AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

TAX INCENTIVES FOR LAND USE, CONSERVATION, AND PRESERVATION

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

APRIL 30, 2002

Serial No. 107–93

Printed for the use of the Committee on Ways and Means

U.S. GOVERNMENT PRINTING OFFICE

85–675 WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON WAYS AND MEANS

BILL THOMAS, California, *Chairman*

PHILIP M. CRANE, Illinois
E. CLAY SHAW, JR., Florida
NANCY L. JOHNSON, Connecticut
AMO HOUGHTON, New York
WALLY HERGER, California
JIM MCCRERY, Louisiana
DAVE CAMP, Michigan
JIM RAMSTAD, Minnesota
JIM NUSSLE, Iowa
SAM JOHNSON, Texas
JENNIFER DUNN, Washington
MAC COLLINS, Georgia
ROB PORTMAN, Ohio
PHIL ENGLISH, Pennsylvania
WES WATKINS, Oklahoma
J.D. HAYWORTH, Arizona
JERRY WELLER, Illinois
KENNY C. HULSHOF, Missouri
SCOTT MCINNIS, Colorado
RON LEWIS, Kentucky
MARK FOLEY, Florida
KEVIN BRADY, Texas
PAUL RYAN, Wisconsin

CHARLES B. RANGEL, New York
FORTNEY PETE STARK, California
ROBERT T. MATSUI, California
WILLIAM J. COYNE, Pennsylvania
SANDER M. LEVIN, Michigan
BENJAMIN L. CARDIN, Maryland
JIM MCDERMOTT, Washington
GERALD D. KLECZKA, Wisconsin
JOHN LEWIS, Georgia
RICHARD E. NEAL, Massachusetts
MICHAEL R. MCNULTY, New York
WILLIAM J. JEFFERSON, Louisiana
JOHN S. TANNER, Tennessee
XAVIER BECERRA, California
KAREN L. THURMAN, Florida
LLOYD DOGGETT, Texas
EARL POMEROY, North Dakota

Allison Giles, *Chief of Staff*
Janice Mays, *Minority Chief Counsel*

SUBCOMMITTEE ON SELECT REVENUE MEASURES

JIM MCCRERY, Louisiana, *Chairman*

J.D. HAYWORTH, Arizona
JERRY WELLER, Illinois
RON LEWIS, Kentucky
MARK FOLEY, Florida
KEVIN BRADY, Texas
PAUL RYAN, Wisconsin

MICHAEL R. MCNULTY, New York
RICHARD E. NEAL, Massachusetts
WILLIAM J. JEFFERSON, Louisiana
JOHN S. TANNER, Tennessee

Pursuant to clause 2(e)(4) of Rule XI of the Rules of the House, public hearing records of the Committee on Ways and Means are also published in electronic form. **The printed hearing record remains the official version.** Because electronic submissions are used to prepare both printed and electronic versions of the hearing record, the process of converting between various electronic formats may introduce unintentional errors or omissions. Such occurrences are inherent in the current publication process and should diminish as the process is further refined.

CONTENTS

	Page
Advisory of April 23, 2002, announcing the hearing	2

WITNESSES

U.S. Department of the Treasury, Pamela F. Olson, Acting Assistant Secretary for Tax Policy	26

American Forest & Paper Association, and Temple-Inland Forests Products Corporation, Jim DeCosmo	63
Blumenauer, Hon. Earl, a Representative in Congress from the State of Oregon	18
Dunn, Hon. Jennifer, a Representative in Congress from the State of Washington	13
Evergreen Forest Trust:	
Charles W. Bingham	53
Eugene G. Duvernoy, Cascade Land Conservancy	56
Isakson, Hon. Johnny, a Representative in Congress from the State of Georgia	22
Johnson, Hon. Nancy L., a Representative in Congress from the State of Connecticut	10
Land Trust Alliance, Rand Wentworth	59
Portman, Hon. Rob, a Representative in Congress from the State of Ohio	7
Sawyer, Christopher Glenn, Atlanta, GA	38
Nature Conservancy, Steven J. McCormick	44
Real Estate Roundtable, and Lowe Enterprises, Inc., Timothy Brazell	48
Weller, Hon. Jerry, a Representative in Congress from the State of Illinois	16

SUBMISSIONS FOR THE RECORD

American Farm Bureau Federation, statement	74
American Farmland Trust, Ralph Grossi, statement	76
Chesapeake Bay Foundation, Inc., Annapolis, MD, Lee R. Epstein, statement	77
Ducks Unlimited, Memphis, TN, Scott Sutherland, letter	47
Houghton, Hon. Amo, a Representative in Congress from the State of New York, statement	73
Montana Land Reliance, Helena, MT, statement	75
Neal, Hon. Richard E., a Representative in Congress from the State of Massachusetts, statement	5
Trust for Public Land, San Francisco, CA, Alan Front, statement	78

TAX INCENTIVES FOR LAND USE, CONSERVATION, AND PRESERVATION

TUESDAY, APRIL 30, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SELECT REVENUE MEASURES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:05 p.m., in room 1100 Longworth House Office Building, Hon. Jim McCrery (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SELECT REVENUE MEASURES

FOR IMMEDIATE RELEASE
April 23, 2002
No. SRM–5

CONTACT: (202) 226–5911

McCrery Announces Hearing on Tax Incentives for Land Use, Conservation, and Preservation

Congressman Jim McCrery (R–LA), Chairman, Subcommittee on Select Revenue Measures of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on tax incentives for land use, conservation, and preservation. **The hearing will take place on Tuesday, April 30, 2002, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 2:00 p.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Internal Revenue Code includes a number of incentives to encourage responsible stewardship of the land, including the deductibility of gifts of land to charitable institutions, the deductibility of gifts of conservation easements, and the expensing of environmental remediation costs. The hearing will examine proposals designed to improve upon those incentives and further encourage the preservation of open spaces.

In announcing the hearing, Chairman McCrery stated: "Across America, once-pristine natural resources are giving way to the spread of urban areas. In many cases, the estate tax's valuation rules have forced family farms to be sold to developers. This hearing will give the Committee a better handle on the challenges facing communities working to preserve open spaces and the ways in which the tax code might help those efforts."

FOCUS OF THE HEARING:

The focus of the hearing will be to examine several proposals which expand the tax incentives available to individuals and groups seeking to preserve open spaces and promote conservation.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to *hearingclerks.waysandmeans@mail.house.gov*, along with a fax copy to (202) 225–2610, by the close of business, **Tuesday, May 14, 2002.** Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Select Revenue Measures in room 1135 Longworth House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse unopened and unsearchable deliveries to all House Office Buildings.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to *hearingclerks.waysandmeans@mail.house.gov*, along with a fax copy to (202) 225–2610, in Word Perfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at http://waysandmeans.house.gov.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202–225–1721 or 202–226–3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman MCCRERY. The Subcommittee will come to order. Good afternoon, everyone.

Today, the Subcommittee on Select Revenue Measures will learn more about the issue of urban sprawl and whether the tax code can encourage conservation through responsible land use. We are fortunate to have a distinguished group of witnesses today, including many of our colleagues in Congress whose efforts have landed this issue onto our Subcommittee's agenda.

I am also pleased to welcome later Ms. Pam Olson, who is the Acting Assistant Secretary for Tax Policy. She is attempting to fill the very large shoes of our friend, Mark Weinberger, who has left U.S. Department of the Treasury. We look forward to Ms. Olson's testimony about the conservation proposals in President Bush's budget.

Across the country, economic progress has been marked by the urbanization of America. In many parts of our country, cities seem to have grown steadily outward until they meet their nearest neighbor. In this area, it is becoming difficult to tell when one leaves the Washington metropolitan area and enters the Baltimore metropolitan area.

