



CONSERVATION

EXEMPLARY CONSERVATION FINANCE INITIATIVES

CAPITAL IN THE

JAMES N. LEVITT, EDITOR

AMERICAS

CONSERVATION CAPITAL IN THE AMERICAS

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INITIATIVES

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THE PRIVATE LANDS CONSERVATION INITIATIVE IN CHILE

Henry Tepper and Victoria Alonso

MAKING CONSERVATION PERSONAL

A new initiative to catalyze voluntary conservation action by private landowners in Chile has made rapid, dramatic progress since it began in 2006. Although it is not the first effort to increase private lands conservation in Latin America, this initiative has gathered and maintained momentum in a way that bodes well for Chile and other countries in the region.

Marcelo Ringeling is one of the most influential leaders of the Chilean Private Lands Conservation Initiative. In his efforts on behalf of private lands conservation in Chile, he wears two hats—as president of the board of Quintec, one of Chile’s most successful IT companies, and as a board member of Parques para Chile (PPC), a respected environmental nongovernmental organization (NGO). Because conservation action by private individuals in Chile is a relatively recent phenomenon, it is instructive to hear Ringeling’s story of personal and professional motivation that brought him to help lead the Chilean Private Lands Conservation Initiative.

His involvement in conservation dates back more than a decade. At that time he was asked to speak to the director of a low-income school about ways to improve Chile’s troubled public school system. Ringeling had enjoyed great success as a corporate executive, and was now seeking ways of bringing this knowledge into the public policy arena. Following their conversation, the school director asked Ringeling if he would share his business experiences with a classroom of 14-year-old boys and girls. He agreed and returned to the school four years in a row.

Moved by this experience, he concluded that he could take two possible approaches to improving Chilean society. He could address public policy at the macro level, which, if he were successful, would move the ship of state perhaps a millimeter. Or he could inspire just a few people to become better-informed citizens, to achieve a greater understanding of the complex world around them and

of their ability to help Chilean society move forward. Working on this personal level, Ringeling felt he could help a smaller number of people advance by several meters. Having grown a bit weary of his macro-scale role as a corporate manager, Ringeling decided to work on environmental and educational issues directly—on the ground—with individuals and stakeholders.

His connection with conservation was direct and physical, coming from his passion for hiking around his property in Colico Lake located in Chile's Region IX, also called the Lake District. Even getting lost in the woods left a positive and long-lasting impression on him. He became increasingly concerned about the direct threat to the beautiful Chilean landscape posed by climate change and infrastructure projects that would destroy the irreplaceable Valdivian temperate forests he knew so well. Faced with the choice of becoming involved in lobbying at the government level, through the Ministry of Public Works and the National Forestry Administration, or dedicating himself to working with his fellow local residents on efforts to protect the place itself, he enthusiastically chose the latter.

His decision led him to become involved in PPC and to launch an initiative to develop sustainable timber management practices in a privately owned wildlife corridor in the Lake District. In the 20,000-hectare Namuncahue Biological Corridor project, Ringeling witnessed firsthand the difficulty the government faced in trying to impose sustainable forest management practices on private landowners. As an alternative, he and his colleagues at PPC approached their neighbors individually. Through discussions and negotiations with local authorities and public officers, the vision of a 1.1 million-hectare Biosphere Reserve began to take shape. This way of thinking about sustainable management was unprecedented in an area equivalent to one-third of Region IX.

He states that he is “convinced now that, to achieve the goals of this great Biosphere Reserve, work on the ground is needed with each one of the landowners, communities, interest groups, government agencies, and inhabitants. We certainly need a lot of people to get this message across.” Now, the dream of a biological corridor connecting remaining patches of native forest in Mediterranean Chile keeps him awake at night. Ringeling has brought his keen business judgment to bear on the immense challenge and opportunity of achieving conservation in Chile. “I see these projects as opportunities to let future generations get involved in protecting the habitat they have always lived in and convince them that one of the keys of this new era is to learn how to have a different view of our biosphere, the home we live in,” he says (Ringeling personal communication 2009).

THE PRIVATE LANDS CONSERVATION INITIATIVE

The Chilean Private Lands Conservation Initiative is the product of a unique, synergistic, and well-timed collaboration among one of Chile's most prominent business councils, the Chilean-American Chamber of Commerce (AmCham); a United States-based NGO, The Nature Conservancy (TNC); and several far-sighted and influential representatives of Chile's private sector. After a flurry of activity over a short period of time, the initiative stands on the cusp of success in passing legislation to provide the critical pub-

lic and private incentives necessary to unleash the enormous potential of private lands conservation in Chile.

