characteristics or conditions worked well, what were neutral, and what were problematic). To avoid duplication of previous efforts, the CCO's easement survey should be considered one source of possible test cases. Based on preliminary inquiries with one of the Conservancy's lead scientists, such an Easement Study could take roughly the following form: \$50,000 total budget (\$10,000 staff time, \$20,000 raised and \$20,000 matched by the Conservancy's discretionary fund). Realistically, this is an 18-month study. In addition the EWG suggests that the Conservation Learning Group or the Conservation Measures Group be involved in conducting the study or disseminating its results and lessons.

The first iteration of the Easement Checklist should not wait for the results of the Easement Study. Rather, the study should inform future updates to the Easement Checklist.

### **Impact**

While use of the checklists may take some learning at first, they should expedite easement review and drafting and, thus, should have a positive impact on field operations. The review of the conservation effectiveness of easements could have a significant long term impact on the use and design of conservation easements at the Conservancy and elsewhere.

### **Who will implement**

A small subcommittee of the EWG, including some additional staff, will draft the checklists for review by the CCO and legal staff. The Risk Assessment Committee has already provided guidance to the field on the kinds of projects that should be referred to that committee. The CCO should appoint a conservation science based team to conduct the ecological impacts of easement study.

### **How will it be implemented**

When the checklists have been completed, they will be distributed through a memo to field staff by the CCO. They will be covered in conservation easement training as described below.

### **Costs**

There will be a \$50,000 cost for the study of the effectiveness of conservation easements. Implementation of the use of checklists should not add costs to field units.

## **4. Use conservation science for easement location and design**

As a best practice and cultural norm, conservation scientists, legal staff, and protection staff need to collaborate closely throughout the easement process to ensure that decisions about the acquisition and design of conservation easements are grounded in solid science. Decisions on how best to implement this collaborative relationship will remain with operating units. However, we recommend Operating Units (OUs) consider the formation of easement working teams comprised of protection, legal, and science staff and clearly define the role of science as well as train staff in its applications.

### **Details, Notes and References**

Implementing this recommendation is a management issue that requires the commitment of the Conservancy's senior managers. It should be carried out in a manner that makes clear that science is not a rubber-stamp. The best practice is to have scientists working with protection staff at the front end of easement projects. This may require a shift in culture and practice for some OUs. As a first step, the Easement Checklists should include a section on science input. The same should be reflected in the project approval process.

### **Impact**

Implementation of this recommendation should tie the use of conservation easements at the Conservancy more closely to implementation of Conservation by Design. With integration of scientists in the easement decision-making process, there should not be delays in evaluating easements. However, scientists in some smaller OUs may face additional demands on their time, or, in some cases expertise may have to be borrowed from other OUs or from divisions.

### **Who will implement**

Easement acquisition and science staff in each OU.

### **How will it be implemented**

Through coordination and processes established within OUs by unit directors.

### **Costs**

Any costs will be in the demands on the time of scientists in the OUs.

## **5. Adopt a process for decision-making on risky and/or complex easement projects**

The Nature Conservancy has created a Risk Assessment Committee (RAC) to evaluate the risks of complex projects, including conservation easement projects, to bring together the experience and perceptions of the staff immediately responsible for a project with the broader experience, judgment and consistency evaluation of a standing committee whose members are drawn from across the Conservancy to ensure a diversity of experience, perspective and judgment. The RAC became operational at the end of April 2004.

The committee can provide review and approval for conservation easement related issues such as helping to make the decision as to whether the Conservancy will participate in an easement that is suspect or unreasonable. The RAC can also help to establish precedents on the appropriate balance between protection and use for conservation easements.

As a first order of business, the RAC should establish criteria for risk that will lead to referral to the committee such as size, character of retained rights, and location.

### **Details, Notes and References**

The RAC was appointed at the beginning of April 2004, and held its first meeting on April 14, 2004, at which it began the process of further defining the field of projects that should be referred to the committee for review.

**Impact**

Referral of some projects to the RAC may cause some delays in negotiations and will result in the Conservancy modifying or abandoning some easement acquisition projects that involve unacceptable risks to the organization. The process should help to avoid projects that could embarrass the Conservancy or discredit the use of conservation easements. The challenge in this new process will be to use it as a foundation for encouraging creativity and taking reasonable risks rather than causing the Conservancy to become too risk averse.

**Who will implement**

The RAC working with OU and division directors.

**How will it be implemented**

Through the process that has been established by the RAC.

**Costs**

There will be some cost in the time of OU and division directors in preparing proposals for the RAC and in the time of the RAC members in the review process. While the RAC's procedures are intended to avoid delays, some project delays may be inevitable.

