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National Trust for Historic Preservation**

**Testimony
Before the Committee on Ways & Means
Subcommittee on Oversight**

**Oversight Hearing on Tax Deductions for Façade Easement Donations
June 23, 2005**

Good afternoon, Mr. Chairman and members of the Subcommittee. I appreciate this opportunity to assist the Subcommittee as it reviews the federal tax incentives for historic preservation easements. The National Trust considers easements and the tax deductions that support them to be valuable tools for historic preservation, and we are deeply concerned by reports of abuses in this area. We are eager to work with Congress to ensure that steps are taken to ensure the integrity of this important incentive for historic preservation.

By way of background, the National Trust is the only nonprofit organization chartered by Congress to promote public participation in the preservation of America's heritage. For more than half a century, the National Trust has actively pursued this mission—through the operation of historic sites open to the public; through public education, financial assistance, and advocacy; by providing technical assistance to hundreds of independent historic preservation organizations operating at the statewide and local levels; and by using preservation as the core focus of community revitalization activities across the country. With the support of more than a quarter of a million members, the National Trust has sought to ensure that the places that reflect our history as Americans will continue to be enjoyed by future generations.

With the pressures of urban sprawl, in-town tear-downs, and the bottom-line realities of the real estate development world, the preservation of America's historic places could not be accomplished without effective public policy tools and incentives at the federal, state, and local levels. Municipal landmark laws, state regulations and incentives, and federal laws that promote rehabilitation and reuse of historic properties all create a framework of policies and incentives that help to promote historic preservation as a strong public value. While these policies and incentives are relatively modest in scope and cost, they are incredibly important, because without them our history would simply *be* history.

Historic Preservation Easements Serve as a Valuable Preservation Tool

Preservation easements are a uniquely effective preservation tool—a tool that uses *private*—and *voluntary*—agreements to protect historic structures and significant historic areas from demolition or inappropriate alteration. For well over three decades, hundreds of nonprofit organizations—and governmental agencies at the federal, state, and local levels—have responsibly used preservation easements to protect many thousands of historic structures, archaeological sites, battlefields, and rural landscapes. For many of these properties, easements serve as the only legal protection to preserve their historic or architectural values. And, for more than a quarter of a century, Congress has recognized the value of such easements by granting tax incentives to taxpayers who donate them to qualified easement-holding organizations.

Since the early 1970s, the National Trust has actively encouraged the use of conservation and preservation easements to preserve historic places. Pursuant to our mission and Congressional Charter, the National Trust has published reference materials on easements, and has provided advice and assistance to other preservation and conservation organizations holding easements. Over that same period—over the past 30 years—the National Trust has itself acquired approximately 100 easements, protecting a variety of historic sites in 21 states and the District of Columbia. Some of these easements were donated to the National Trust, some were

obtained by the National Trust as a condition of grants or other financial assistance, and many were imposed on historic properties given outright to the National Trust for other disposition.

The easements that the National Trust holds and administers protect a wide variety of historic resources, including archaeological ruins in rural Colorado, open farmland next to our historic sites in Virginia, a modest but unaltered Cape Cod saltbox cottage in Massachusetts, a modernist classic in California, a frontier fort in Texas, and a number of important National Historic Landmark structures from Florida to Oregon. Our easements are very restrictive, going far beyond a simple “façade” easement, by protecting the entire structure, its historic setting, and, very often, interior historic features as well. And these restrictions are backed up by an active monitoring and enforcement program, with support from an endowment of more than \$1 million, and with the help of an on-staff architect specifically assigned to this area.

While the National Trust is an easement-holding organization, it is worth noting that the National Trust does *not* actively solicit easement donations for itself. Instead, pursuant to a board policy adopted in 1995, we first encourage prospective donors to work with qualified statewide and local preservation organizations that accept and administer easements as part of their mission to serve a broad range of community-based preservation activities. There are many capable easement-holding organizations at the state and local levels that also rely on restrictive easements, and that take seriously their responsibility to monitor and enforce easement restrictions to ensure the effective long-term preservation of these historic places. Some of these organizations include prominent nonprofit preservation groups, such as the New York Landmarks Conservancy, the Preservation Resource Center of New Orleans, Historic Denver, the Cleveland Restoration Society, the Pittsburgh History & Landmarks Foundation, the Georgia Trust for Historic Preservation, the Florida Trust for Historic Preservation, the Utah Heritage Foundation, the Foundation for San Francisco’s Architectural Heritage, the Historic Charleston Foundation—just to name a handful. Others are state government offices that are specifically dedicated to protecting historic sites, such as the Texas Historical Commission, the Minnesota Historical Society, the Virginia Department of Historic Resources, and the Maryland Historical Trust.