Conservationists have been interested in increasing conservation of that country's private lands for almost a decade. In 2001, the United States–based Weeden Foundation underwrote the cost of sending several Chileans to the Land Trust Alliance Rally in Baltimore, Maryland. Many of these attendees became leaders in the promotion of private conservation in Chile. The origin of the current initiative dates to 2004, when Steven McCormick, the former president and CEO of TNC, visited Chile and met with former AmCham President Michael Grasty and Executive Director Jaime Bazan. The three men agreed that the two organizations might form a partnership (AmCham Special Projects Department 2006).

Beginning in September 2006, this collaboration became cemented when Henry Tepper, then TNC's director of its New York State program, spent three months in Santiago as a conservation fellow. The purpose of the fellowship was to explore ways in which TNC and AmCham could increase private philanthropy and voluntary conservation by the private sector. Tepper's assignment was conceived by Joe Keenan, TNC's vice president for South America, who identified early the confluence of positive forces that made Chile a promising country in which to formulate and implement innovative conservation strategies.

While the beginnings of the partnership between AmCham and TNC were modest, this collaboration turned out to be propitious. Both TNC, and more importantly AmCham, recognized an emerging, perhaps historic, opportunity to forge a new approach to conservation in Chile. The Private Lands Conservation Initiative took shape quickly, and the number of key strategists expanded beyond the two organizations.

WHY CHILE? WHY PRIVATE LAND CONSERVATION? WHY NOW?

Four fundamental factors account for the rapid success of the Private Lands Conservation Initiative: Chile's unique economic and political profile; a growing recognition by the private and public sectors of the need for increased environmental conservation and sustainable management of the nation's natural resources; its unsurpassed beauty and threatened biological diversity; and the country's particular appropriateness for having strategies that conservationists deployed some 40 years ago in the United States, when they launched the extraordinarily effective land trust movement.

1. CHILE HAS A UNIQUE ECONOMIC AND POLITICAL PROFILE IN LATIN AMERICA.

Since democracy was re-established in Chile in 1990, after years of military dictatorship, the country has emerged as a stable and increasingly well-tested democratic country. Its economic profile is remarkable in several ways, making it stand out from many other countries in Central and South America. The nation of more than 16 million people, with a gross domestic product of approximately \$9,900 per capita in 2007, enjoys the highest standard of living in Latin America and boasts the region's third-largest economy (Instituto Nacional de Estadísticas Chile 2008).

Chile is also notable for its strong private sector, which is dominated by four extractive industries—agriculture, including crops for wine; mining; forestry; and fishing. The country is the largest exporter of avocados in the world, and it projects that it will be the leading exporter of farmed salmon by 2010 (SalmonChile 2008). Its wine industry has achieved global success and respect. The biggest industry of all is mining. In 2007, Chile exported approximately \$37 billion of copper, which represents more than one-half of the total goods exported from the country that year (*New York Times* 2008).

2. CHILE'S PUBLIC AND PRIVATE SECTORS HAVE RECENTLY RECOGNIZED THE NEED FOR CONSERVATION AND SUSTAINABLE MANAGEMENT OF NATURAL RESOURCES AND EXPORT PRODUCTS.

Chile's export-dependent industries own vast amounts of environmentally significant land. Many enlightened representatives of these industries realize that if Chile expects to continue its successful economic expansion, it must begin to implement long-overdue sustainability practices for its export products.

Among Chile's most sought-after customers are companies and consumers based in the European Union, as well as huge multinational retailers based in the United States. Many of the corporate entities that buy growing volumes of goods from Chile, such as Home Depot and Wal-Mart, have far-ranging multinational operations. Consumers who shop in these stores increasingly demand sustainably managed products. This combination of a strong private sector dominated by extractive industries and recognition of the need for environmental sustainability has made the Private Lands Conservation Initiative particularly appropriate at this moment in Chile's history.