**6. Inform prospective donors of the terms and conditions for acceptance of easements**

At the beginning of negotiations with prospective donors of conservation easements, the Conservancy should provide those donors with a summary of its conservation easement policies and practices to ensure a clear understanding of mutual expectations and obligations. This summary will include a statement of intent such as, "The purpose of this process is to facilitate the conveyance of donated easements and to encourage the granting and appraisal of easements in a way that reflects the letter and spirit of the law." Staff should also provide donors with a copy of the current IRS regulations. The Conservancy's obligation to so inform donors has already been adopted as policy by the Board of Governors in March 2004, as part of policies relating to IRS forms 8282 and 8283 (See also Recommendation #8 and #9 related to communication to donors.)

**Details Notes and References**

The Legal Department must now draft the statement to be used to inform easement donors of the process and a training program must be put in place to inform staff of this and other new policies. The draft statement should be completed by June 1, 2004.

**Impact**

Some prospective easement donors may be concerned with the details of the Conservancy's easement process and may choose to work with other organizations.

**Who will implement**

Easement negotiators in OUs.

**How will it be implemented**

As a standard part of the negotiating process.

## Costs

This recommendation may require negotiating staff to take more time with explanations to prospective easement donors and sellers.

## **7. Strengthen policies governing the valuation of conservation easements and the execution of IRS Form 8283**

Pursuant to preliminary recommendations of the Easement Working Group, at its meeting on March 15, 2004, the Conservancy's Board of Governors adopted a policy and procedures with respect to IRS Form 8283 that accomplishes the following:

- As noted in 6, above, the Conservancy will provide prospective donors with a summary of the Conservancy's requirements for donations of conservation easements and land at the beginning of the process of discussions with the donor.
- The Conservancy will require that the donor provide a fully completed and accurate Form 8283 before the Conservancy will sign the form.
- The Conservancy will require that the donor provide a copy of the donor's qualified appraisal for the Conservancy's internal purposes.
- Before the Conservancy will sign Form 8283, the donor's appraiser will provide a certification to the Conservancy attesting to the following:
  - The appraiser is state certified.
  - The appraiser has used generally accepted professional appraisal standards in the appraisal.
  - The appraiser has the expertise and experience to make appraisals of conservation easements and conservation lands.
  - The appraiser is not barred from practice before the IRS or Treasury Department or other administrative bodies.
  - The appraiser has accounted for any value enhancement issues to nearby property of the donor or parties related to the donor.
  - If the appraisal is being made for a donation by a "covered person," the appraiser will further certify that he/she is aware of the relationship between the donor and the donee; and such relationship did not influence the appraiser's conclusion of fair market value.
- Particularly large, risky or potentially controversial easement donation projects will be referred to the Risk Assessment Committee discussed in item 5.
- The Conservancy will not participate in transactions in which the appearance of the transaction is suspect or unreasonable or where the transaction does not conform to this policy.

- All gift acknowledgment letters provided by the Conservancy to donors for gifts where Form 8283 has been signed will continue to state that the Conservancy does not take a position on either the value or the tax deductibility of the gift.

### **Details, Notes and References**

The implementation of this recommendation has begun, and, as expected, raises complex procedural issues. The Conservancy's Legal Department must work closely with OUs to evaluate problems as they arise and to ensure consistent interpretation and implementation of the policy. Communication to donors should include monitoring and enforcement expectation and staff should be trained in the application of these recommendations.

### **Impact**

This has been the most difficult recommendation addressed by the EWG because of its potential impact on donors of conservation easements. Because the policy and procedures adopted by the Conservancy are more stringent than those used by other organizations, some donors may choose to go elsewhere, at least initially. A potential problem that must be monitored is the donation of easements at the end of the tax year that are not accompanied by completed appraisals. If this continues to be a common practice, the Conservancy will have to adopt additional procedures to deal with those appraisals or easements that ultimately prove unacceptable.

### **Who will implement**

Legal and field staff who negotiate the donation of conservation easements; real estate appraisers.

### **How will it be implemented**

The new policy and procedures have already been distributed to the field. Implementation will be through donor contacts and easement negotiations. The actions of real estate appraisers will be important to successful implementation.

### **Costs**

Additional staff time may be required to explain and negotiate the new procedures. Some easements may be lost through landowner objection to the new procedure.

## **8. Adopt policies to ensure consistent monitoring of conservation easements by the Conservancy**

Compliance monitoring ensures the success of conservation easements in sustaining conservation objectives by maintaining a relationship with the property owner, identifying issues which need to be addressed before they become problems, and when necessary, serving as the foundation for enforcement actions. Annual compliance monitoring should be conducted for each Conservancy-held conservation easement. Less frequent monitoring, (but no less frequently than every three years), must include written justification and be approved by the OU director. The monitoring process must be documented, and the reports maintained centrally within the OU to be available for audit.