Land which has been farmed for generations is being converted to golf courses, housing developments, and shopping centers. Small towns once thought to be far from the nearest urban area now find themselves becoming bedroom communities and home to thousands of commuters who seem to spend as much time getting to and from their work as they actually spend in their office.

In some ways, this march of progress is a sign of our economic strength. Farmers are able to grow more food on less land, while the offices and factories of America turn out new and better products for consumption here and across the globe.

This transformation of America's land and its use does not come without a price, though. Swimming holes are giving way to swimming pools and open spaces are being leveled to make room for open houses. Stands of trees are being replaced by nurseries where one can buy a tree or a shrub for his new house. It is becoming more difficult to take a stroll in the woods with your family, though

there might be a designated walking path around the artificial lake in the middle of your housing development.

In some ways, the tax code contributes to the urbanization of America. Today, we will hear about how the cost of remediating brownfields discourages developers from locating in and helping to rebuild blighted urban areas. We will hear how pressures of the estate tax can force estates to sell family farms to developers in order to pay Uncle Sam. We will also hear about proposals which help local governments and nonprofit groups raise funds necessary to prevent over-development in their communities.

In a free market, land holders must be allowed to enjoy the appreciation in the value of their land. Accordingly, I think Congress must proceed very carefully on any proposal which would deprive them of the freedom to dispose of their land as they choose.

The proposals being discussed today generally do not suffer from that flaw. Rather than handcuffing landowners, they use various tools to encourage voluntary transactions in which property owners dedicate their land to conservation purposes. Some of the proposals achieve that goal by increasing the deductions available to landowners for preserving open spaces for future generations. Others make it easier for nonprofits and government organizations to raise the money necessary to purchase lands for conservation purposes.

Underlying each proposal is a belief that the loss of open spaces and the conversion of farms to freeways comes at some cost to the community, a so-called negative externality. These proposals attempt to act as a counterweight so local communities will not have to view the loss of their natural surroundings as an inevitable consequence of progress.

[The opening statement of Chairman McCrery follows:]

Opening Statement of the Hon. Jim McCrery, Chairman, and a Representative in Congress from the State of Louisiana

The Subcommittee will come to order. I ask our guests to please take their seats.

Good afternoon. Today, the Subcommittee on Select Revenue Measures will learn more about the issue of urban sprawl and whether the tax code can encourage conservation through responsible land use. We are fortunate to have a distinguished group of witnesses today, including many of our colleagues in Congress whose efforts have landed this issue onto the Subcommittee's agenda.

I am also pleased to welcome Ms. Pam Olson, who is the Deputy Assistant Secretary of Tax Policy and who is stepping into the very large shoes left behind by Mark Weinberger. We look forward to Ms. Olson's testimony about the conservation proposals in President Bush's budget.

Across the country, economic progress has been marked by urbanization of America. In many parts of America, cities seem to have grown steadily outward until they meet their nearest neighbor. In this area, it is becoming difficult to tell where the Washington metropolitan area ends and Baltimore's begins.

Land which had been farmed for generations is being converted to golf courses, housing developments, and shopping centers. Small towns once thought to be far from the nearest urban area now find themselves becoming bedroom communities and home to thousands of commuters who seem to spend as much time getting to and from work as they actually spend in the office.

In some ways, this march of progress is a sign of our economic strength. Farmers are able to grow more food on less land, while the offices and factories of America turn out new and better products for consumption here and across the globe.

This transformation of America's land and its use does not come without a price.

Swimming holes are giving way to swimming pools, and open spaces are being leveled to make room for open houses. Stands of trees are being replaced by nurseries, where one can buy a tree or a shrub for the new house. It is becoming more difficult to take a stroll in the woods with your family, though there might be a des-

ignated walking path around the artificial lake in the middle of the housing development.

In some ways, the tax code contributes to the urbanization of America. Today, we will hear about how the costs of remediating brownfields discourages developers from locating in and helping to rebuild blighted urban areas. We will hear how pressures of the estate tax can force estates to sell family farms to developers in order to pay Uncle Sam.

We will also hear about proposals which help local governments and non-profit groups raise funds necessary to prevent over-development in their communities.

In a free market, landholders must be allowed to enjoy the appreciation in the value of their land. Accordingly, I think Congress must proceed very carefully on any proposal which would deprive them of the freedom to dispose of their land as they choose.

But the proposals being discussed today generally do not suffer from that flaw. Rather than handcuffing landowners, they use various tools to encourage voluntary transactions in which property owners dedicate their land to conservation purposes.

Some of the proposals achieve that goal by increasing the deductions available to landowners for preserving open spaces for future generations. Others make it easier for non-profits and government organizations to raise the money necessary to purchase lands for conservation purposes.

Underlying each proposal is a belief that the loss of open spaces and the conversion of farms to freeways comes at some cost to the community, a so-called negative externality. These proposals attempt to act as a counter-weight, so local communities will not have to view the loss of their natural surroundings as an inevitable consequence of progress.

Before introducing our first witnesses, I yield to my friend from New York for an opening statement.

Chairman MCCRERY. Before introducing our first distinguished panel of witnesses, I yield to my good friend from New York for his opening statement. Mr. McNulty?

Mr. MCNULTY. Thank you, Mr. Chairman. In the interest of time, I would like to submit my entire statement for the record and briefly summarize. Also, I would ask permission, since Congressman Neal cannot arrive in time to testify in person, that his statement be submitted for the record.

Chairman MCCRERY. Without objection.

[The statement of Mr. Neal follows:]

Statement of the Hon. Richard E. Neal, a Representative in Congress from the State of Massachusetts

Thank you, Mr. Chairman and Mr. McNulty, for the opportunity to testify before the Subcommittee today. This Subcommittee has the unique opportunity to provide tax incentives for smart growth, brownfields redevelopment, and endangered species habitat, among other important land use issues. With such a responsibility, I urge the Subcommittee to draw from legislative efforts showing a broad base of support.

I come before the Subcommittee to express my full support for H.R. 2290, the Conservation Tax Incentives Act of 2001. I would like to recognize the outstanding leadership of Representatives Rob Portman and Bob Matsui on this important bill. Later in this hearing, the Subcommittee will be hearing from Steven McCormick, the President of the Nature Conservancy, who supports this bill and happens to be accompanied by Philip Tabas, the Director of the Land Protection program, from the Boston office of the Nature Conservancy.

The bill allows a 50 percent exclusion from gain on the sale of land or water rights to an eligible conservation entity for conservation purposes. This bill would benefit all states across the nation by helping protect land and natural resources. In my own district in Massachusetts, there is a great need to prevent unplanned sprawl along the Connecticut River Valley, a precious and beautiful landscape. Local and state conservation groups have been able to do this by utilizing state money to purchase conservation easements from local farmers along the river valley, who are faced with the tough economic decision of either selling a conservation easement (and preserving an agricultural use) or selling the land altogether. With this legislation, the conservation easement would win more often in that battle as the tax incentive would mean a great deal to these small farmers.

Further, these limited dollars in the state program could be stretched much farther and utilized for many other important projects, such as the Quinebaug River Heritage corridor, yet another land conservation priority in my district. Since 1945, Massachusetts has been steadily losing thousands of acres of farmland per year. However, just during the last year, this inventive state program was able to save 50 farms and over 4,700 acres. Providing tax incentives to those who want to conserve land is good tax policy, and I hope the Subcommittee will support H.R. 2290.

Another bill I hope the Committee will consider is H.R. 4579, the Endangered Species Recovery Act of 2001, introduced by Rep. George Miller. This bill uses tax incentives to encourage endangered species conservation agreements between private landowners and the government regulators, while also providing certainty to these landowners under the Endangered Species Act. In my home State of Massachusetts, it has been estimated that there are 427 identified species of plants and animals designated as endangered, threatened, or of special concern. I am hopeful that the Subcommittee will consider legislation that draws the appropriate balance between landowner rights and environmental protections, through tax and other financial incentives.