3. CHILE HAS RICH, INCREASINGLY THREATENED, SCENIC BEAUTY AND BIOLOGICAL DIVERSITY.

With more than 6,400 kilometers of coastline and nearly as great a length along the Andes Mountains, the country boasts magnificent fjords, glaciers, and icebergs; vast temperate broad-leaf forests; Patagonian grasslands and forests; the driest desert on the planet; and incredibly productive agricultural areas. The number of international travelers seeking to enjoy the spectacular landscape has grown dramatically in the past two decades.

Chile's natural and agricultural areas are particularly susceptible to variations in climate, and residents have a heightened awareness of the perils of global climate change throughout the country.

TNC and other conservation organizations are also focusing attention on what is perhaps Chile's rarest and most endangered ecosystem, the Mediterranean-like habitats of the Central Valley, which encompass Regions III to VIII and include the capital city Santiago. This habitat, found in only five locations in the world and nowhere else in South America, features diverse forest, scrub, and plant communities, all of which are characterized by a high number of endemic species. The Mediterranean habitats are concentrated in Chile's most populous regions and overlap

with its most intensive agricultural areas. The most telling and alarming statistic about this habitat is that it is *less than 1 percent protected*, compared to the better-recognized temperate broad-leaf forests of the south, which are 15 to 20 percent protected (Piscoff 2007).

4. IMPORTANT PARALLELS EXIST BETWEEN CURRENT CONDITIONS IN CHILE AND THOSE THAT SPAWNED THE LAND TRUST MOVEMENT IN THE UNITED STATES.

Even before the AmCham–TNC partnership was established, a number of conservation practitioners observed the striking similarities between the economic, political, and environmental situations in Chile in the early twenty-first century and those present in the United States in the 1960s and 1970s, when the land trust movement was launched. Forty years ago, the combination of a robust, expanding economy, an enlightened and influential private sector, and a growing recognition of the need to supplement government efforts to safeguard the United States’ natural heritage, resulted in a series of targeted, strategic actions to create incentives for voluntary, private conservation.

At its inception, this land trust movement was relatively small in scope and scale, and it attracted only modest public attention. Up until the 1960s, major land conservation projects had largely been the province of the government, just as in much of Latin America today. In the 1960s and 1970s, a small group of conservation-minded private individual and business landowners became interested in expanding on the idea established by the first regional land trusts, which were created in New England in the 1890s as charitable institutions to protect and sustainably manage remarkable natural and historic properties. Some of the conservation innovators who came forward in the last half of the twentieth century were from prominent families, with names such as Rockefeller and Mellon. Others owned land of great national ecological and recreational significance. While a number of the landowners were already protecting their land voluntarily, they concluded that they needed some form of financial incentive, even if modest, to encourage others to do so as well.

Working behind the scenes, they took two significant steps. First, they labored persistently with the federal government (and later with selected state governments) to make modest changes in the tax code. By the last half of the 1970s, they had succeeded in establishing the precedent that private donations of land (i.e., fee donations of the land itself), or of the right to develop the land (i.e., gifts of conservation restrictions or easements) to a land trust or governmental unit would be considered charitable contributions for tax purposes. When treated this way, these gifts entitled the landowning donor to federal and state income tax deductions, estate tax reductions, and in some cases reductions in property taxes.

For the second step, the landowners worked to develop practical, flexible legal instruments that would memorialize their conservation actions. In the case of the donation of a conservation easement, for example, the same legal instruments protected the landowners’ remaining private property rights, such as the right to maintain roads and existing structures on the property.

The development of these relatively straightforward incentives and tools resulted in a dramatic increase in private conservation by landowners in the United States. With little attention from the media and minimal government involvement, the private land conservation movement has become the fastest-growing segment of the environmental community. The number of land trusts has grown from fewer than 200 in the late 1960s to 1,667 national, state, and local land trusts in 2005. Cumulatively they have protected approximately 15 million hectares (more than 37 million acres). After a generation of rapid growth in the number and national distribution of land trusts, by the early twenty-first century land trusts and similar NGOs are found in each of the 50 states (Land Trust Alliance 2005).

It is important to note that private land conservation is just that—private. The landowner’s decision to protect his or her property is entirely voluntary. The government’s involvement is restricted to its key role of authorizing the landowner/donor’s tax deduction, and unless the landowner chooses to publicize his or her action, something few do, it garners little public attention.