OUs should report easement compliance monitoring through Conservation Land System (CLS) which will be adapted to organize tract interests into new easement records. Information captured will include the following: Date of last monitoring report, approved interval for frequency of monitoring, status of compliance (OK, under review, violation), and an estimate of costs of the monitoring activity (for future planning purposes). Organizing easement interests for CLS and confirming them from OU legal files will be time consuming and will influence the time frame required to bring all easements into compliance with a new “Monitoring Conservation Interests” policy.

Systematic and proactive monitoring is the first step in ensuring that easement lands are managed in conformance with easement provisions. The Conservancy’s revised policy on “Ownership and Management of Lands and Waters” reflects this and states 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.” The same policy sets the expectation “... that the relevant operating unit will develop and implement an appropriate monitoring plan to determine whether such goals and objectives are being met.”

In the past, the Conservancy and its state and country offices have adopted their own practices for monitoring, but these need to be accounted for and audited in a consistent manner to ensure that they are effective. Once an easement is acquired, sufficient funding and resources must be available to ensure perpetual active monitoring, management and if necessary enforcement. The effectiveness of even the toughest easement will be severely compromised by weak or non-existent monitoring.

The Conservancy should create a “Monitoring Conservation Interests” policy. The first instance of this policy will be limited to monitoring easement legal compliance and serve as the foundation for a more general policy dealing with the monitoring of all conservation interests from a legal and ecological perspective. While both types of monitoring are critical to the evaluation of our success, it is important to distinguish between legal compliance monitoring on easements and ecological monitoring, since they are significantly different in both methodology and purpose. Compliance monitoring occurs at the level of the individual ownership unit, (those lands which are restricted by what terms), while ecological monitoring must focus on viability of units of biological diversity — typically at the natural community or population level — and usually over multiple ownerships. Ecological monitoring can provide a feedback loop that documents threat abatement, is useful in modifying our approach to locating and drafting easements and supports our ability to assess the success of our conservation strategies in protecting the portfolio.

The policy should state:

- Easements must be monitored at least annually unless justification is submitted and approved for less frequent monitoring (e.g., based on the intensity of threat or change, size, capability of land owner such as university or resource management entity). The maximum monitoring interval should not exceed three years. Any violation or change in ownership outside the previous owner’s immediate family resets the monitoring frequency to annually, and new justification must be submitted for longer intervals.

- The monitoring process must be documented (reports, photographs, maps, etc.) and tracked (but not necessarily centrally). Documentation, at a minimum, should include site conditions relative to the enforceable terms of the easement.
- The monitoring process and results must be auditable either remotely or at a single OU central location.
- Timely monitoring of all easements will be recorded in a central database that will include the easement location and boundaries (i.e. shape file), the desired monitoring frequency (i.e. monitoring interval), a date of last monitoring, the status of the monitoring (e.g. ok, under review, violation) and the estimated cost of monitoring for the year.

### **Details, Notes and References**

A procedure to accompany this policy should include:

- Best practices monitoring templates, recognizing that easements are so customized that it is difficult to have a standard template for all. Regardless, each easement includes within its terms the conditions which must be monitored.
- Baseline documentation report required at the time of easement donation or purchase. Such reports carefully record the condition of properties, and specifically those features constrained by the easement's terms, at the time an easement goes into effect.
- A property transfer notice, or similar vehicle, included within the original easement document. These notices require the current landowner to clearly inform subsequent landowners or prospective landowners of the existence and terms of the easement.
- Regular owner cultivation conducted. Monitoring is best conducted through regular contact with the landowner designed to avoid violations rather than to catch them after the fact. Cultivating owners includes contacting them in advance of the monitoring visit, and personal follow up either on site or after the visit.
- Engagement of science staff applied in developing measurable ways to track the effectiveness of different easements restrictions at protecting different biodiversity targets.
- Compliance monitoring conducted for periodic verification of the baseline. The compliance monitoring schedule should be informed by science and "threat intensity." That is, if the site is subject to intensive pressure for change by economic or other conditions, monitoring should be more frequent than if the easement is part of a larger protected area owned by an entity which also has a conservation mandate.
- Easement monitoring activities recorded in detail using local systems. Common elements of these systems should be eventually incorporated into a central system (i.e. Conservation Land System).
- Insistence that monitoring reports are specific in detailing what information is gathered, with all data linking directly back to clearly articulated easement conditions informed by threat abatement strategies from Conservation by Design.
- Active support of efforts to apply state-of-the-art technology (such as satellite imagery) to document and focus monitoring actions and thus reduce the cost of lengthy and laborious on-the-ground monitoring.

- One individual responsible for easement monitoring in each state program (even if that responsibility is actually discharged through agreement with a division or another state).
- Communication system in place to ensure timely monitoring. The production of alerts, exception and management reports regarding compliance with easement monitoring (e.g. easements due to monitor, next month, past due, easement violation reports, etc.).
- Systematic training conducted for staff, volunteers and third parties involved in easement monitoring.
- Informal networks encouraged and supported by managers that encourage staff working on easement monitoring to share, review and improve practices.