Concerns About “Façade” Easement Valuation Abuses

Because of our longstanding interest in easements, and the tax incentives that help to encourage them, the National Trust is seriously concerned by reports that some donors of historic “façade” easements have abused this important tax incentive by submitting exaggerated deduction claims. While we have no specific information regarding the actions of individual taxpayers, the fact that the IRS believes that there has been widespread overvaluation of façade easement donations should be of concern to any easement-holding organization. On the other hand, the recent announcement by the IRS that it plans to conduct pre-audit reviews of a large number of façade easement donations is an important sign that the agency plans to take a more active and critical role in this area, which we hope will in turn lead to greater caution on the part of easement donors, and the appraisers, accountants, lawyers—and, yes, the preservation organizations—who advise them.

Statements made by the IRS on this topic note one concern in particular: that donors often claim significant deductions for simple façade easements on historic properties located in historic districts that are already tightly regulated by local municipalities, and where the imposition of new restrictions would likely have little valuation impact. While each situation must be addressed on its own merits (for example, many historic district laws are actually quite weak, or poorly enforced), the National Trust agrees that simple façade easements—particularly those that only restrict changes to the front of a historic structure—are generally not likely to justify significant tax deductions for historic properties already subject to strong local preservation laws, and especially for properties that have substantial market value because of their historic character. This is not only a matter of common sense, but it is a concept embodied in the regulations accompanying this area of the tax code. It also happens to be the guidance that the National Trust has long provided, first published in the 1984 manual “Appraising Easements” (jointly produced by the National Trust and the Land Trust Alliance, and currently in its third edition).

On the other hand, it is essential to stress that many qualified easement-holding organizations use restrictive easements that go well beyond the preservation restrictions of local preservation laws, and that many easement donations protect historic sites that are not protected in any other manner. In these cases, both the IRS regulations and the guidance available to appraisers suggest that significant deductions *should* be permitted for such easements, again depending on the circumstances of any individual case.

And, it is important to state that, from a substantive preservation standpoint, most easements *do* provide important preservation values, even for properties already regulated by local historic preservation laws. Such easements can serve—and indeed have served—as an important “backstop” to local preservation ordinances, which are often subject to economic hardship or special merit exemptions, variances, or changes to permit development as a result of political or economic pressure. These additional protections should be considered as part of the valuation process, as noted in the applicable IRS regulations.

Concerns About Over-Promotion of “Façade” Easement Donations

In addition to concerns raised about exaggerated valuation claims for façade easements, recent media reports have focused on the significant increase over the past several years in activities by organizations and individuals involved in promoting façade easement donations as a tax-saving device.

There is nothing wrong, *per se*, with easement-holding organizations—or private promoters—encouraging donors to take advantage of duly authorized tax incentives. Congress created the tax incentive in 1976 to encourage the use of this tool for historic preservation, and it is important for potential donors to understand that such incentives exist. However, the National Trust has been quite concerned with the marketing practices used by some organizations in recent years to solicit donations of simple façade easements. Some of those promotions have prominently claimed that easement donations should be worth between ten and fifteen percent of a historic property’s overall value, without making any qualification regarding the nature of the easement or the other restrictions to which the property may already be subject. Although

promotion of this ten to fifteen percent figure may have been prompted by guidance once used by the IRS, the Service's regulations and the decisions of the Tax Court in this area have long made it clear that there is no ten to fifteen percent "safe harbor" for easement donations. Deductions may be far less—or in some cases even greater—than these percentages, depending on the type of property, the restrictiveness of the easement, and the effect of existing local preservation and zoning controls.

The National Trust has also been concerned that many easement promoters have failed to provide any meaningful acknowledgement that significant tax deductions for easement donations can only be obtained if the easement's restrictions result in a corresponding *reduction* in the value of the property encumbered by the easement. Instead, a number of statements in promotional materials have effectively reassured donors that the real impact of easements on property rights is truly minimal—particularly when the property is already regulated as part of a local historic district. And, for easements that truly have a minimal impact on property rights—such as easements that only protect the view of the front façade of a property from the other side of the main frontage street—the easement may actually be *less* restrictive than local preservation laws, and have little or no value at all, both from a substantive preservation standpoint, and from a valuation standpoint.

Recommendations

As previously indicated, it is the view of the National Trust that historic preservation easements, and the tax incentives that support them, serve as important tools to promote the preservation of America's historic places. The National Trust is committed to working with our partner organizations to provide increased training and guidance, and to develop standards and practices that will help to ensure that the integrity of this important program is not compromised. We have also discussed with our partners the concept of creating a voluntary system of accreditation for historic preservation organizations that accept easement donations. In addition, we have had discussions with representatives of the appraisal industry about creating better guidance and additional training for appraisers.