Since the inception of this project, several senior staff members at TNC recognized the potential of private lands conservation in Chile. Margo Burnham, formerly country program director; Francisco Solis, Chile’s country representative; Victoria Alonso, private lands specialist; Carlos Fernandez, a TNC lawyer based in Bariloche, Argentina; Randy Curtis, director of multilateral and bilateral affairs; and Bill Ginn, TNC’s chief conservation officer were among them. Tepper worked closely with these staff members and others, as well as with representatives of the World Wildlife Fund (WWF), including David Tecklin and Bronwen Golder, to discuss the importance of private lands conservation with a diverse group of business representatives who had ties to AmCham.

Tepper quickly discovered that these ideas would be well received. Much of the Private Lands Conservation Initiative’s early success was related to the fact that Tepper was hosted by AmCham and introduced to Santiago’s business community by Michael Grasty, AmCham’s former chairman, who was the first person to recognize the potential significance of the AmCham–TNC partnership and that a collaborative approach between the business and the environmental NGO communities would be necessary to catalyze private land conservation. Grasty commented: “I was intrigued by TNC’s approach. Here is an environmental organization that stays out of the headlines, doesn’t take public positions either supporting or opposing development projects, and instead works closely and often quietly with private landowners and businesses to accomplish exceptional conservation results. This seemed like the kind of organization that could work with AmCham and Chile” (AmCham Special Projects Department 2006).

THE PRIVATE LANDS WORKING GROUP

In the fall of 2006, TNC staff held a flurry of meetings with a cross section of representatives of Chile’s four extractive industries. In just weeks, Tepper and Amanda Jefferson, AmCham’s director of research at the time, made contact with the core members of

what evolved rapidly into the Private Lands Working Group. With the formation of this group, the Private Lands Conservation Initiative began to take shape and take off. Each member of the group was uniquely suited to this ambitious but carefully defined undertaking. Along with Marcelo Ringeling were Alejandro Quintana, a founder of the law firm Grasty Quintana Majlis & Cia.; tax lawyer Roberto Peralta, who specializes in charitable giving; Rafael Asenjo, a former senior United Nations staff person in New York and Rome, who returned to Chile to direct the Global Environment Facility grant project; and Mateo Budinich, CEO of telecommunications company VTR and chair of AmCham.

The group forged a practical, results-oriented program based on three strategies adapted from the launching of the private land trust movement in the United States.

1. Establish *financial incentives*, including possible changes to Chile's tax laws as well as outright financial compensation, that will encourage private donations of conservation land.
2. Develop and test flexible, legal instruments to protect private lands, notably *conservation easements*.
3. *Protect land*, especially in the Mediterranean habitat, by using these new private lands conservation tools.

STRATEGY 1: ESTABLISH FINANCIAL INCENTIVES FOR PRIVATE LAND CONSERVATION

Tax incentives. Tepper and his colleagues at TNC confirmed that financial incentives to support the environment in Chile are either inadequate or nonexistent. Chilean tax laws currently provide incentives to businesses when they contribute to NGOs working in the areas of education, culture, sports, and poverty alleviation. No such incentives exist for contributions to the environment, and none exist at all for contributions by individuals to causes. Several interesting explanations are offered as to why there may be resistance to providing or enhancing tax incentives to businesses and individuals in Chile.

- Chile's existing tax code has virtually unprecedented stability in Latin America. The government is concerned about the possible loss of tax revenue should deductions be increased.
- To some degree, the existing tax collection system is structurally incompatible with increased tax deductions.
- Increasing the private sector's role in influencing how and which social and educational causes are funded raises some concerns, since support of these causes is traditionally the responsibility of the government.

The experts who consulted TNC and AmCham urged them both to be realistic about the challenge involved in securing meaningful changes in Chile's tax laws, so as to initiate incentives for private contributions to the environment. Widespread agreement held that tax reform is perhaps the single most important factor necessary in increasing private conservation in Chile, however, and the group was extremely fortunate

in having the involvement of tax specialist Roberto Peralta. He responded to Tepper's naïve optimism about changing Chile's tax laws by reminding him just how difficult, if not impossible, this effort would be.

Peralta explained: "The short answer is that there are virtually no incentives for private conservation action in the Chilean tax code. There are numerous ideas for improving the existing laws that would encourage private conservation. But we need to be both realistic and optimistic, and assume that it's likely to be a long-term effort which will require collaboration among conservationists, NGOs, businesses, and the Chilean executive branch and Congress" (AmCham Special Projects Department 2006).