### **Impact**

The current system, CLS, stores information by tracts and not easements per se. An easement is an assembly of tracts of various sizes and single easements may be the result of multiple transactions. Currently this system is not organized to identify easements or to track actions there, such as monitoring. Tracts will have to be associated into easements using CLS “managed areas” and associated with “action records” in order to record the result of the monitoring at the easement level. Compiling the information necessary to prepare a monitoring visit and subsequent report varies widely depending on the complexity of the easement’s terms but can be time consuming (e.g., 1 to 2 days per easement).

### **Who will implement**

Implementation will be by local OUs (assembling tracts into easements) and by central functions such as Legal (crafting the policy and doing CLS entry) and Technology and Information Services (CLS).

### **How will it be implemented**

Conservation Information Management (CIM) and TIS will create a project to assist OUs in assembling easement tracts into managed areas which can be reported on through CLS, by doing database queries. TIS will train OUs in the use of CLS for reporting easement monitoring. OUs will ensure the quality of the information in the database in cooperation with CIM.

Changes in monitoring frequency exceeding one year will be approved by the OU director. The OU director will be accountable to ensure that easement monitoring documentation is managed in compliance with the procedure and made accessible to auditors as needed. OUs will define the process by which CLS information is populated. OUs that do not operate CLS will need to leverage the CLS installation in another OU to comply with the policy. The process of estimating compliance monitoring costs should be consistent within each OU and roughly documented (e.g. field monitor to report hours mileage and material costs). The use of state-of-the-art technology should be adapted to local conditions, budgets and monitoring goals. The team encourages OUs to experiment, learn and adapt based on results.

OUs should establish clear roles, responsibility and accountability for the person in charge of easement monitoring and to provide them with proper training. Each OU should create a

plan to comply with this policy in the shortest time possible. It is expected that OUs with a large number of easements will take longer to comply. Complete compliance should be achieved no more than three years following the publication of the policy.

### **Costs**

The cost of adapting CLS to accommodate easement information and the costs of entering data from OU's into the system are substantial. The cost of system design is estimated at \$1,000 plus TIS labor. Costs for individual OUs will vary greatly with the number of easements held. The cost of a local auditable system to track the success of conservation actions over time including 50 distributed easements is estimated at \$400,000 and could be implemented at any level (e.g., local, regional, central). For each easement OUs should plan for an average of 4 to 5 hours of a paralegal or 2 days of an intern to assemble the information necessary to monitor the easement. The actual monitoring work will represent the largest cost. It is estimated that for large easements (i.e. 5,000+ acres) documenting compliance with restrictions may require consultants costing several thousands of dollars. At the other end of the scale, at a minimum, the real costs to monitor a simple smaller easement by a consultant or third party has come out to about \$3,000 in California. This does not address training, enforcement or possible court costs.

## **9. Ensure consistent enforcement**

A strong outcome of effective easement monitoring must be to prevent the need for enforcement by identifying violation risks through monitoring and correcting potential easement violations before they occur. Enforcement should never be the costly consequence of ineffective monitoring.

To ensure consistency and reduce the need for enforcement actions, we recommend that OUs communicate to donors, buyers, and sellers a clear statement of easement-owner and landowner responsibilities, as noted in 6, above, during the early stages of transaction negotiation or prior to property transfers. Each OU should identify a person responsible for enforcement planning and management, although enforcement actions are team efforts involving project and legal staff and managers. All personnel involved in easement enforcement need appropriate negotiation and legal training, and their activities in each enforcement action must be tightly coordinated. Easement violations that occur need to be resolved using a systematic process, and each easement violation resulting in an enforcement situation should be reviewed to ensure that it did not result from ineffective monitoring. The Conservancy should consider pursuing penalties (e.g. punitive damages) for landowners who willfully violate easements, both as a deterrent and to finance future legal defense efforts. Monitoring staff are encouraged to share knowledge of easement violation settlements through informal networks.

- Adopt a standard process and checklist for enforcement including training for legal and program staff and creation of a center of expertise in the Legal Department.
- Create a Conservancy-wide Enforcement Committee to which all easement violations and proposed enforcement actions must be referred. Routine and minor enforcement actions that are readily resolved by an operating unit will be referred solely for information purposes (and will be recorded in the easement tracking

system described in 3, above). All enforcement actions where the fee owner disputes the claim of violation or chooses not to comply without further steps should be reviewed by the committee for advice and consistent treatment.

- Establish a pooled legal defense loan fund or insurance program to pay the cost of enforcement actions or to defend against attempts by landowners to escape the provisions of easements. The size of the fund should be evaluated every three years based upon enforcement experience during the preceding period. Except in extraordinary circumstances loans from this fund for easement defense activities would have to be repaid by the operating unit.