Finally, I am pleased that the Subcommittee will be hearing from our colleagues, Representatives Bill Coyne and Jerry Weller, on legislation to make permanent the expensing of brownfields remediation costs. Tax incentives to encourage land remediation has been supported by commercial developers and environmental groups alike. As co-chair of the Congressional Real Estate Caucus, I am fully aware of how important this issue is to the real estate industry and I hope the Subcommittee will consider these legislative priorities as well.

Thank you again for the opportunity to address the Subcommittee today.

Mr. MCNULTY. Conservation and preservation of our open space land is of great importance to every American. This Subcommittee, on a bipartisan basis, supports tax incentives to encourage donation of land for conservation purposes and to protect our environment through the clean-up of toxic sites. I look forward to the testimony of our distinguished colleagues and all of those who will testify on this important topic today. Thank you, Mr. Chairman.

[The opening statement of Mr. McNulty follows:]

Opening Statement of the Hon. Michael R. McNulty, a Representative in Congress from the State of New York

Today, the Ways and Means Select Revenue Measures Subcommittee will hold a hearing to review current tax law incentives and pending legislation designed to improve land use conservation and preservation.

Conservation and preservation of our open-space land is of great importance to every American. The Committee, on a bipartisan basis, supports tax incentives to encourage the donation of land for conservation purposes and to protect our environment through clean-up of toxic sites. In tandem with state and local efforts, Federal tax incentives have proven to be effective tools in support of private and public sector efforts to maintain and preserve critical features of our environment.

Hearing testimony scheduled for this afternoon will focus on bills that would use the tax laws to achieve important environmental and conservation goals. Importantly, these bills have been developed on a bipartisan basis, with many Committee Democrats and Republicans joining as cosponsors. With Earth Day 2002 celebrations having just ended, it is appropriate that the Select Revenue Measures Subcommittee take the lead and consider how these proposals would contribute to land use preservation and conservation.

I join Subcommittee Chairman McCrery in emphasizing the importance of this review and look forward to the possibility of moving the proposals to the full Committee for further consideration.

Thank you.

Chairman MCCRERY. Thank you, Mr. McNulty. Our first panel of witnesses is comprised of our colleagues from the House. Mr. Portman has expressed a desire to go first because he has an urgent engagement away from the hearing room, and so without ob-

jection from any other panel Member, I will recognize first our good friend from the Committee on Ways and Means, Mr. Rob Portman. Mr. Portman?

STATEMENT OF THE HON. ROB PORTMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. PORTMAN. Thank you, Mr. Chairman. I appreciate the indulgence of my colleagues. I really thought your opening statement outlined the issues well, Mr. Chairman, and I appreciate Mr. Lewis, Mr. McNulty, and other Members of the panel who may join us for hearing us out.

I do believe that conserving open spaces, as one of our Nation's greatest natural resources, is extremely important, and I look forward to working with my colleagues on this panel with me and with the Subcommittee to try to move legislation forward using the tax code to help encourage that.

Mr. Chairman, open spaces are necessary to be sure that we are preserving our diversity of plants and wildlife in this country that are disappearing at an alarming rate. We are told, in fact, that every minute, another two acres of farmland in this country are lost to development. That translates, Mr. Chairman, to about one million acres a year. About the size of the State of Vermont is now being lost every year to development.

Preserving some of our remaining open spaces will not only help maintain important natural habitat, but also improves our quality of life, as you noted in your opening statement, by slowing the growth of traffic, congestion, air and water pollution, maintaining areas for recreational use, and helping to keep productive farmland and ranch lands intact.

The Federal and State Government cannot and should not have the sole responsibility for preserving these open spaces, and you have made that point well. In the United States, in fact, the vast majority of this land is held in private hands. Private landowners must be willing partners, thus, with the government in helping to conserve these open spaces and natural habitats for the public's benefit.

The Tax Code, of course, does provide some tax incentives already to encourage conservation. For example, taxpayers can take a deduction for charitable contributions of real property or an interest in property for qualified conservation purposes. In fact, the Federal estate tax also provides for a partial exclusion for gifts of conservation easements. These are valuable tools for conservation, and they are used but they do not work in all instances and that is one of the focuses of my testimony today.

As we all know, there has been a great appreciation in these rural land values, certainly in my district, and I am sure in all the districts of those represented today. It is particularly true where metropolitan areas, as you said, are moving outward to meet what were previously strictly rural areas and these farmers and ranchers in these areas found they have very few financial assets other than their land. The income from farming and ranching is still relatively modest, so these are land-rich and cash-poor property owners who are generally unable to take advantage of the existing charitable donation incentives because their annual incomes and

their tax liabilities just are too low to use the tax benefit to declare the deduction.

The legislation that I am promoting today, which is H.R. 2290, Conservation Tax Incentive Act, would address this problem by focusing on another tax, which is the capital gains tax. I am pleased that this proposal was included in President Bush's fiscal year 2003 budget. The bill excludes 50 percent of the gain on sales of land or interest in land or water where the sale is made to a qualified conservation entity for conservation purposes.

Now, that sounds like a lot of new language, but it is really not, because qualified conservation entities is already in the tax code. This could include publicly supported conservation charities, governmental conservation agencies. In my district, for example, the Southern Ohio Farmland Preservation Association would be a qualified purchaser, and so could a city park or a county park, the State. Conservation purposes in the Act would include, and again, this is in the tax code, the preservation of land for outdoor recreation by the general public and the protection of natural habitats of fish wildlife or plants or the preservation of open space, including farmlands or forest. The bill uses the definitions for conservation entities and the test for conservation purposes that are, again, already in the tax code and well understood.

It is a fiscally conservative, private citizen-based approach to land conservation that will help preserve these open spaces from sprawl and development while avoiding any onerous new land use regulations. It also enables conservation organizations and State and local governments to stretch their limited resources so they can focus on acquiring the most environmentally sensitive tracts of land.

My district offers a great example of how this bill could be very helpful. Like a lot of other big cities, Cincinnati has expanded out into the rural areas and a lot of family farmers in my area are just getting by financially. They do not have the income and, thus, the tax liability. A lot of them want to keep their land in agriculture, but it is getting harder and harder to do it all the time.

The State of Ohio does have a new program that provides for the purchase of development rights. However, a lot of farmers have purchased their land before the property escalated in value, and they would have huge capital gains taxes if they were to sell their development rights. With such a hefty portion of the payment from the transaction going to Federal taxes, many just are unable or unwilling to participate in the program.

Under this bill, again, the capital gains on the sale of these development rights could be substantially reduced. The resulting increase in the net after-tax return, of course, means that more farmers would be able to afford to keep their land in productive use. That is one example.

The bill is supported, Mr. Chairman, by a wide range of interests, the American Farm Bureau, Ducks Unlimited, Defenders of Wildlife, Association of State Foresters, the Nature Conservancy, who helped us in putting this bill together the last several years.

It will encourage conservation, again, through voluntary private, market-based sales at a very modest cost to the government. The current cost estimate we have from the Joint Committee on Tax-

ation, Mr. Chairman, is $66 million per year. Again, I think that is a small cost that will yield lasting and very important benefits for generations to come.

Again, thank you for allowing me to explain my proposal. I look forward to working with you and Members of the Subcommittee and colleagues here on the panel to move some of these ideas forward.

[The prepared statement of Mr. Portman follows:]

Statement of the Hon. Rob Portman, a Representative in Congress from the State of Ohio

Mr. Chairman and Members of the Subcommittee, I appreciate your holding this hearing and giving me the opportunity to appear before you today to talk about the importance of conserving one of our Nation's greatest natural resources—open spaces. I also would like to acknowledge my colleagues who are on the panel with me today. They have been very active in legislative efforts to preserve and improve the environment, and their leadership is to be commended.