Sobered by this assessment, Tepper and his colleagues continued their investigation into possible financial incentives for private land conservation. During his last week in Chile, he and TNC lawyer Carlos Fernandez scheduled what they thought would be a routine meeting to report on their efforts to Peralta. Completely by coincidence, in the three months since their last meeting, Peralta had achieved a major legal and legislative breakthrough by adding poverty alleviation to the list of Chilean tax laws' allowable charitable contributions by businesses. He suggested that the strategies deployed successfully for the poverty alleviation initiative could be adapted to a private lands effort. Peralta thus became a forceful and effective advocate for creating a tax incentive for private land conservation in Chile, and with his associate Vanessa Lamac Geller, he set about drafting a legislative proposal that would put private charitable contributions to the environment, including conservation land, on the list (Lamac Geller and Peralta 2008).

In August 2007, Peralta and the other members of the Private Lands Working Group achieved a significant breakthrough when they met with Chile's Finance Minister, Andres Velasco. During the meeting, the minister commented that this was the first time a group of prominent representatives of the private sector had met with him in support of increased conservation. Perhaps most important, Velasco assigned a senior member of his staff, Hector Lehuede, to review Peralta's evolving tax proposal. The two men have worked closely to refine it, and the working group hopes to introduce the tax proposal as legislation in the Chilean Congress when appropriate.

Compensation. At another early meeting in the fall of 2006, Tepper, Jefferson, and Solis discussed private lands conservation with Alejandro Quintana and members of his staff at the Grasty Quintana Majlis law firm. After talking about tax issues and conservation easements, Quintana asked a question the group had never heard before in Chile: In the United States, were public or private funds ever used to purchase conservation land outright from private landowners?

The answer, of course, is an emphatic yes. For decades, TNC and many other U.S. land conservation organizations have successfully advocated for the creation of myriad public and private funds. The rationale for these funds is that private landowners, regardless of their commitment to conservation, sometimes are not in the position simply to give away either title (i.e., fee ownership) or development rights (a conservation easement) to their land. It is often necessary for land trusts or the government to purchase priority conservation properties or development rights outright.

Following up on Quintana's question, Tepper quickly contacted three senior TNC staff persons: General Counsel Philip Tabas, Director of Conservation Finance and Planning Greg Fishbein, and Director of Bilateral and Multilateral Affairs Randy Curtis. Together they produced memos describing the types and sources of conservation funds established in the United States, which include state and local environmental bond funds; revolving loan funds; dedicated funds for the environment supported by sources such as a percentage of real estate transfer taxes, lotteries, fees from special license plates, and similar instruments; pooled funds from foundations; water use fees; and other fees from ecological services (Tepper 2007).

This information captured Quintana's imagination, and since 2006 he has led an effort to explore the creation of the first-ever public-private land conservation fund in Chile, the creation of which has proven to be a highly complex undertaking. But the group is cautiously optimistic that such a fund, seeded with private donations, will be established in 2010.

STRATEGY 2: DEVELOP AND TEST FLEXIBLE LEGAL INSTRUMENTS TO PROTECT PRIVATE LANDS, NOTABLY CONSERVATION EASEMENTS

While working on these financial and tax incentives, the Private Lands Working Group has also pursued this second strategy, and the group expects to achieve a breakthrough on legal instruments even before tax incentives are in place.

The development of conservation easements, more than tax incentives, accounts for the extraordinary success of the land trust movement in the United States. In the tradition of English common law, the legal tradition followed in the United States, a conservation easement is a legal agreement, written in the form of a deed. It documents the decision by a landowner to grant—or “deed over”—certain rights to his or her land. For example, when a landowner conveys a conservation easement to a qualified non-profit conservation organization or government entity, the organization receives the right to develop additional buildings on the property, which the organization is prohibited from exercising. With such an easement, the landowner retains all other ownership rights not deeded over, such as water or access rights.

In the United States, the conservation easement has become a very popular and successful tool for three reasons. First, the landowner does not have to relinquish ownership of the property and can still live on it, sell it, or pass it on to heirs. Second, the donation of a conservation easement entitles the donating landowner to tax savings for charitable contributions. Finally, conservation easements do not necessarily prohibit development. Each is specifically tailored to the needs of the individual landowner. Limited development and sustainable land management (e.g., forestry or agriculture) are frequently allowed in conservation easements (Byers and Marchetti Ponte 2005).

