Land Trust Alliance
Together, conserving the places you love

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Ms. Karin Gross
IRS Office of the Chief Counsel
1111 Constitutions Avenue
CC: ITA: B01, Room 4043
Washington, D.C. 20224

Mr. Marc L. Caine
IRS Office of the Chief Counsel
1600 Stewart Avenue, Suite 601
Westbury, NY 11590

Dear Karin and Marc:

Thank you for coming to the Land Trust Rally. It was great to have you there, both so that you could inform us about Internal Revenue Service policy, and so that you could see how the land trust community takes its responsibilities seriously as publicly supported charities holding important assets for the public benefit.

Land Trust Alliance member land trusts must adopt and commit to *Land Trust Standards and Practices*, the ethical and technical guidelines for the responsible operation of a land trust, first established by the Land Trust Alliance and the land trust community in 1989. Our accreditation program evaluates land trusts' compliance with those standards and practices; there are now 317 accredited land trusts which hold 76% of land held by land trusts. In the next few years, we expect to increase that to 90%.

We also created Terrafirma, a nonprofit insurance pool to help ensure that our members have the legal resources to defend the lands and easements they protect with more than 476 land trusts enrolled in the program covering over 7.2 million acres of conservation easements and fee-owned property. And, of course, at Rally you witnessed firsthand some of our continuing efforts to provide education on legal requirements and how to best achieve their conservation missions.

I am writing to express concern about Marc's comments at the Rally session on recent court cases involving conservation easements. He seemed to state that the IRS was arguing in Tax Court that the mere existence of an amendment clause in a conservation easement document should disqualify a donated easement from a tax deduction.

We find this disturbing for several reasons. First, arguing that an amendment clause disqualifies an easement for a tax deduction is essentially arguing that virtually no easement qualifies for a

1660 L Street NW, Suite 1100, Washington, DC 20036-5635
202-638-4725 PHONE 202-638-4730 FAX www.landtrustalliance.org

deduction. The Land Trust Alliance encourages land trusts to include this clause in every easement. State laws widely provide for the amendment of easements, with or without an amendment clause.

Karen has, over the years, stated that some amendments to a conservation easement are acceptable, such as amendments removing rights previously reserved to the landowner, adding acreage to the easement, and correcting of errors. In fact, in *Strasburg v. Commissioner*, the Tax Court approved a deduction for a conservation easement amendment that eliminated rights to a building site reserved in the original easement. How would these be possible if the Tax Court finds that the simple possibility of amendments *disqualify* an easement from a tax deduction?

Since at least 2005, the Land Trust Alliance has specifically advised land trusts to include an amendment clause in their easements. As noted in the 2005 edition of the *Conservation Easement Handbook*, "[we] consider it prudent to set the rules governing amendments, both to provide the power to amend and to impose appropriate limitations on that power to prevent abuses." In 2007, we published *Amending Conservation Easements: Evolving Practices and Legal Principles*, which guides land trusts in developing responsible protocols that thoughtfully deal with inevitable changes that easement land will face. In that publication, we specifically recommend an amendment clause "to allow amendments that are consistent with the overall purposes of the easement, subject to the requirements of applicable laws. Doing so clarifies up front for all parties that there are circumstances under which conservation easements may be modified." In addition, *Land Trust Standards and Practices* require land trusts holding easements to have a written policy on amendments.

Needless to say, it is hard to imagine that that the framers of the federal law providing the deduction intended that landowners would be denied a deduction because the document has an amendment clause. It is even harder to imagine that Congress did not want donors to get a deduction when they approved the enhanced deduction for easements in 2006 and then subsequently extended it (a period in which most easements created with nonprofit organizations included amendment clauses).

We need good IRS enforcement to keep bad actors from abusing the tax incentives, but we will vigorously oppose any attempt in court to punish landowners simply for signing a conservation easement that includes an amendment clause.

Perhaps we misunderstood Marc's comments and the Tax Court's intention in this matter. I hope we are mistaken in our concern and would appreciate your help in clarifying this matter for us.

Sincerely,

Rand Wentworth
President