### **Details, Notes and References**

Decision tools are needed for successful enforcement. Enforcement of conservation easements can be very challenging. Often the economic stakes involved are very high making it worthwhile for those few property owners who choose to violate easements to expend substantial amounts of money in legal fees to achieve their desired end. Even in the case of landowner misunderstandings or lack of knowledge or of minor infractions, how the easement is enforced can either secure cooperation and compliance or resentment and a lack of future cooperation. Consequently, a strong outcome of effective easement monitoring must be to prevent the need for enforcement by identifying violation risks through monitoring and correcting potential easement violations early on. The Conservancy must in all cases take the necessary steps to see that violations are remedied. To ensure consistency of enforcement we recommend that:

- As noted in recommendation #6, the Conservancy should publish and communicate ahead of the transaction to donors and sellers a clear statement of easement-owner (i.e. Conservancy) and landowner responsibilities (i.e. that the Conservancy will monitor, and engage with the landowner when that person has questions, as well as when and if the Conservancy has concerns). This written disclosure should articulate without ambiguity the Conservancy's reasons for pursuing the easement and its commitment to track its interest over time and follow up as needed. This information should be combined with other expectation setting documents such as those explaining the Conservancy's position on easement valuation and the treatment of IRS forms in the United States. Regardless, it is paramount to clearly state without any ambiguity that the Conservancy has the right to, and will, monitor and enforce its conservation interests.
- All violation risks and violations be recorded in CLS with a monitoring status of "under review" and "violation" respectively.
- OUs maintain auditable documentation of violations and their resolutions.
- OUs identify a person responsible for enforcement planning and management.
- Provide appropriate training (e.g. negotiation, legal, etc.) to staff involved in easement enforcement.

- All violations and their related enforcement cases be reported to the General Counsel.
- The purpose of the Enforcement Committee is to relieve the local person or OU Director from making final decisions on enforcement in what may be an environment of complex relationships with landholders and community members. The committee is intended to be very small (3 people) and should include the General Counsel or his representative.

Enforcement should never be the costly consequence of ineffective monitoring. Enforcement actions, particularly those where court action is required, can be very expensive. Few chapters have set aside sufficient funds in anticipation of enforcement. There are differences of opinion on funding enforcement. Some argue that there should be a pooled enforcement fund to be drawn on by operating units. Others suggest that pooled funding should only be in the form of loans and that central payment of the costs of litigation would be a disincentive to the drafting and administration of easements in ways that avoid enforcement.

Given the risk for enforcement of all easements held by the Conservancy, we recommend that the organization:

- Guarantee the organizational capacity to enforce all easement violations. The funding capacity should be planned at the divisional level and backed up with organizational commitments (i.e., collective contribution) in case the enforcement costs exceed the funds set aside by the OU.
- Audit each easement violation resulting in an enforcement situation to ensure that it is not the result of ineffective monitoring and adapt monitoring practices as necessary.
- Systematically seek resolution to all easement violations without exception. Few of these resolutions should involve legal action and most should be resolved through discussions with the landowner.
- Consider pursuing penalties (e.g., punitive damages) for landowners who willfully violate easements both as a deterrent and to finance future legal defense efforts.

### **Impact**

A more comprehensive enforcement policy could produce more enforcement cases, but the policy is designed to maintain landowner contact and to try to achieve cooperative resolution of enforcement cases. If, however, landowners are intent on turning aside the provisions of conservation easements, the policy will produce more rigorous enforcement actions. This will take up substantial staff time and effort.

**Who will implement**

OU field staff, legal staff, a new Enforcement Committee. The CCO must appoint the enforcement committee. TIS and Legal (i.e., CIM) staff must incorporate enforcement tracking into the tracking of conservation easement monitoring described in recommendation #8.

**How will it be implemented**

The preceding discussion sets out in some detail how the enforcement recommendations should be implemented.

**Cost**

Enforcement actions are costly and, to the extent that more actions are taken, enforcement costs will increase. Potential costs must be estimated and an enforcement fund created.

**10. Re-evaluate the costs of monitoring**

Easements are legal interests in conservation land that the Conservancy intends to hold, but the long-term success of conservation easements depends in part on there being sufficient resources to monitor landowner conformance with easement terms. Estimating the long term cost of easement monitoring can be complex.

The Easement Working Group recommends that the existing Stewardship Funding policy include a procedure requesting annual reporting by OUs on the total amount of funds available to pay for perpetual compliance monitoring of easements (reserves and/or endowments). There should be periodic estimates of the actual annual costs of conducting the monitoring that will provide information for future fundraising and budgeting to support easement monitoring. OU's should have long term financial plans that demonstrate that the amounts set aside are consistent with the estimated monitoring costs

Additional engagement from Worldwide Office is needed in the following areas: Guarantee the organizational capacity to enforce all easement violations, audit each easement violation resulting in an enforcement situation, systematically seek resolution to all easement violations without exception.