For at least a decade, TNC and other conservation organizations have worked to adapt the legal framework that allows for conservation easements to work within the Napoleonic legal system that prevails in Chile and most of Latin America. Easement templates have been drafted and tested in several Latin American countries, including Chile. Adapting English common law legal instruments to Napoleonic law poses a significant challenge, however.

In one of the most critical breakthroughs of the Private Lands Conservation Initiative, Jose Manual Cruz, an associate at Grasty Quintana Majlis & Cia., had a bold insight about conservation easements in Chile. He suggested that rather than struggling to adapt an instrument based on one legal system to another, it might make better sense to transcend this difficulty altogether by creating a whole new category of conservation land ownership, called a *derecho real de conservación* (a real right, or real law, of conservation).

To accomplish this, Cruz and his colleagues developed a proposal to amend Chile's Civil Code to create the new category of conservation land, which corresponds closely to a state-of-the-art conservation easement, a flexible, functional, and perhaps most important, enforceable legal instrument developed specifically to accommodate private conservation in Chile (Cruz et al. 2008).

Quintana, Cruz, and the other members of the working group brought rigor and sophistication to their ambitious proposal. Amending Chile's Civil Code is no casual matter, and to ensure that they were creating the strongest possible document, the working group solicited advice about Cruz's draft from a cross section of Chile's most distinguished constitutional lawyers, who provided valuable insight.

In addition, the group has benefited throughout its efforts from the technical assistance of the Cyrus Vance Center for International Justice, a nonprofit organization based at New York City's Bar Association. Founded in memory of Cyrus Vance, former U.S. secretary of state, the center provides pro bono legal services on environmental and social justice initiatives around the world. Todd Crider, chairman of the Vance Center, and Felipe Lecaros, its former executive director, have helped provide legal review of the *derecho real de conservación* and tax incentive proposals. The Vance Center is also completing an analysis of the adaptability of both strategies to other countries in South America. The implications of the *derecho real* could be profound. It could be adaptable to any country with a Napoleonic legal system, and it is attracting particularly strong interest from conservation leaders in Argentina, a country with huge areas of privately owned land.

After completing and vetting the *derecho real de conservación*, the working group converted it into a legislative proposal, successfully attracting bipartisan legislative sponsors in the Chilean Congress, among them Patricio Vallespin, Jorge Burgos, Carlos Montes, and Edmundo Eluchans. In April 2008, the legislation was formally introduced. A series of hearings were held throughout 2009, and its sponsors' goal is to move the legislation out of Chile's lower house and into the upper house by the time Congress dissolves in March 2010. Legislation of this importance moves slowly in Chile, so its sponsors hope for its passage in 2010 or 2011.

In late April 2008, just days after the introduction of the *derecho real* in Chile's Congress, a delegation that included the members of the Private Lands Working Group, members of Congress who sponsored the legislation, Hector Lehuede from the Treasury Ministry, and key staff from TNC traveled to the United States to visit land trust professionals. The trip provided members of the working group with more information about the functioning of land trusts. As planning for the trip progressed, personnel from TNC

and the Vance Center became increasingly impressed by the vision of the precedent-setting Private Lands Conservation Initiative. They wanted their constituents in the United States to learn more about and celebrate the initiative. The Weeden Foundation, demonstrating its enduring support for private land conservation in Chile, underwrote the cost of the trip.

Highlights of the trip were two receptions—one in New York, hosted by the Vance Center, and the second, in Cambridge, Massachusetts, hosted by TNC and the Lincoln Institute of Land Policy. Palpable excitement attended Patricio Vallespin's address to the Cambridge audience. He expressed the view, shared by the entire delegation, that the *derecho real de conservación* legislation represented a major step forward, specifically in the history of Chilean conservation efforts, and more generally in his country's efforts to build a fair and just society.

The several working sessions and field visits on the itinerary included:

- a panel discussion at the Vance Center on the working group's three-part strategic approach;
- tours of properties in the Boston area protected by conservation easements held by The Trustees of Reservations (the oldest land trust in the United States) and the Concord Land Conservation Trust; and
- tours of historic properties in the Boston area, such as the Boston Common and the Waverley Trail in Belmont.