Fundamentally, however, we believe that many of the concerns raised about valuation problems, and about questionable promotion of easement deductions can—and should—be addressed by Congress. Appraisal and appraiser standards should be enhanced to ensure that appraisers are properly trained and certified, that valuations are accurate, and that the impact of local preservation and zoning laws are fully considered. Stronger penalties should be adopted for valuation misstatements, and appraisers who significantly misstate easement values should be barred from practice before the IRS. Easement deductions should not be granted for easements that protect only a façade if other significant historic features of a property are unprotected, or if the structure itself is at risk. And easements—as well as easement-holding organizations—should also adhere to the highest professional standards for review and approval of changes.

We stand ready to work with the Ways & Means Committee to address these issues, and to ensure that this important incentive is retained.

PAUL W. EDMONDSON
Vice President & General Counsel
National Trust for Historic Preservation

Biography

Paul Edmondson serves as Vice President & General Counsel of the National Trust for Historic Preservation, a national nonprofit organization chartered by Congress in 1949 to promote public participation in historic preservation across the country. Mr. Edmondson oversees a department that provides a variety of legal services for the organization, including legal advocacy and in-house corporate legal services in support of the different programs and activities carried out by the National Trust, its regional offices, and historic sites.

During his 18 year career at the National Trust, Mr. Edmondson has worked on a wide variety of legal issues pertaining to the protection of historic resources in the United States—from constitutional issues, to federal preservation law matters, to issues relating to local landmarks laws. He also assists with legal education and outreach, and serves as managing editor of the *Preservation Law Reporter*, the only legal journal specifically devoted to the subject of preservation law.

Mr. Edmondson also oversees the National Trust's historic preservation easement program, with staff support from the legal and regional staff and with the assistance of an architect specifically assigned to this function. The National Trust holds approximately 100 easements in 21 states and the District of Columbia. Mr. Edmondson provides advice and assistance on easement issues to the National Trust's statewide and local partners, and speaks frequently on the subject.

Before joining the staff of the National Trust for Historic Preservation, Mr. Edmondson served for six years as an attorney with the federal General Accounting Office (now the Government Accountability Office), rising to the level of Senior Attorney in 1987.

Mr. Edmondson received his undergraduate degree in Anthropology/Archaeology from Cornell University in 1976, and he received his law degree from The American University in 1981.

**Federal Funds Received by the National Trust for Historic Preservation from the U.S.
Department of the Interior Fiscal Years 2001-2004
As Reported on A-133 Audit of Federal Expenditures**

FY 2001

59,740	NPS, Fort Smith, Arkansas Tornado Relief (mostly pass-through to the city)
65,000	NPS, Annual conference, Save America's Treasures general support
5,200	NPS, NR nomination project in Yellowstone Park
15,000	NCPTT, Historic rehabilitation tax credit forum
10,060	Drayton Hall Great Hall Floor (pass-through from state of SC)
68,412	NCPTT, Statewides initiative
20,613	NPS, Lincoln Cottage Special Resource Study
260,222	NPS, Save America's Treasures – Chesterwood, Drayton Hall and Lincoln Cottage
<u>20,000</u>	Bureau of Land Management, Guide to Cultural Resources
524,248	

FY 2002

2,500,000	NPS – Historic Sites Fund Endowment
90,000	NPS – Annual Conference 2001 and 2002
<u>9,940</u>	Drayton Hall Great Hall Floor (pass-through from state of SC)
2,599,940	NPS Historic Preservation Fund (HPF)
29,133	NCPTT – Historic Schools Project
10,695	NPS – Lincoln Cottage Special Resource Study
240,042	NPS – Save America's Treasures – Chesterwood, Drayton Hall, Lincoln Cottage, Lyndhurst and Wilson House
73,377	NCPTT - Statewides Initiative
10,000	Blackstone River Valley NHCC – Annual Conference 2001
5,000	Bureau of Land Management – Guide to Cultural Resources
<u>500</u>	Fish & Wildlife Service – Ashley River Wetlands Conservation Plan
368,747	
2,968,687	TOTAL

FY 2003

4,487,000	NPS – Historic Sites Fund Endowment
52,000	NPS – Annual Conference 2002 and 2003
<u>5,000</u>	Drayton Hall Landscape Plan (pass-through from state of SC)
4,544,000	NPS Historic Preservation Fund (HPF)

6,990	NPS – Lincoln Cottage Special Resource Study
670,158	NPS – Save America’s Treasures – Chesterwood, Drayton Hall, Lincoln Cottage, Lyndhurst, Wilson House and SAT administration
<u>5,221,148</u>	TOTAL
<u>FY 2004</u>	
5,815,951	NPS Historic Sites Fund Endowment (includes 02, 03 & 04 grants plus net gains)
<u>57,600</u>	NPS – Annual Conference 2003
5,873,551	NPS Historic Preservation Fund (HPF)
2,250	NPS – NHL Condition Assessment Internships
754,794	NPS – Save America’s Treasures: Lincoln Cottage, Lyndhurst, Woodlawn and SAT Admin
<u>6,630,595</u>	TOTAL