**Details, Notes and References**

Easements are legal interests in conservation land that the Conservancy intends to hold. Their effective monitoring requires reliable annual expenditures to support staff who can work with landowners on a cooperative basis and complete necessary compliance reviews. The Conservancy's "Stewardship Funding" policy mandates that "... funds must be set aside for the perpetual management, or stewardship, of that interest." It also identifies the Land Preservation Fund as a potential source of funds (up to 25% of the fair market value of the land interest) "... 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." As noted before, estimating the long-term cost of easement monitoring can be complex. Existing practices include a worksheet for calculating costs and endowment needs. In the absence of such calculations the policy offers guidance that "If the appropriate amount of funding is difficult to determine, an acceptable estimate is 20% of the land interest's fair

market value.” If management funding cannot be arranged and assured up front, the easement will not live up to its potential, no matter how well-crafted it starts out to be.

While many chapters have set aside monitoring funds or otherwise devoted resources to monitoring, this standard may not have always been met, and as a result, monitoring obligations may have sometimes gone unattended because of capacity limitations. In some cases, volunteers have been used to assist in monitoring, but they can only shoulder a portion of the responsibility, and they require extensive up-front training. Technologies such as remote sensing and geospatial analysis could substantially reduce the cost of monitoring certain aspects of easement provisions (e.g., boundaries, buildings, roads) by reducing the need to spend extended periods of time on the ground. In a number of cases the Conservancy has conveyed easements to other governmental and nonprofit organizations with significant local presence to reduce its costs and increase the effectiveness of monitoring.

The following procedures should be included in the Stewardship Funding policy:

- That operating units report annually the total amount of funds available to pay for perpetual easement monitoring (reserves and/or endowments) and provide an estimate of the actual annual costs of conducting the monitoring.
- That operating units have long term financial plans that demonstrates that the amounts set aside are consistent with the estimated monitoring costs reported for each monitoring activity (as recommended in the Monitoring Policy) to ensure perpetual monitoring. Should funding these monitoring costs exceed capacity of dedicated funds, a plan will be submitted indicating how the OU is currently meeting its monitoring requirements and how it will achieve the required reserves.

This will require either that landowners contribute to establish endowments for monitoring or that chapters and country programs secure such funding from other sources. When easements are purchased with public funding, this will be particularly challenging.

### **Impact**

This recommendation could have a substantial financial impact on all programs and unrestricted funds should the collective amount of funds identified be insufficient to ensure perpetual monitoring and enforcement.

### **Who will implement:**

OUs will implement this recommendation in coordination with Finance and Legal.

### **How will it be implemented**

Operating units will report the amount of funds available to pay for perpetual easement monitoring and those allocated for enforcement. Finance will collect and analyze the information to ensure that the organization maintains the capacity to perpetually monitor and enforce easements.

## **Costs**

Aside from moneys needed to complement any identified shortfall of funds there will be minimal costs to implement this recommendation.

## **11. Revise transfer policies**

Our existing policies and procedures deal with the transfer of Conservancy property only in the context of Conservation Buyer transactions and do not address the transfer of easements. The Easement Working Group recommends that “A Transfer of Conservation Interests” policy be created. For conservation easements, this policy would highlight Treasury Regulations, require that successor entities conduct regular monitoring of easement terms and make results available to the Conservancy. The organization would retain reverter or reentry rights where legally possible. Maintaining donor intent, tracking results in CLS, and clarity of monitoring expectations will be part of the procedure. Monitoring training opportunities for Conservancy staff, would be open to staff of successor entities to understand Conservancy systems and methods.

## **Details Notes and References**

Section 5 of the Conservancy’s “Conservation Buyer” procedure applies generally to the transfer of Conservancy property to others but does not specifically discuss the transfer of easements. With respect to the transfer of easements to other parties, TNC is morally and legally obligated to continue some level of oversight of easements sold or transferred. Because of the importance and complexity of transfers the Conservancy should consider the creation of a separate “Transfer of Conservation Interests” policy. In the mean time, to address the transfer of easements the Conservancy should put forth an interim policy that includes:

- Respect of IRS transfer conditions outlined in Treasury Regulation 1.170A-14(c)(2) “Transfers by Donee” that restricts transfers to qualified organizations and mandates that the initial conservation purpose that the contribution was originally designed to advance be carried out.
- Ensure that transferee are eligible under Treasury Regulation 1.170A-14(c) (1) “... to be considered an eligible donee an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation and have the resources to enforce the restrictions.”
- To ensure that if the easement no longer serves its conservation objectives the proceeds from the sale/exchange are managed according to Treasury Regulation 1.170A-14(c)(2) “If a later unexpected change in conditions surrounding property ... makes impossible or impractical the continued use of the property for conservation purpose, the requirements of this paragraph will be met if the property is sold or exchanged and any proceeds used by the donee organization in a manner consistent with the conservation purposes of the original contribution.”