By all accounts, the Private Lands Working Group and the Chilean congressmen returned to Chile energized, inspired, and informed. Mateo Budinich commented at the time that "it's incredible to see how far this project has come, especially for those like myself and many other members of the Chilean delegation, who have had the privilege of knowing first-hand how this all started. And, I might add, it had a very humble beginning" (Budinich personal communication 2008).

STRATEGY 3: PROTECT LAND WITH NEW PRIVATE LANDS CONSERVATION TOOLS

One of the singular strengths of the Private Lands Conservation Initiative is its mixture of ambition and focused practicality. The working group has consistently recognized that the ultimate goal of the effort is to increase on-the-ground conservation of Chile's natural heritage—its biological diversity; panoramic landscapes; recreation areas; and working forests, farms, and vineyards. TNC staff and land trust representatives reinforced this perspective during the trip to the United States, where, throughout its history, the land trust movement has been characterized by its drive for conservation action and measurable results.

Since 2007, members of the working group have talked to landowners and identified properties that are appropriate to serve as demonstration projects, especially those in the threatened Mediterranean habitat. These projects will test the developing incentives and legal instruments at the same time as they result in important new conservation for Chile. The initiative's participants are also learning from existing conservation

projects in Chile, which include the extraordinarily ambitious efforts of Douglas and Kristine Tompkins at Parque Pumalín, the Wildlife Conservation Society's Parque Natural Karukinka, TNC's Valdivian Coastal Reserve, and Sebastián Piñera's Tantauco Park on Chiloé Island, as well as smaller private reserves that have a wide range of ecological, scenic, and economic values. At this writing, TNC, members of the working group, and other Chilean conservation organizations, such as Parques para Chile, are developing plans to protect priority conservation areas.

Another notable and encouraging parallel between the current situation in Chile and that of the United States a generation ago is that now numerous conservation-minded Chilean landowners are interested in protecting their properties even before the incentives are formally in place. Some individual landowners are simply committed to doing the right thing. While a number of landowning businesses wish to increase their corporate social and environmental responsibility, others believe that, from export and marketing perspectives, conservation is good business.

Initially, these properties would be protected on a voluntary basis using the same language as the *derecho real de conservación*. The following list includes just a few of the possible projects.

- A group of adjacent properties stretching from El Boldo Hill near Zapallar to the coastal mountain range called El Roble near Santiago is under consideration. Their protection would create a critical Mediterranean habitat corridor in a complex, long-term project. Environmental organizations or consultants would be required to provide comprehensive land management assistance to this corridor's property owners. Those interested in voluntarily protecting their properties are increasing rapidly in number, creating staffing challenges for Parques para Chile and TNC.
- One or more vineyards in the heart of the Mediterranean habitat would be protected in a manner that would accommodate sustainable wine growing. This kind of market-driven conservation strategy, which has applications in other Mediterranean wine-growing regions around the world, is of particular interest to the Private Sector Working Group.
- A privately owned wetland complex in the Santo Domingo area could be linked both to a prototype environmental education initiative for the Mediterranean habitat and the longer-term conservation of a much larger series of publicly owned wetlands to the south.

The importance of the outreach and collaboration that TNC and its partners have extended to private landowners to conserve these and other properties cannot be overemphasized. Jeff Parrish, TNC's former global director of Mediterranean conservation, has forged potentially powerful strategies that will link the Chilean Mediterranean with corresponding habitats worldwide. His special emphasis is on developing common sustainable management practices for export products like wine and avocados.

ESTABLISHING LAND TRUSTS IN CHILE

The work of the Private Lands Working Group has also made it clear that it is urgent that one or more Chilean land trusts be established that are similar in purpose to those holding conservation easements in North America. Currently, no such organizations exist in Chile. Given the likelihood of the passage of the *derecho real de conservación* legislation and other legislation that will allow tax incentives for conservation donations, as well as the increased interest of landowners in voluntarily protecting their properties, creation of an NGO that can work with landowners and take gifts of conservation land or development ownership interests will be vitally important.

Possibly, the working group will establish one or more new, nongovernmental land trusts. Alternatively, an existing NGO could develop the capacity to function as a land trust. Either way, it is urgent that these steps are taken to accommodate Chilean landowners and their conservation properties, and the first may have been established by the time this book is published.