Mr. Chairman, the open spaces necessary to preserve our Nation's rich diversity of plant and wildlife are disappearing at an alarming rate. Every minute, two acres of farmland in this country are lost to development. That translates to a loss of more than one million acres every year. Preserving some of our remaining open spaces will not only help to maintain important natural habitats, but will also improve our quality of life by slowing the growth of traffic congestion and air and water pollution, maintaining areas for recreational use, and helping to keep productive farm and ranch lands intact.

The Federal and State Governments cannot, and should not, have sole responsibility for preserving open spaces. In the United States, the vast majority of threatened habitats are privately owned. Thus, private landowners must be willing partners with the government in helping to conserve open spaces and natural habitats for the public benefit.

The tax code does provide some tax incentives to encourage conservation of open spaces. For example, taxpayers may take a deduction for charitable contributions of real property or interests in property for qualified conservation purposes. In addition, the Federal estate tax provides for a partial exclusion for gifts of conservation easements. These tax benefits are valuable tools for encouraging conservation, but they don't work in all instances. As we all know, there has been great appreciation in rural land values in recent years, particularly where metropolitan areas have expanded outward to meet rural areas. Farmers and ranchers in such areas often have few financial assets other than their land, and income from farming and ranching is still relatively modest. Thus, land rich, cash poor property owners are generally unable to take advantage of the existing charitable donation incentives because their annual incomes and tax liability are too low to use the tax benefit of a deduction.

My bill, H.R. 2290, the Conservation Tax Incentive Act, would address this problem by focusing on the capital gains tax. I am pleased that this proposal was included in President Bush's Fiscal Year 2003 budget. H.R. 2290 would exclude 50 percent of the gain on sales of land or interests in land or water where the sale is made to qualified conservation entities for conservation purposes. Qualified conservation entities include publicly-supported conservation charities and governmental conservation agencies. Conservation purposes include: (1) the preservation of land for outdoor recreation by the general public; (2) the protection of natural habitats of fish, wildlife or plants; and (3) the preservation of open space (including farmland and forests). The bill uses definitions for conservation entities and tests for conservation purposes that are already in the tax code, and are well understood.

The Conservation Tax Incentives Act is a fiscally-conservative private citizen-based approach to land conservation that will help preserve open spaces from sprawl and haphazard development while avoiding onerous new land use regulations. It will also enable conservation organizations and state and local governments to stretch their limited resources to acquire the most environmentally-sensitive tracts of land.

My district in Southwest Ohio offers a classic example of where the bill would be helpful. Like other major cities, the metropolitan areas of Cincinnati have expanded out to meet rural areas. Many small family farms in the rural areas outside Cincinnati are just getting by financially. They want to continue to keep their land in production agriculture, but it's getting tougher all the time.

The State of Ohio has implemented a new program that provides for the purchase of development rights to recognize the public interest in maintaining farmland. However, many farmers purchased their land before the recent escalation in property values, and they would experience substantial capital gains taxes on a sale of their development rights. With such a hefty portion of the payment from the transaction going to Federal taxes, many have been unable to participate in the program. Under my bill, capital gains taxes on the sale of such development rights would be substantially reduced. The resulting increase in the net after-tax return means that more farmers could afford to keep their land in productive use.

The bill is supported by a wide range of interests, including the American Farm Bureau, Ducks Unlimited, Defenders of Wildlife, the Association of State Foresters, and The Nature Conservancy. H.R. 2290 will encourage conservation through private, voluntary, market-rate sales at a modest cost to the Federal Government—approximately $66 million per year according to the last estimate we have from the Joint Committee on Taxation. This is a small cost that will yield important benefits for future generations.

Thank you for allowing me to explain this proposal. Of course, I would be happy to try to respond to any questions you may have.

Chairman MCCRERY. Thank you, Mr. Portman. Our colleague on the Committee on Ways and Means, the Chairman of the Subcommittee on Health, Mrs. Nancy Johnson. Mrs. Johnson?

STATEMENT OF THE HON. NANCY L. JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mrs. JOHNSON. Thank you very much, Mr. Chairman, and thanks to all of your colleagues on your Subcommittee on Select Revenue Measures for being here this afternoon.

I am going to build on what my colleague from Ohio has said, but before I do, let me just welcome Rand Wentworth, who is the President of the Land Trust Alliance, whom you will hear from shortly. Mr. Wentworth and his organization have been really national leaders in promoting conservation across the country and his organization's membership have strong representation in Connecticut. I am proud that the Land Trust has devoted clear resources to developing the leadership and the literal resources for land preservation in many, many counties throughout America.

Over the past 20 years, many landowners have protected the value that they place on their land by donating it for conservation or adopting an easement that permanently protects the land they love. The continued rise in land prices, coupled with the rising cost of retirement, has greatly undermined the existing income tax incentives for open space protection and forces people to choose between retirement security and land protection in a way they have not had to in the past.

In addition, States have developed quite impressive programs to buy either land or development rights. Since they are appropriated programs and actually involve buying the land, they are very costly and States, too, are limited in their ability to address their own land preservation needs.

It is my belief that while the tax code has in the past thought about this, its provisions are inadequate and its provisions are particularly inadequate for the kind of person of modest means that Mr. Portman referred to. Many of my constituents have modest incomes, but they look rich when you look at the now value of their land. The tax code could really be a far more powerful agent in land preservation if we could enable these people to donate their

land, thus avoiding some of the capital gains problems that Mr. Portman alluded to.

Our bills are actually complementary, because his deals with situations where there is a sale. Mine deals with situations when there is a donation. The primary provision of my bill, H.R. 1309, would increase the current income tax deduction for the donation of land for conservation purposes from 30 to 50 percent of income until the full value of the land was realized, rather than limiting those deductions to up to 6 years.

So, it would enable the people in my part of Connecticut, the Northwest corner, who own only 10 acres or 20 acres but who live next to people who also own 10 or 20 acres and would like to see this reserve in the valley preserved, each of them to be able to donate and, in a sense, develop a reverse income through this deduction and reduction of tax liability. So, it is kind of like reverse mortgages, and it really minimizes the cost to the government while maximizing the opportunity to preserve land that is important to us to protect open spaces.

In my part of the country, protecting open spaces is important so you have fields that you can lease to support the working farms in existence, because if those fields go out of protection and are developed, you lose the farms as a secondary impact.

Allowing families to deduct 50 percent of the value of their land from their income for as many years as it takes to recoup the value of the donated land creates an income stream through reduced tax liability that allows them both to be secure in their retirement and protect the land that they so love.

It is kind of interesting to note that if you have a very high income and you donate a $1-million picture, you can deduct the whole $1 million, which may bring, in the first year, the tax liability down very low. So, in a sense, we are saying to the person who does not have a $1-million picture by a famous artist but does have 20 acres they would like to donate to conservation that they cannot ever deduct the whole value of that. So, there is a disparity in our tax code, how we are valuing the donation of art objects to art museums versus how we are valuing the donation of land to environmentally friendly uses that will serve the public interest.

I am going to skip the rest of my testimony out of deference to my colleagues, but I am very excited about this hearing. I think that if we really look thoroughly at this issue of sales and donation, that the Federal Government could be a far better partner to the States now that the States are keenly aware that the parcels that are left are rising rapidly in price and we need to act in the next decade, not in decades ahead.

So, I think we have an opportunity to make a very significant contribution at minimal public cost and with maximum flexibility and maximum respect for the fact that there are many important pieces of public land owned by small landowners who really profoundly value their land and the preservation of the quality of life of their small town and know that only an easement or some other means of preservation will preserve that quality of life that they enjoy and hope to will to their children. Thank you for your attention.

