April 14, 2015

The Honorable Michael B. Enzi
The Honorable Charles E. Grassley
The Honorable Debbie Stabenow
Co-Chairs, Individual Tax Reform Working Group
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Submitted via: Individual@finance.senate.gov

Dear Co-Chairs Enzi, Grassley and Stabenow:

As members of the Senate Finance Committee consider comprehensive tax reform, the Land Trust Alliance ("The Alliance") appreciates the opportunity to submit comments about the charitable deduction and the special treatment of charitable donations of conservation easements.

## The Land Trust Alliance and Land Trusts

The Alliance is a 501(c)(3) publicly-supported nonprofit organization, which advances private, voluntary land conservation by serving the needs of 1,700 land trusts – nonprofits promoting land conservation in communities around the country.

The Alliance does not hold easements or buy land. Our goal is to advance the work of our member land trusts that do hold easements or land. We work to increase the pace, quality and permanence of their conservation efforts. We provide training and education for our members; we work with them to set standards for their work; and we represent them in Federal policy matters.

Our members are involved in many different kinds of conservation. They are citizen-led charities working on local conservation priorities. Many of our member organizations conserve wildlife habitat. Many conserve parks and preserves for the public to use, including urban parks, gardens and trails. Many are dedicated to ensuring the survival of working lands – farms, ranches and forests, whose owners produce food and fiber for our country. Together, our members have been very successful, having been involved in the conservation of 47 million acres of land in the United States.

## Charitable Deductions, Generally

Our member land trusts are highly dependent on charitable donations for their operating budgets, and they believe that those donations are greatly affected by the availability of a charitable tax deduction for donations to them as 501(c)(3) publicly-supported charities. For this reason we strongly support having that deduction available to the maximum number of taxpayers.

## Easement Donations Are Big Donations

As charitable institutions, each of our member organizations is responsible for raising funds to do its work, and donations are a very important part of that. But we are not just accepting donations of cash. A crucially important part of our work is accepting donations of property and of conservation easements from private landowners.

Those donations represent highly-leveraged conservation, with the public protecting important environmental and historic resources for one-third or less than the market price. That is possible because landowners who love their land partner with us to protect it, for everyone's benefit.

Conservation easements are contracts specifically enabled by state laws in each of the 50 states. These contracts retire development rights in order to protect natural, scenic or historic resources on those lands. In the 1970s, Congress specifically enabled tax deductions for such gifts with section 170(h) of the tax code, with the current version largely finalized in 1980. Land trusts hold about 12 million acres of conservation easements, and have, up until recently, been adding about a million acres a year.

Both land and conservation easements are very valuable gifts. The IRS says that in 2009, the average value of a donated work of art for which a tax deduction was taken was about $7,000. The average value of a gift of appreciated stock was about $42,000. The average value of a gift of land, whether for conservation or for any other cause, was about $170,000. And the average value of a conservation easement was $460,000.

## Limitations of the Deduction

It is natural to assume that conservation easements, being such high-value gifts, come from high-income people, and many do. But it is important to understand that many do not. Many come from family farmers, ranchers, and forestland owners who find that the land that their parents or grandparents purchased for a few dollars per acre is now worth thousands of dollars an acre on the open market. These families may have very modest incomes, but very, very high-value development rights, often worth 10, 20, or 30 times their family income.

These donors face an unusual situation. The tax code generally provides a limit on tax deductions for donations of property of 30% of the taxpayer's AGI, with a carryover of donations in excess of that limit for an additional five years past the year of donation. Unfortunately, for a rancher raising cattle on land that has become very valuable for development, this simply does not work.

A cattle-raising family with an AGI of $50,000 a year, may take no more than $15,000 in charitable deductions for donating their development rights in any one year. Taking a deduction in the year of donation and during the five carry-over years means a total of $90,000 in tax deductions for a gift that averages $460,000, and is often worth $1 million or more.

In 2006, the *Pension Protection Act* ("PPA") addressed this with a provision that had been sponsored by Senators Max Baucus (D-MT) and Charles Grassley (R-IA). This allowed donors of conservation easements to deduct an amount equal to 50% of their AGI and carryover their deductions for 15 years instead of five. That would enable the family referred to above to deduct as much as $400,000 over 16 years instead of $90,000, for its gift. In addition, a donor whose income was primarily from agriculture or forestry could deduct an amount equal to all of his or her AGI, doubling the amount that could be deducted each year.

## The Need for Certainty

After enactment of the PPA provision, the number of conservation easement donations doubled, compared to the two years before, and the amount of acreage conserved increased by about 32 percent. We believe there is even greater potential for this provision to expand conservation, as it encourages many landowners who simply could not afford to donate a conservation easement under the old limits to consider doing so. Accordingly, the Alliance strongly supports S. 330, the *Conservation Easement Incentive Act of 2015*, bipartisan legislation introduced by Senators Heller and Stabenow to make permanent the enhanced tax deduction for gifts of conservation easements.

Without permanence, it is very hard to educate landowners and their advisors about this option because we cannot tell them with any certainty that it will still be available after they invest the considerable time and money it takes to properly plan a conservation easement.

We have long advised that any landowner considering such a gift be represented by an attorney in the process of negotiating the specifics of the easement. Professional help is also advisable with regard to the tax treatment of an easement donation. The Internal Revenue Service ("IRS") is understandably particular about how such a gift is made and how it is documented, so great care must be taken in the process. In addition, the IRS requires a professional appraisal that meets rigorous standards.

A conservation easement often means giving away a family's largest financial asset. The easement will control what can happen on the land for generations to come. It often takes a landowner two years or more to come to the decision to seriously explore donating an easement, and then another nine months or more to actually plan and execute the gift. The certainty of a tax provision that is not set to expire will mean many more landowners will be willing to seriously consider making a donation.

This really is an incentive for people to take action. Renewing it after people do not have the time to carefully consider what they are doing – something that seems to happen routinely in the waning hours of a congressional session – is bad tax policy and bad conservation policy. We don't want landowners to rush to a decision. We want them to have confidence that they have covered all the details and done what makes sense for them, for their community, and for conservation.

People make donations of land and easements because they love their land and want to protect it. The tax incentives the Congress has provided make it possible for many more landowners to make such donations. They allow landowners to protect land and resources that are often incredibly valuable to their communities. Many landowners need that incentive. They need certainty in the tax law so that they can carefully plan their donations. And they will be very grateful if these incentives remain in the code – permanently – as Congress takes on the important task of reforming our tax laws. The result – the conservation of wildlife habitat, parks, gardens, trails and open space – will enrich the lives of generations to come.

On behalf of the Alliance, thank you for the opportunity to share our views on this tax matter. As you move forward with your deliberations, we look forward to working with you and would be pleased to serve as a resource.

Sincerely,

Russell Shay
Director of Public Policy
Land Trust Alliance
1660 L Street NW #1100
Washington DC 20036
202-800-2230
rshay@lta.org