- If the easement still serves a conservation purpose include a reverter or reentry clause in the transfer that stipulates that if the transferee ceases to be a “Qualified Organization” as defined in Treasury Regulation 1.170A-14(c)(1) or if the transferee does not periodically report to the Conservancy the auditable results of its monitoring activities (i.e. date, status and estimated costs of monitoring) the organization may take back the easement ownership. The Conservancy should produce a document clearly outlining its expectations from the transferee and obtain the rights to audit transferee’s records.
- Preserve donor intent.
- Document transfers and record them in CLS.
- Outside of the United States adapt these provisions to reflect local legislations and cultures. The Conservancy should support the Land Trust Alliance’s effort to establish a certification process for land trusts that adhere to its Standards and Practices guidelines.

### **Impact**

The Conservancy will need to establish a process for documenting compliance with these policies for each transfer going forward.

### **Who will implement**

OUs will implement these recommendations for new transfers and prepare transfer documentation/brochures clearly stating the Conservancy’s expectations for transferees. The small group preparing easement checklists should also prepare the transfer checklist.

### **How will it be implemented**

OUs will consult with Legal and Marketing to prepare the documents to include in a standard transferee kit. They must ensure that transferees have sufficient capacity for monitoring. A standard checklist for evaluating the appropriateness of transfers must be prepared.

### **Costs**

- Minimal printing, publishing and legal costs.
- Costs for a periodic (every three year) review of transferred easements.

## **12. Research the legal foundations for easements outside the United States**

Create an interdisciplinary team of international staff, domestic staff experienced in working with conservation easements and legal support, including consultants if necessary, to further research the legal foundations for the use of easements in other countries and to develop model easement processes and policies. This team should explore such concepts as creation of regional land trusts outside the United States to hold conservation easements, and an international easement certification program.

**Details, Notes and References**

The team to accomplish this task should be appointed by May 15, 2004, and report back to the CCO by September 1, 2004. The team should consider working with existing multinational organizations, such as Ecolex ([www.ecolex.org](http://www.ecolex.org)).

**Impact**

The establishment of this team will not have impacts in itself, but its recommendations could have significant impacts on the use of easements outside the United States.

**Who will implement**

The team should be appointed by the CCO. Zdenka Piskulich, Costa Rica Country Director, has volunteered to lead the team.

**How will it be implemented**

Through the deliberations of the committee.

**Costs**

\$10,000 for meetings of the committee and outside experts.

**13. Ensure engagement of OU directors in easement activities**

Make certain that OU directors, with the advice and involvement of legal staff, are responsible and accountable for the implementation of easement acquisition programs in a way that is consistent with the Conservancy's policies, procedures and practices. Initially this must be accomplished through the training first of legal staff and then of all staff engaged in easement negotiations. (See 14, below.)

**Impact**

OU directors are already extremely busy and have multiple responsibilities. Ensuring that compliance with easement policies and procedures will add to this burden.

**Who will implement**

OU directors, in part, through delegation to other staff.

**How will it be implemented**

Through explicit inclusion of responsibility for easements in the duties and responsibilities of OU directors.

**Costs**

Not significant.

## 14. Conduct staff training

Immediately take affirmative steps to train project staff in the effective use of the policies, procedures and practices set out in this document. Accountability for implementation and practice of these policies, procedures and practices should be vested in the line organization (CCO, CRMs) DDs, OU directors). Legal Staff should support and facilitate line managers in fulfilling this responsibility.

### Details, Notes and References

There should be a three-pronged approach to training: (1) rapid online training, (2) “train the trainers” and (3) conservation conference.

**Online training** — This would involve rapid Webex training to get field staff up to speed quickly on the new policies and procedures for easement administration.

**Train the trainers** — This approach is needed to facilitate a more accelerated process for training targeted staff in the application of new easement policies, procedures and practices. The concept is to convene a workshop involving three staff (representing legal, science, and protection functions) from each division. This workshop should involve a combination of instruction, case studies, compatible use scenarios, and role-playing. Each of these division teams should then be charged with leading a workshop within their own divisions to engage the frontline practitioners in the same training.

Both phases of the Train the Trainers approach should be accomplished within 120 days (ideally before the end of FY04) of when the final EWG recommendations are adopted.

**Conservation Conference** — If and when a regional or organization-wide conservation conference is scheduled, a module (or modules) for protection staff should be included for a “Conservation Conference” to provide training and updates on a range of subjects, including new easement policies, procedures and practices. Ideally, this should be done under the auspices of the CCO within the next 15 months. The Conservancy should consider an initial training session in conjunction with the Land Trust Alliance Rally in October 2004.

The lead for both training approaches should be the CCO or the CCO’s designee. The application of the new easement policies, procedures and practices are so intertwined with balance of the day-to-day work of conservation line practitioners, the CCO is in the best position to ensure that the appropriate integration with legal, science, finance, and other functions occurs.