[The prepared statement of Mrs. Johnson follows:]

Statement of the Hon. Nancy L. Johnson, a Representative in Congress from the State of Connecticut

Mr. Chairman and Members of the Subcommittee:

Thank you for convening this important hearing on tax incentives for the conservation of land. I want to welcome Rand Wentworth, President of the Land Trust Alliance (LTA), who you will hear from shortly. Mr. Wentworth, and his organization, has been a national leader in promoting land conservation across the country and his organization's membership has a strong presence in Connecticut. I am proud that the Land Trust Alliance has endorsed my bill, H.R. 1309, about which I have come to testify today, and appreciate the leadership and resources LTA has provided in representing more than 1,200 non-profit, grass-roots land trusts nationwide.

While Congress often uses the tax code to promote certain activities, I do not believe we have used it effectively enough to promote land conservation. Connecticut, like most of its fellow New England states, is known for its historical beauty. However, like so some many communities across the country, we have seen an alarming amount of farmland and green spaces lost to development. More and more strip malls, shopping plazas and housing complexes are replacing productive farms and precious open spaces.

Today, in many places with important value for their wildlife habitat, scenic beauty, outdoor recreation, and open space, land prices have risen far faster than the incomes of the farmers, ranchers and other landowners whose stewardship has protected and enhanced those values. Over the past twenty years, many landowners have protected such values on their land by donating it, or by donating a conservation easement that legally protected those values permanently. But the continued rise in land prices has greatly undermined the existing income tax incentive for such.

Connecticut has embarked on major initiatives to either buy, or provide grants for the purchasing of land for conservation or recreation. In addition to popular state initiatives and current tax incentives, more must be done to encourage those who are land rich, but of modest means, to donate their land for conservation purposes. The primary provision of my bill, H.R. 1309, would increase the current income tax deduction for the donation of land for conservation purposes, from 30 percent to 50 percent of income until the full value of the land is realized, rather than a deduction for no more than 6 years.

Allowing families to deduct 50 percent of the value of their land from their income for as many years as it takes to recoup the value of the donated land essentially creates an income stream while their land is permanently protected from development. In the absence of improved conservation tax incentives, more and more land owners will succumb to the highest bidder and sell their valuable land for development. This will diminish preservation efforts and urban sprawl will become an even greater problem throughout the country. We need to find better ways to protect and preserve open spaces and I believe the tax code can further promote environmentally-friendly uses of our lands.

I also want to mention one other bill before the committee which complements my legislation. Mr. Portman's bill, H.R. 2290, would allow landowners to exclude from tax 50 percent of the gain on sales of land or easements to public or private conservation entities for conservation purposes. His bill would allow landowners to protect the ecological value of their land without forfeiting the lands' economic value. We both share the same goal of preserving land, but our respective bills seek to achieve this goal in slightly different ways.

I will continue to strongly advocate for proposals to enhance tax incentives for the conservation of land so those who are land rich, but cash poor, can afford to make this income sacrifice and help us all preserve our rural landscapes. My legislation, and others before the committee, promote this goal. It is my hope that the committee will act as soon as possible to put in place greater incentives for the conservation of land.

Chairman MCCRERY. Thank you, Mrs. Johnson. Now, our next witness is another Member of the Committee on Ways and Means, the gentlelady from Washington, Ms. Jennifer Dunn. Ms. Dunn, welcome.

STATEMENT OF THE HON. JENNIFER DUNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Ms. DUNN. Thank you very much, Mr. Chairman. Mrs. Johnson put her finger on it. We are talking about partnership. I think it shows that you are, indeed, a panel of vision to be letting us have these hearings because we think we may have some solutions that will create good partnerships and result in the preservation of our Nation's beautiful forests at the same time.

One of our most important roles as elected officials is to serve as stewards of our environment. We have a responsibility to future generations to care for our environment so that they will be able to experience and enjoy our natural resources.

I believe there is broad support within Congress and in America for sound, consistent environmental policy. Sadly, it seems whenever a discussion moves beyond general goals to actual policies, it becomes rancorous and often bitter. The lingering distrust between the environmental community and private property advocates has proven to be a very difficult obstacle to overcome. Clearly, we need some new thinking.

For this reason, I am so pleased to be speaking on behalf of H.R. 1711, the Community Forestry and Agriculture Conservation Act. This legislation presents an innovative solution to one of the most vexing challenges facing policy makers, conserving our land while ensuring that it remains a source of economic activity. This bill achieves an important balance by promoting a public good without impinging on private property rights.

The bill has 25 cosponsors, including six Members of the Committee on Ways and Means. I want to recognize two Members of the Subcommittee, Mr. Tanner and Mr. Foley, for their support.

Here is how the concept works. A community citizens group or a local government with a desire to protect a piece of land as a working greenbelt creates a nonprofit entity that includes a balanced membership of landowners, environmentalists, financial leaders, local officials, and forest professionals. The nonprofit group develops a management plan for the land that conforms to the relevant State and Federal environmental standards. Under the plan, a large portion of the land will be dedicated for stream and habitat protection and another area will be identified for logging.

The State agency responsible for bond authority issues tax-exempt revenue bonds on behalf of the nonprofit group, who purchases the land from the private owner at a fair market value. The nonprofit group takes title of the land. The nonprofit group harvests appropriate amounts of timber to pay off the debt while preserving the bulk of the forestland from future development.

To make this concept a reality, Congress needs to change our tax law to allow nonprofit groups to access tax-exempt bonds. By doing so, we can employ a collaborative model to preserve natural resources.

Although we began to write this legislation several years ago, Mr. Chairman, a recent example has allowed us to show how this concept could be applied in other areas around the country. The recent example of the partnership is the Snoqualmie Tree Farm in my district in Washington state. Last January, the Weyerhaeuser Corporation agreed to sell 104,000 acres of the Snoqualmie Tree

Farm to the Evergreen Forest Trust. The parcel is only 40 miles from downtown Seattle and is under imminent threat of development. The tree farm, which is nearly twice the size of the city of Seattle, is too valuable to remain as forest. Vast tracts would eventually be sold to developers. By accessing tax-exempt bonds, the trust can preserve the integrity of the tree farm.

Once the trust takes ownership, it will accommodate the various needs of the community. It will protect vital habitats and watershed areas. It will continue to allow residents of the Puget Sound area to use wilderness lands for recreational purposes. Perhaps most significantly, it will keep the mills working and retain jobs for timber workers.

In Washington state, we are blessed with stunning natural beauty, but as the population continues to grow, pressure to conserve the land often collides with the desires of the landowners. In the past, the government has further complicated matters through heavy-handed regulation. A typical result leaves one side victorious and the other side contemplating a long, costly court battle. H.R. 1711 demonstrates that environmental policy does not have to be a zero-sum game. We can satisfy both sides.

Our problem in the Pacific Northwest is acute, but not unique. Communities all over the Nation are struggling with the competing demands of property owners and preservationists. I hope the Evergreen Trust can be a national example of a new, constructive effort to achieve the widely accepted goal of environmental preservation. Proof exists in the diverse group of supporters of this bill, including environmental organizations like the Nature Conservancy and timber companies like Weyerhaeuser and Plum Creek, two of whom you will hear from later on on the second panel.

Privately-held forestland is disappearing throughout the United States. Since 1997, 10.6 million acres of private forestland have either been sold or are currently under contract for sale. One of the reasons for the reduction is the disparate tax treatment of private forestland. Hopefully, as we move forward with conservation measures, we can also devote some attention to how we tax timber assets.

I have many fond memories of hiking through the woodlands around Puget Sound with my family. I want to ensure that families in the future will enjoy our forests just as much as we have. H.R. 1711 offers an opportunity to fulfill that promise. Thank you, Mr. Chairman.

[The prepared statement of Ms. Dunn follows:]

Statement of the Hon. Jennifer Dunn, a Representative in Congress from the State of Washington

One of the most important roles we have as elected officials is to serve as stewards of our environment. We have a responsibility to future generations to care for our environment so that they will be able to experience and enjoy our natural resources.

