The Nature Conservancy
New York

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Martin Levine, Esq.
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New York State Joint Commission on Public Ethics
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Re: Comments on Staff Draft Proposed Comprehensive Lobbying Regulations

Dear Mr. Levine:

The Nature Conservancy in New York ("TNC") is the state program of the world's largest conservation organization. Our mission is to conserve the lands and waters on which all life depends. We work in all 50 United States as well as in over 30 countries to protect nature for the benefit of people today and future generations. We have a collaborative, science-based approach to environmental problem-solving. We are engaged in hands-on research, we are land stewards for the 160 preserves we own in New York, and we work with governments, community groups, industry, and other stakeholders to secure a more sustainable future. In this capacity, TNC is very active in New York State policy matters and at various times has been both a lobbyist and a client of a lobbyist. As an organization that has many volunteers and is active in the grass roots movement, we have taken a particular interest in the New York State Joint Commission on Public Ethics ("JCOPE" or "the Commission") staff draft proposed regulations. We are pleased to submit the following comments. Specifically, we seek to raise three concerns, and request one clarification.

1. *Definition of* "*designated lobbyist*" – 942.3(f). The proposed definition of "designated lobbyist" takes an overly broad position, essentially providing that where there is an organization that lobbies, that entity is required to treat more than just its employees and officers as authorized lobbyists. Specifically, the proposed regulation states that a designated lobbyist may include any "person who lobbies on behalf of a client as an ***internal board member, volunteer, or by virtue of some other affiliated but non-employed status . . .***" but is not an outside lobbyist. This overreaching language significantly concerns TNC. First, as an organization that is proud of its volunteer activists who participate in various advocacy efforts with the TNC, but are

uncompensated, we fear that this definition could be read to require TNC to include on its statement of registration individuals who merely participate in a lobby day, and are by no means professional lobbyists. These individuals are not "designated" to lobby on behalf of the TNC, but may nonetheless join the TNC it is efforts to advocate for certain may nonetheless join the TNC it is efforts to advocate for certain environmental policies. There is no public interest in the names of these individuals exercising their own free
speech rights.

Similarly, as drafted, it appears that individuals who serve in advisory capacities to TNC could be captured by this definition. TNC, in addition to having a global fiduciary board of directors, has many volunteer boards of trustees. These individuals serve on a strictly advisory basis to TNC state programs related to their expertise. The trustees do not have any fiduciary duties and have no governance responsibilities. As is the case with the volunteers described above, there is no public interest in having these individuals appear on a lobbyist registration. We contrast these individuals from those who may serve as officers of our organization, and engage in lobbying activity on the entity's behalf. For these reasons, we believe it is imperative to revise the definition of designated lobbyist to clearly exclude persons who are truly volunteers and have no fiduciary or formal management responsibilities to the organization.

2. *Statutory Exemption from Lobbying – Response to requests for information/comments* – 942.4(f)(ii). The Commission is to be commended for attempting to provide useful guidance on when the various statutory exceptions to the definition of lobbying apply. The caveats imposed on the exception for responses to requests for information/comments, however, seem to inappropriately limit the application of this exception, to an extent that could adversely impact the sharing of information that is desirable and important to the State and that falls outside the policy goals of these proposals.

By way of example, from time-to-time TNC receives technical assistance letters ("TAs") from legislators and State agencies. These requests are based upon the expertise and resources TNC offers as a 501(c)(3) with expertise in various subject areas. These TAs ask TNC to provide factual background on a variety of environmental matters, and sometimes require TNC to engage in research and/or public opinion polling. The materials generated as a result of these efforts in response to the TAs are lengthy, and often costly to prepare. They are materials that likely would not have been generated, but for the fact that the government official requested TNC to provide the information. TNC is pleased to assist the State in these efforts, and to provide a response to the government's request for information.

It is well-established that the expense of providing a factual response to a governmental request for information (or even for TNC's position on a particular matter) is not reportable lobbying. Prior to this draft regulation, we are not aware of the Commission or any of its predecessors taking the position that the expenses of preparing documents or other materials in response to a governmental request for information should be reportable because they may be subsequently used as part of a lobbying effort. There is no rationale for concluding that the expenses for creating these documents should be considered lobbying expenses, simply because TNC subsequently provides copies of the same materials to individuals or entities other than the requesting official. TNC generally makes such materials widely available to the public in a non-partisan, non-advocacy context after presenting them to the requesting official. This widely available public information then may or may not be referenced by a number of interests in a variety of ways. Similarly, the responsive materials should not be transformed to a lobbying expense simply if the TA was issued after the public official discussed the relevant topic with TNC staff. Nonetheless, due to

the limitations in 942.4(f)(ii), TNC likely would be obligated to treat this responsive work product as a lobbying expense. This is not just an academic concern. If reporting of those expenses is required, we likely would, in turn, be compelled to reevaluate whether we are permitted – in light of our charitable status and the restricted grant funding we receive to respond to such TAs – to continue to provide the information that the State solicits from TNC. Consequently, we request that the Commission remove the restrictions in 942.4(f)(ii).