The resource requirements to implement this recommendation are those associated with the Conservation Conference and the Train the Trainers workshops. Presumably, the former would have a budget substantial enough to cover a wider range of subjects for 300 – 500 staff.

Training should address the use of systems and ensuring information quality.

**Impact**

Training will take staff time and resources but is essential for these recommendations to be implemented effectively.

**Who will implement**

Conservation Training Group in cooperation with the CCO.

**How will it be implemented**

See above.

**Costs**

Webex training module (1.5 hour for 40 people) is estimated to cost \$2,850 including training materials to be drafted and distributed.

The CLS Train the Trainers session of 1.5 day should involve 14 staff at a cost of \$14,000. Two training sessions of CLS and the CLS toolkit for 12 trainees each would cost \$26,500. On-the-ground training for easement monitoring is estimated to average three days (two days travel, one day training) for staff already familiar with basic legal and biological concepts. Travel costs and time would vary depending on the OU.

Training at a large conservation meeting will be part of other such training and information sharing at such a meeting and cannot be estimated separately.

## **NEXT STEPS AND CONCLUSIONS**

**Next steps for implementation**

The Easement Working Group recommends the approval of its recommendations by the Chief Conservation Officer of The Nature Conservancy and referral to the Board of Governors or committees of the BOG for any further changes in policy or procedures not already accomplished. Upon approval by the CCO:

- a) The working group should complete its function by appointing a sub-group to draft the checklists for decision-making on the use and design of conservation easements noted in Recommendation #3, the monitoring checklist called for in Recommendation #8, the enforcement checklist called for in Recommendation #10, and the transfers checklist called for in Recommendation #11 by June 15, 2004.
- b) Conservation Information Management (CIM) and Technology and Information Systems should begin the requirements analysis, design, planning and costing of the development of the information systems required to support track of conservation easements and their monitoring and enforcement across the organization.

- c) The FY05 budgets should include sufficient resources at every level for easement administration including \$80,000 for training of staff in the recommended processes and a mechanism to secure and allocate the funds necessary for the establishment of the easement information system. The cost of the easement information system will be identified once the requirements analysis will be completed. \$50,000 is also needed for the study of the ecological impacts of easements and \$10,000 to support the team working on easements outside the United States. Thus, a total of \$140,000 is requested for FY05 with additional funds coming later for the data management system.
- d) A copy of the approved EWG report should be distributed to senior managers, the Board of Governors and chapter board chairs, and relevant partners.
- e) The initial Webex training called for in Recommendation #14 should be scheduled before June 30, 2004.
- f) Conservancy representatives should meet with representatives of the Land Trust Alliance and other partner organizations to present and discuss the approved report.
- g) The communication document to donors and landowners identified in Recommendations #6, #8 and #9 should be prepared.

### **Adaptive Management**

The Easement Working Group recognizes that its recommendations represent significant changes in the conservation easement policies and procedures of the Conservancy. An impact analysis should be prepared quickly to identify major implementation risks. Additionally, some of these changes may not quite work as planned in the field and will require further refinement as a result of practical experience. The EWG suggests that the CCO conduct a review of the results of the changes during January 2005 with objective of identifying those revisions needed to make new policies and procedures more effective.

### **Conclusion**

While the recommendations set out in this report are based on policies and procedures previously adopted and carried out by The Nature Conservancy and its staff, we understand that they represent an increased level of effort and the commitment of scarce resources. Given the concerns that have been raised about the use of conservation easements by the Congress and by all who care about effective conservation, however, we believe that rapid implementation of these recommendations by the Conservancy is important to ensuring the long term integrity of conservation easements as a very useful tool in achieving the our mission of protecting habitat for the diversity of plant and animal species. We thus recommend that the Board of Governors and the Conservancy's management secure, allocate and align the necessary resources to successfully implement these recommendations.

# APPENDIX I

## MEMBERS OF THE EASEMENT WORKING GROUP

Bob Bendick, Director, Southeast Division (Chair)

Bruce Runnels, Director, Rocky Mountain Division

Bob Klein, Director, Vermont Chapter

Carter Smith, Director of Conservation Programs, Texas Chapter

Elizabeth Gray, Director of Conservation Science, Washington Chapter

Jean-Louis Ecochard, Vice President, Chief Information Officer

Lynn Lozier, Project Director, California Chapter

Mark Robertson, Director, South Carolina Chapter

Michael Dennis, Director of Conservation Real Estate and Private Lands

Mike Andrews, Chief Conservation Officer

Mike Sweeney, Director of Operations, California Chapter

Phil Tabas, Acting General Counsel

Zdenka Piskulich, Director, Costa Rica Country Program

Roger Milliken, Member Board of Governors

Christine Scott, Member Board of Governors.