I think that there is broad support within Congress and in America for sound, consistent environmental policy. Sadly, it seems whenever a discussion moves beyond general goals to actual policies it becomes rancorous and often bitter. The lingering distrust between the environmental community and private property advocates has proven to be a difficult obstacle to overcome. Clearly, we need some new ideas.

For this reason I am so pleased to be speaking on behalf of H.R. 1711, the Community Forestry and Agriculture Conservation Act. This legislation presents an in-

novative solution to one of the most vexing challenges facing policymakers—conserving our land, while ensuring that it remains a source of economic activity. The bill achieves an important balance by promoting a public good without impinging on private property rights.

The bill has 25 cosponsors, including six Members of the Ways and Means Committee. I want to recognize two Members of the Subcommittee, Mr. Tanner and Mr. Foley, for their support.

Allow me to briefly explain how the concept works:

- A community citizens' group or a local government with a desire to protect a piece of land as a "working" greenbelt creates a non-profit entity that includes a balanced membership of landowners, environmentalists, financial leaders, local officials, and forest professionals.
- The non-profit group develops a management plan for the land that conforms to the relevant state and Federal environmental standards. Under the plan, a large portion of the land will be dedicated for stream and habitat protection and another area will be identified for logging.
- The state agency responsible for bond authority issues tax-exempt revenue bonds on behalf of the non-profit group who purchases the land from the private owner at fair market value. The non-profit takes title of the land.
- The non-profit group harvests small amounts of timber to pay off the debt while preserving the bulk of the forestland from future development.

To make this concept a reality, Congress needs to change our tax law to allow non-profit groups to access tax-exempt bonds. By doing so, we can employ a collaborative model to preserve natural resources.

One example of this partnership is the Snoqualmie Tree Farm in my district in Washington State. Last January, the Weyerhaeuser Corporation agreed to sell the 104,000 acre Snoqualmie Tree Farm to Evergreen Forest Trust. The parcel is only forty miles from downtown Seattle and is under imminent threat of development. The tree farm, which is nearly twice the size of Seattle, is too valuable to remain as forest. Vast tracts would eventually be sold to developers. By accessing tax-exempt bonds, the trust can preserve the integrity of the tree farm.

Once the trust takes ownership it will accommodate the various needs of the community. It will protect vital habitats and watershed areas. It will continue to allow residents of the Puget Sound area to use wilderness lands for recreational purposes. And perhaps most significantly, it will keep the mills working and retain jobs for timber workers.

In Washington State we are blessed with stunning natural beauty, but as the population continues to grow pressure to conserve the land often collides with the desires of landowners. In the past, the government has further complicated matters through heavy-handed regulation. A typical result leaves one side victorious and the other side contemplating a long, costly court battle. H.R. 1711 demonstrates that environmental policy does not have to be a zero-sum game. We can satisfy both sides.

Our problem in the Pacific Northwest is acute, but it is not unique. Communities all over the nation are struggling with the competing demands of property owners and preservationists. I hope that the Evergreen Trust can be a national example of a new, constructive effort to achieve the widely accepted goal of environmental preservation. Proof exists in the diverse group of supporters of this bill, including environmental organizations like the Nature Conservancy and timber companies like Weyerhaeuser and Plum Creek.

Privately-held forestland is disappearing throughout the United States. Since 1997, 10.6 million acres of private forestland have either been sold or are currently under contract for sale. One of the reasons for the reduction is the disparate tax treatment of private forestland. Hopefully, as move forward with conservation measures we can also devote some attention to how we tax timber assets. I have introduced H.R. 1581, the Reforestation Tax Act, which would ameliorate some the tax problems faced by the timber industry. I am happy to see that it is part of today's hearing.

I have many fond memories of hiking through the woodlands around Puget Sound with my family. I would like to ensure that families in the future can enjoy our forests as much we have. H.R. 1711 offers an opportunity to fulfill that promise.

Chairman MCCRERY. Thank you, Ms. Dunn. Now, a colleague from the Committee on Ways and Means and a Member of our Subcommittee, Mr. Jerry Weller from Illinois. Mr. Weller?

STATEMENT OF THE HON. JERRY WELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. WELLER. Thank you, Mr. Chairman, and Mr. McNulty, thank you, as well, for the opportunity to testify before our Subcommittee today on an issue that we all care very much about and an issue that carries strong bipartisan support and that is the issue of farmland and open space preservation. I commend you, Mr. Chairman, for conducting today's hearing on looking at how the tax code can impact our goal of protecting valuable open space.

One lesson I think we have always learned as we look at the various pieces of tax legislation that have gone through our Committee is the tax code does have consequences and the tax code does have incentives. How can we use that to achieve this goal?

Since I joined the Committee in 1996, and Mr. Chairman, if I could, I would like to summarize my testimony and just ask that I could submit my full testimony and summarize it for you.

Chairman MCCRERY. Without objection.

Mr. WELLER. I have enjoyed working with my colleagues, Nancy Johnson and Bill Coyne and others on the issue of brownfields. Every one of us can think of a community in our district, if not our hometown, where there is a parcel of land on one side of town, an old industrial park or a strategic location, and you always wonder why someone does not redevelop that and put it to use.

All too often, there are some environmental cleanup needs in that brownfield, and if it is an old industrial park, you already have the sewer, the water, the infrastructure, the streets the access to that industrial park already in place, but private investors are hesitant to purchase it. Of course, the cost of the environmental cleanup has been the roadblock there, and as I talk with economic development as well as environmental agencies, they raise that issue when they are trying to attract a private investor to purchase that particular property.

Now, why is it important that we revitalize brownfields? Well, if you are a private investor looking to develop an industrial park, you have a choice. You can take an existing, old, unused industrial park which already has the sewer, the water, the infrastructure, or you can purchase a cornfield in Illinois, a greenfield site, and statistics will show you that if the developer makes the choice of purchasing the greenfield site, they will probably consume anywhere from four to six times as much open space and land for that new industrial park as they would for an existing industrial park if they would just revitalize that.

So, the question has been, how can we motivate and encourage those private investors to purchase that old industrial park, do the environmental cleanup, and revitalize it, and in turn, revitalize the community?

We worked to provide, in a team effort, Nancy Johnson, Bill Coyne, and myself, over the last several years, provide an expensing provision for environmental cleanup of brownfields. In the 1997 Balanced Budget Act, we were successful in obtaining bipartisan support for a targeted provision that was targeted to low-income census tracts, the areas around them as well as Federal empowerment zones. Two years ago in the Community Renewal Tax Relief Act of 2000, we were successful in removing that targeting provi-

sion so every community in America, whether rural or suburban or urban or middle class or low income, would have the opportunity for this tax incentive to recover the costs of environmental cleanup, and it is working.

In the district that I represent on the South side of Chicago as well as the South suburbs, we have brownfield sites currently being cleaned up in LaSalle County, Kankakee County, the city of Ottawa, Chicago's 10th ward, and in Joliet. In my district, considering the fact that there are 2,000 brownfields in the Chicago region alone, represents the two largest brownfields in the State of Illinois, the former Joliet arsenal, which is under redevelopment today, and, of course, land adjacent to the Ford plant in the 10th ward of Chicago, which is also under redevelopment. This tax incentive is helping make that happen.

What we are asking the Subcommittee to consider and ask for the full Committee's support as well as continued bipartisan support for expensing of environmental cleanup on brownfields is to make this provision permanent. We have introduced H.R. 2264, legislation which would make permanent the existing provisions for expensing of environmental cleanup of brownfield sites. The current provisions expire June 30, 2004.

