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**Testimony of David Sutherland – Director of Government Relations
Before the Judiciary Committee – February 24th, 2016**

**In Opposition to Bill 144
AN ACT CONCERNING LAND THAT IS SUBJECT TO A CONSERVATION
RESTRICTION HELD BY A NONPROFIT LAND-HOLDING ORGANIZATION.**

On behalf of The Nature Conservancy, I would like to express our opposition to Bill 144, which would eliminate a provision passed last year by the General Assembly which prevents land subject to a conservation easement held by a land trust from being taken by adverse possession.

Adverse possession, sometimes colloquially referred to as “squatter’s rights”, allows a person to acquire the title to, or an easement over, someone else’s land or a portion of their land by using that land in an open, visible, and exclusive way, without the owner’s permission, for an uninterrupted period of fifteen years. A landowner who wishes to interrupt an adverse possession situation can, if they are aware of the trespass, serve a notice on the adverse possessor and record it on the land records.

The concept of adverse possession began as, and in many cases can still be, a useful and even noble legal principle. As explained by John Sprankling, a former Chair of the Property Law Section of the Association of American Law Schools: “Adverse possession evolved in England as a method to protect the true owner of land by barring ancient (and presumably frivolous) claims, much like a modern statute of limitations... In a mature, populated, agricultural society without an effective system for registering or recording title to real property, long term possession served as a substitute for, and sufficient evidence of, actual ownership.”

Sprankling further notes: “In the United States, traditional adverse possession law was remolded by an instrumentalist judiciary in the nineteenth century to serve the goal of national economic development.”

In some countries, adverse possession was a way of ensuring that lands held or formerly held by the nobility could be more equitably distributed. In some cases in various jurisdictions, the concept has been unfortunately abused by trespassers as a way of simply stealing land, devoid of any societal benefit.

Adverse possession predated the concept of land conservation and is in conflict with many of the realities and objectives of conservation. In recognition of this, this General Assembly passed PA 99-64 in 1999, prohibiting land owned by land trusts from being taken by adverse possession, similar to how lands owned by governments and railroads were already so protected.

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In passing PA 99-64, the legislature was mindful of the ways in which land trust lands are fundamentally different from lands owned by many other private parties. These lands are often by design large holdings, the boundaries of which are difficult to monitor, but the purpose of which is to provide society and communities with important benefits - clean air and water, scenic beauty, wildlife habitat, and often recreation. The land trusts owning them are most often run by volunteers, who receive no financial gain from their service or from the lands.

Unfortunately, many land trusts, including my organization, have had serious problems with encroachments by neighboring property owners, in some cases, by trespassers intentionally trying to expropriate property or even extort settlement money to resolve artificially contrived disputes. These situations impose very expensive hardships on land trusts and hinder our ability to perform critical core functions.

We and at least some other trusts of which I'm aware have been cooperative with abutting landowners in addressing genuine boundary confusions, but the law should not give greater legal standing to trespassers who are often intentionally encroaching.

Last year's legislation recognized that lands subject to conservation easements held by land trusts provide many of the same benefits as lands owned by trusts, and present many of the same challenges, if not more, as do the lands they own. It is hard to imagine a use or purpose that a long-term trespasser might have that would serve a greater societal objective than that provided by the land trust's easement.

Landowners who place easements on their lands, often by donation, are usually active, engaged property owners who want to provide the benefits that conservation management and protection offers to their community. Those who trespass on their lands to the point of using them illegally should not be rewarded or encouraged by the prospect of assuming ownership.

This legislation, as proposed, does specify that a successful adverse possession will not extinguish an easement, but we would not need that specification if the existing statutory language is simply left as it is. The language that Bill 144 proposes to delete from the statutes would encourage encroachments on underlying land that would be far more likely to violate the purpose of an easement than to provide any conservation benefit. This bill will all too likely make management of conservation lands more difficult and costly.

We urge you to reject this legislation.