

Proposals for Strengthening Laws Governing Conservation Easements and Donations of Land

The Nature Conservancy

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

A conservation easement is a voluntary agreement between a landowner and a conservation organization or government entity in which the landowner promises to limit the use of his or her lands to activities that are consistent with conservation purposes.

The Nature Conservancy strongly supports conservation easements and targeted tax incentives designed to encourage their use.

Although the vast majority of conservation easements protect important natural areas and produce significant public benefits, as with any charitable endeavor, there have been limited, but clear, cases of abuse.

To eliminate the opportunity for abuse, help ensure conservation easements are used only in the manner intended by Congress and ensure that every easement produces significant conservation and public benefits, some of the laws governing conservation easements and related tax incentives should be strengthened.

To that end, The Nature Conservancy has submitted to Congress a series of recommendations for specific reforms. These reforms are designed to address potential areas of abuse, while preserving the flexibility and integrity of the existing laws that have helped make conservation easements such a valued option for private landowners interested in conserving their lands for future generations.

Recommended Reforms to Strengthen Laws Governing Conservation Easements and Donations of Land

Conservation Easement and Land Donation Valuation and Appraisals

Issue: A donation of a conservation easement or land may entitle the donor to a significant tax deduction; therefore it is imperative that the public is assured that the value of a land-related gift eligible to be claimed as a tax deduction is fair and appropriate. Determining the value of a donation of a conservation easement or land

requires a thorough, experienced appraiser, one who is well versed in the complexities of conservation easements, understands how protected land may affect the value of adjacent properties and is properly certified and uses uniform appraisal standards.

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

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

Ensuring Conservation Purposes and Public Benefits

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

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

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

Easement Compliance, Monitoring and Enforcement

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

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

- In cases where a donor intends to take a tax deduction for a conservation easement gift, prohibit any modifications to the easement that reduce the conservation values the easement was designed to preserve. In cases where a modification's effect on the conservation value of an easement is neutral or improves the conservation value, the modification must be approved by a third party and any financial benefit to the landowner must be accounted.
- Require easement-holding charities to annually certify on their IRS Form 990s that they have in place an appropriate easement compliance and monitoring program.
- Create penalties for donors and donees that violate the terms of conservation easements.

Further, Congress should provide additional resources to the IRS to support conservation easement and land donations oversight activities. Some of these resources could come from modest and reasonable transaction fees and assessed penalties.

Additional Incentives for Private Landowners to Encourage Conservation Activities

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

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

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