3. *Coalitions & Reportable Lobbying Activity* -- 942.9(h)(iii). This is a particularly confusing and concerning provision for TNC. As a public charity, TNC is a member of a number of coalitions that engage in advocacy to support the common mission of conserving the lands and waters on which all life depends. These coalitions are important vehicles that enable like-minded organizations to more effectively lobby the State. Due to our experiences working with coalitions, TNC believes that the reporting requirements created by this provision would have a chilling effect on the ability of public charities to continue to participate in these coalitions.

This requirement will divert resources from charitable activities to compliance and overhead activities. Charities will be required to spend more time and money as they organize coalitions, track membership, and track and report time to the coalition member responsible for filing the reports. Many smaller charities that take part in these coalitions do not spend enough on lobbying to be required to register as lobbyists and file lobbying reports so they do not have the staff or systems in place to track time spent on lobbying. Moreover, whose obligation would it be report to the Commission, when there is no pooling of funds, just coordinated efforts? Perhaps even more fundamental, when there is no pooling of funds, what is the public interest in requiring joint reporting? Just because likeminded entities join together under a common banner, it does not mean that they are working together in a formal fashion that should require common reporting.

Furthermore, there is a significant burden in requiring common reporting by these organizations. Charities that infrequently advocate for themselves would be particularly unfit to assist with this effort. Requiring lobbying reporting for coalitions would also lead to duplicative data collection and reporting of lobbying time and expenses, while providing little to no new information to the public than it would already receive under what is currently publicly available. We believe that this proposal puts at risk the ability of public charities to participate in advocacy work, particularly in cases when those charities have a scarcity of resources.

Moreover, TNC is perplexed as to what the Commission intends to require by this draft provision, or how the provision could be implemented. Our additional concerns regarding implementation include:

- Demanding reporting of "members" of a coalition would be difficult to do in many cases. Membership of coalitions can change from project to project or year to year. For example, there might be a coalition of more than 100 organizations that commonly advocate together on an issue. Some of those coalition members return to participate year after year, but other members fluctuate in and out of the coalition and their participation level waivers from year to year. How would the organization(s) charged with reporting to JCOPE for such a coalition accurately report membership? Is it just a matter of uploading a copy of any "sign on letters" that are issued? Or would something more formal be required?

- How would one so-called member be able to track who else needs to be identified when there are no funds shared amongst the group? What is the threshold for "membership"? Is it signing a letter? Is it going to a lobby day?

- Is the coalition membership assumed to remain the same after an action is completed? If the legislative session ends and the coalition is no longer in communication, but bi-monthly lobby reports are still required, are the groups still required to report their work (non-activity reports) when the work has been completed? Or would termination paperwork be required?

- How would organizations that are part of a collation report lobbying time and expenses to avoid duplicative reports? Currently, if TNC expends funds on behalf of coalition work, we report it on our lobby report because it is TNC's lobbying expense. Under the proposed rule, if an organization provides support to a coalition, and then provides the administrator or sponsor of that coalition with information about that support (e.g.: hours spent in support of the coalition work), would it no longer be required to disclose that time on its own lobby report? If it would continue to disclose the time and expenses there will be duplicative reporting. Is the coalition reporting data going to be treated separately than the rest of the lobbying data?

  As a result, TNC recommends removing the draft provisions pertaining to coalitions.

4. *Lobbyist Disbursement of Public Monies Report* -- 942.13. TNC asks that JCOPE clarify the language which closely tracks the statutory provision in Legislative Law § 1-l(a), but is not easily understood. 942.13(b) provides that "[a] Disbursement of Public Monies Report is only required of a Lobbyist . . . [that expects to expend more than] $5,000 in connection with ***any Attempts to Influence a determination by a Public Official***, or by a person or entity working in cooperation with a Public Official, ***with respect to the solicitation, award or administration of a grant, loan or agreement involving the disbursement of Public Monies*** in excess of $15,000 will be required to file a Disbursement of Public Monies Report." TNC understands that when an already lobbyist is seeking to influence the State with regards to the award of a grant that the lobbyist may be required to file this additional disclosure form with JCOPE. What is less clear is what an entity is required to do if its communications with a State Agency that has awarded a grant are limited to post-award discussions. There is no longer any attempt to influence, but there are conversations regarding the administration of the grant. Is that lobbyist still expected to file a public monies report? It would seem illogical to require this, but TNC asks that the Commission take this opportunity to clarify what is meant by "administration of a grant."

The Nature Conservancy thanks the Commission for its efforts and for this opportunity to comment on the draft regulations. We welcome any opportunity to discuss these issues further.

Sincerely,

Stuart F. Gruskin
Chief Conservation and External Affairs Officer