This is important. If you think about it, permanency of a tax provision causes greater investment in that. Business decisionmakers making decisions on millions of dollars in investments, if they know that the tax consequence is permanent, they are more likely to make a decision of greater magnitude, and I believe that making permanent the brownfields tax incentive will make a big difference.

There are 400,000 brownfields across this country. The U.S. Conference of Mayors estimates that in 187 cities, estimated that if the 21,000 existing brownfield sites within the municipal limits of those cities were redeveloped, it would generate tax revenues for those cities of $2.4 billion and create up to 550,000 new jobs and revitalizing those communities.

I would also like to touch briefly on an additional provision that was added to H.R. 2264 to expand the type of cleanup that would be eligible to benefit from this tax provision. Our provision would broaden the type of hazardous substances that are eligible for the treatment to include petroleum and pesticides, lead paint, and asbestos. Why do I mention that? Think of that gas station in your hometown that is on that strategic corner that needs to be cleaned up. This would help take care of that and achieve that goal.

These type of contaminants are regularly found at brownfield sites. Our current law does not allow individuals cleaning up these sites with these substances the ability to use this tax incentive. We wish to expand it to include these because we believe it will help expedite the environmental cleanup and revitalization of more brownfields across this country.

Mr. Chairman, thank you for the opportunity to testify. We believe this is an important environmental initiative as well as an economic development initiative and we ask the Subcommittee as well as the full Committee's consideration of making permanent the expensing of brownfields cleanup. So, thank you, Mr. Chairman.

[The prepared statement of Mr. Weller follows:]

Statement of the Hon. Jerry Weller, a Representative in Congress from the State of Illinois

Mr. Chairman:

As you may know, I have been interested in the cleanup of brownfields since I first joined this Committee in 1996. Two years ago, Nancy Johnson, Bill Coyne and I worked to include provisions into the Community Renewal Tax Relief Act of 2000 which extended and expanded existing tax incentives to all brownfield sites. Prior to the 2000 legislation, the tax incentives were available only to brownfield cleanups in low income areas. Our legislation made brownfield cleanups in all communities across the nation eligible for the tax incentives.

Now, I believe it is important that we make these tax provisions permanent. To that end, on June 21, 2001, I introduced H.R. 2264, a bill to make the brownfield tax incentives permanent. Currently, without action by this Committee, the existing provisions will expire June 30, 2004.

Brownfield sites exist throughout all of our districts—abandoned eyesores that blight our communities and drag down local economies. Many brownfield properties are located in prime business locations near critical infrastructure, including transportation, and close to a productive workforce. These sites need to be put back into productive use, contributing to the economy and producing good paying jobs where they are needed most.

The first step towards doing this is to remediate these sites environmentally. This U.S. Conference of Mayors estimates that there are over 400,000 brownfields sites across the country. Development of these sites will help restore many blighted areas, create jobs where unemployment is high and ease pressure to develop beyond the fringes of communities. Small, urban centered businesses often benefit most directly by this redevelopment. There are important economic and environmental benefits to brownfields cleanup. The U.S. Conference of Mayors recently completed a survey of 187 large and small cities throughout the nation, including Chicago, Houston, New York and Miami. According to the responses to this survey, the 187 cities estimated that if their 21,000 existing brownfield sites were redeveloped, this would bring additional tax revenues of up to $2.4 billion annually and could create up to 550,000 jobs. In Chicago alone, developing 2,000 brownfield sites would mean $78 million in additional tax revenue to the city and 34,000 new jobs.

At a time when we are looking for opportunities to jump-start our state, local and national economies, making the brownfields tax incentive permanent would be a big step in the right direction.

Before I conclude my testimony, I would like to touch briefly on an additional provision included in H.R. 2264. This provision would broaden the types of hazardous substances that are eligible for the treatment to include petroleum and pesticides, and lead paint and asbestos. As you know, these contaminants are regularly found at brownfields sites, but current law does not allow individuals cleaning up sites with these substances the ability to use the tax incentives to cleanup these items. Given the toxic nature of these substances, I believe it is the best interest of our communities to ensure that these hazardous substances are cleaned up. I would encourage the Committee to broaden the definition of hazardous substance at the next available opportunity.

Mr. Chairman, I appreciate the opportunity to testify before the Subcommittee on the issue of Brownfields. I look forward to continuing to work with you and other Members of the Subcommittee on this issue. I would be happy to answer any questions.

Chairman MCCRERY. Thank you, Mr. Weller. Now, we will hear from our colleague from the State of Oregon, Earl Blumenauer. Mr. Blumenauer?

STATEMENT OF THE HON. EARL BLUMENAUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. BLUMENAUER. Thank you, Mr. Chairman. I appreciate your courtesy in allowing me to join with my distinguished colleagues here for this critical discussion.

I appreciate your opening statement, which really captured part of the dilemma that we are facing, and Mr. Portman talking about losing a million acres per year to development. Actually, it is worse

than that. In the 1990s, there were some 17 million acres that were lost, an area roughly the size of the State of West Virginia. This has had profound impacts on the way that our communities are organized, the pressures that we are facing, the problems in the long term, and I appreciate your encapsulating that.

It is not just that we are expanding the development area, but we have found that over the years 1960 to 1990, we were expanding almost three times faster than the increase in population. Development rates have gone up exponentially.

Mr. Weller's metropolitan area increased 11 times faster than the population; a 4-percent increase in population and a 46-percent increase in creation of developed land area. We are finding in Mr. Isakson's area the expansion of Atlanta, the most rapid development in the history of human settlement, that has caused that city to grow from 65 miles to 110 miles, north to south, in a 10 year period.

Our citizens know that we cannot continue moving in this direction, paying for the infrastructure expansion and losing these precious resources, and luckily, we are seeing people starting to process this at the State and local level. When Maine finds that despite a decline of almost 30,000 students, they are paying a third-of-a-billion dollars more for school facilities because of the dislocation, we are finding that people are starting to react.

I appreciate the panel that you have following us, with some of the key partners at the State and local level, local government, private business, and the nonprofit land trust community, for instance, that are looking at creative ways of doing that.

Our citizens are voting at home. We have had over 550 initiatives in the last election cycle that have produced billions of dollars of investment. They cannot do it by themselves, and looking at the tax code is an important place for us to begin.

You have four excellent proposals before you. I have cosponsored a couple of them. I have been working with Representative Johnson for several years, trying to think through this.

I would hope that the Subcommittee would consider three things. First, putting together a comprehensive package of tax incentives that would help us coax the types of behaviors that we want. You have got four good proposals before you. There are others that are floating around, and clearly, the Committee has some great ingenuity. This would be the sort of thing that people would move forward and look forward to being a part of, and you would find broad bipartisan support across the political spectrum for protection of farmland, open space, brownfield cleanup in ways that could lead to exciting partnerships in the future.

I hope that the Committee would think about nudging some other things that are within the jurisdiction of the Committee on Ways and Means. Congressman Shaw sponsored H.R. 1172, the Historic Homeowner Tax Preservation Credit. This is something any of us in mature cities, large or small, could support. Whether it is Atlanta or St. Louis or Chicago or the smallest communities in the South and the North, there are historic structures that individual homeowners cannot afford to maintain, but this tax credit would make a huge difference in moving things forward.

I would hope that the Committee would think about using its influence in finding a tax-free instrument that the farmers, for instance, that get payments from the sale of development rights or conservation easements could use not unlike a rollover for a 401(k) plan, a tax-deferred annuity, or an IRA. As a number of your witnesses have already said, land provides the retirement funds for individuals who do not necessarily want to lose control of their property. If they could have the opportunity for these payments to be in a tax-free instrument, you would find that there would be a lot more people that would step forward and take advantage of it.

I appreciate the Committee's leadership and foresight in bringing together the panels and look forward to working with you in any way that I can to further this important work.