CONCLUSION

At this writing, a great deal of work is obviously left to do in order to launch a full-blown private lands conservation movement in Chile. It is imperative that the *derecho real de conservación* legislation passes, the tax reform proposal be introduced in Congress, and the underlying principles of private lands strategies be applied in tangible, on-the-ground conservation projects. Environmental education, marketing, and communication must also be employed to answer the corresponding need to foster a greater conservation ethic in Chile.

It is appropriate, nevertheless, to reflect on the almost quixotic nature of this fledgling endeavor. The goal was nothing less than changing the enabling conditions for conservation of an entire country. By any measure, much has been accomplished in a short time, and the groundwork has been laid for what could be a powerful and practical new approach to conservation. It is also entirely possible that Chile's example will be followed by other countries in Latin America and beyond.

While generalizing about what makes a conservation effort successful is difficult, the Private Lands Conservation Initiative has several notable key components. First and foremost, it benefits from the commitment, talent, and vision of the individual members of the Private Lands Working Group. Each member is practical, diverse, and enlightened, and contributes his or her own unique expertise—in tax, real estate, and constitutional law; public policy; and governance. The working group has made enormous progress and has ambitious expectations. The initiative has received long-term, consistent support from respected NGOs, particularly through the unique partnership of TNC and AmCham, and has also attracted other essential technical and financial assistance from such entities and individuals as the Vance Center, the Weeden Foundation, Bronwen Golder, Wendy Paulson, and numerous other experts from around the world.

Finally, all of this has come together because of the truly unique qualities and characteristics of Chile, a country blessed with magnificent beauty and biological diver-

sity, a powerful and dominant private sector, a rising standard of living, an expanding economy, and a stable, democratic government. The work and success of the Private Lands Conservation Initiative has been driven by recognition that this is a particularly important, even historic moment in Chile. The country has a singular opportunity and obligation to take action to protect its natural heritage, which must be accomplished by decisive public and private action. As Rafael Asenjo, director of the Global Environment Facility grant project, says, “The stars are finally aligned!” (Asenjo personal communication 2009).

The Private Lands Conservation Initiative is motivated by the vision that Chile’s impressive export-driven and export-dependent economic success must now be accompanied by sustainable land management and its conservation activities substantially increased. The clichés that this is a win-win situation and Chile can do well by doing good have genuine resonance. Success will mean that the country’s business and landowner communities will lead the rest of South America—and much of the world—in sustainable management of the country’s resources, and that its most irreplaceable ecological treasures are protected for future generations and visitors alike.

REFERENCES

- AmCham Special Projects Department. 2006. Promoting private conservation. In *Business Chile* (December). www.businesschile.cl/portada.php?w=old&lan=en&id=389
- Byers, E., and K. Marchetti Ponte. 2005. *The conservation easement handbook*, 2nd ed. Washington, DC: Land Trust Alliance; San Francisco, CA: The Trust for Public Land.
- Cruz, J. M., A. Quintana, et al. 2008. Proposal for the establishment of a real property right for conservation (*derecho real de conservación*) in Chilean legislation. Private Lands Working Group document. Available from valonso@tnc.org
- Instituto Nacional de Estadísticas Chile. 2008. www.ine.cl
- Lamac Geller, V., and R. Peralta Martínez. 2008. *Tax incentives for conservation in Chile*. Santiago, Chile: Privately published. Available from rperalta@tyd.cl or vlamac@tyd.cl
- Land Trust Alliance. 2005. *2005 National Land Trust census report*. <http://www.landtrustalliance.org/about-us/land-trust-census/2005-report.pdf>
- New York Times*. 2008. Chile: Copper dependence highlights vulnerability. *New York Times* (November 9). www.ihf.com/articles/2008/12/09/news/09oxan-CHILECOP.php
- Pischoff, P. 2007. Análisis de representatividad ecosistémica de las áreas protegidas públicas y privadas en Chile. (April).
- SalmonChile. 2008. SalmonChile. <http://salmonchile.cl> (Spanish) or www.sig-es-salmonchile.cl/proysig-esingles/ (English).
- Tepper, H. 2007. *Increasing private land conservation action in Chile: Report and recommendations*, appendices 4 and 5 by G. Fishbein. Arlington, VA: The Nature Conservancy. Private report available from valonso@tnc.org or htepper@audubon.org
- U.S. Department of State. 2008. Background note: Chile. <http://www.state.gov/r/pa/ei/bgn/1981.htm>