[The prepared statement of Mr. Blumenauer follows:]

Statement of the Hon. Earl Blumenauer, a Representative in Congress from the State of Oregon

I want to thank Chairman McCrery, Ranking Member McNulty and the Committee for hosting this hearing that touches on an issue of concern for people everywhere—protecting land for agriculture, recreation, natural resource management, and environmental protection.

My focus in Congress is to find ways in which the Federal Government can help localities create their vision of livable communities. A livable community is one where people are safe, healthy and economically secure. How the elements of land use and conservation fit together have a tremendous impact on our communities.

I applaud the work of my colleagues whose legislative proposals we are hearing about today. I am supportive of each of these bills, which together represent the wide range of interests that understand the importance of land use and conservation decisions.

- Representative Rob Portman introduced H.R. 2290, the Conservation Tax Incentives Act of 2001. This legislation allows the exclusion of 50 percent of gains on land or water sales for conservation purposes. I am pleased to hear that this legislation is supported by groups as diverse as the American Farm Bureau, environmental groups, and the Administration.
- H.R. 1309, introduced by Representative Nancy Johnson amends the tax code to encourage the contribution of property or easements for conservation purposes.
- Representative Jennifer Dunn's Community Forestry and Agriculture Conservation Act of 2001, H.R. 1711, gives tax-exempt status to bonds issued to acquire renewable resources on lands subject to conservation easements. I am a cosponsor of this bill that helps to preserve farmland and forestry economies that are important in my Congressional district.
- Representative Jerry Weller introduced H.R. 2264. This legislation amends the Internal Revenue Code with respect to environmental remediation cost expensing, making such provision permanent and widening the definition of "hazardous substance" and "qualified contaminated site" so that more brownfield type sites will be developed and given a new economic life.

Why has land use, conservation and preservation become such an important issue nationwide? No matter where we live, even in areas with little to no population growth, we have witnessed the loss of important farmland and open space. Some of the facts are startling:

- Sprawling development uses land more inefficiently than before, eating up land at twice the rate of population growth. From 1960 to 1990, urban and suburban areas almost tripled, while average population density fell by more than one third.
- More than 90 million acres of farmland across the nation are threatened by sprawl and we lose more than 2 million acres every year to urban development.
- Farms are threatened by sprawl, but also are our frontline against urban sprawl. Farms located near urban centers serve as the primary source of fresh, locally grown food—79% of our fruit, 69% of our vegetables, and 52%

of our dairy goods are produced on high quality farmland threatened by urban growth.

What makes the tax incentives being discussed today so important is that Federal programs and state and local initiatives cannot make it alone. Currently, the Department of Agriculture's Federal Farmland Protection Program is oversubscribed by 600%. If funds were available, more than 4,000 farmers would sell development rights on their land.

Citizens and voters across the country have declared open space preservation a priority through their voting records. In 2001, voters in 17 states approved state and local ballot measures that generated $1.2 billion for conservation measures aimed at protecting recreational lands, farmland, parks and water supplies. Over 70 percent of these types of ballot measures passed.

I support these tax incentive bills because it is another way in which the Federal Government can be active on this important issue. There are a couple of ways in which the Federal Government can make a difference and we must provide the resources necessary to do this.

First, the Federal Government can help through direct funding. In the case of open space preservation, there are programs such as the Farmland Protection Program and Land and Water Conservation Fund that are extremely important. However, budgetary constraints limit the overall effectiveness of these programs.

Second, the Federal Government must be a good partner to state and local governments. These tax incentives are one way we can help. These incentives create a tool for the private sector to create opportunities that will preserve lands that Federal dollars and local and state initiatives cannot protect alone.

I would like to take the opportunity to touch on a few other pieces of legislation that are important to this whole discussion. There are many factors that have an effect on development and land use and Federal funding and tax incentives alone will not protect the resources and lands integral to our communities.

It is important that states and regions are able to consider a wider view of the manner in which transportation infrastructure, employment centers, and housing are connected, or disconnected as the case may be. How these developments are coordinated and where they are built dictates the nature of our communities, the resources consumed, and the tax dollars it will take to maintain and service them. I believe that when regions give forethought to and coordinate the manner in which they invest in infrastructure and protect farmland and water resources, taxpayers can save billions of dollars.

The Community Character Act, H.R. 1433, provides modest grants to states so that outdated planning statutes can be updated and comprehensive planning undertaken. A key reason for the Community Character Act and a primary obstacle to state comprehensive planning stems from the outdated statutes in place at the state level. Roughly half of the states rely on a model for land-use planning legislation created by the Department of Commerce over 70 years ago. The transformation of America's landscape and settlement patterns since the 1920s has changed drastically. Updated state planning statutes are necessary to create the framework that will allow states and regions to address the modern world and adequately plan for the future.

Another bill that touches on transportation's influence is the Bike Commuter Act, H.R. 1265. This legislation aims to include bicycling in the Transportation Fringe Benefit that employers are allowed to give employees for commuting to work. Currently, parking, vanpooling, and transit commuters are the only ones eligible for a benefit. By leveling the playing field for bike commuters we eliminate an incentive for people to live further from work, which is what leads to the development pressures we are now attempting to protect.

Communities across the nation are seeking to reduce traffic congestion, improve air quality, and make neighborhoods safe. The Federal Government can assist in those efforts by promoting bicycling use through the existing Transportation Fringe Benefit of the tax code.

Another important bill that utilizes tax credits is the Historic Homeownership Assistance Act, H.R. 1172. This legislation, introduced by Clay Shaw, Jr. Amends the Internal Revenue Code to allow a limited tax credit for rehabilitation of a qualified historic home. This is a bill important to directing development and investment away from outlying areas and back to the existing infrastructure of our communities.

All of these legislative proposals are important pieces in helping people and localities create the types of communities they want to live in. These are incentives and grants that allow the Federal Government to be a good partner with state and local

governments, so that they are able to create livable communities that are safe, healthy, and economically secure.

Chairman MCCRERY. Thank you, Mr. Blumenauer. Now, our colleague from Georgia, a good friend who has been, I think, a leader in the effort to get a hearing in the Congress on this issue, my friend from Georgia, Johnny Isakson. Mr. Isakson?

STATEMENT OF THE HON. JOHNNY ISAKSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. ISAKSON. Chairman McCrery, Ranking Member McNulty, thank you for letting me be here today and thank you for calling this important hearing. I have submitted my written testimony for the record, but for the sake of these 5 minutes, I would like to speak to you from the heart.

The Sixth Congressional District of Georgia lies in the greater metropolitan Atlanta area. It is known for two great things. It is the most rapidly growing urban area in America, and it is also the home for the largest protected natural waterway and greenway of any urban city in America, the Chattahoochee National River Forest.

I somewhat represent those two characteristics. For 34 years prior to coming to Congress, I was a real estate broker and a developer, and my first act after coming to Congress was to sponsor legislation to expand the Chattahoochee National River Park.

I am not claiming the original thought of H.R. 882. The late Senator Coverdell from Georgia introduced it a few years ago. Mr. Chris Sawyer of Atlanta, Mr. Carl Knoblauch, and others who are the real thinkers and engineers behind what I believe is the solution to the problem that has been restated five times already brought it to me and I fell in love with it because I know tax policy drives economic policy and I know that public/private partnerships work when one side or the other driving the train normally does not.

Mr. Chairman, if you think about it for a second, this Congress exempted home mortgage interest and allowed it to be a deduction on taxes. Therefore, America has the largest homeownership of any country in the world. We decide to allow municipal bond interest to be tax-free and we raised more capital to build more infrastructure in our cities and our counties, to have the finest quality of life of anyone. A decade ago, when public housing had fallen apart, we used the tax code and we used tax credits for low- and moderate-income housing to revolutionize both the capital investment and the quality of that.

H.R. 882 simply does this. It creates a 5-year, $20 billion tax credit program to raise the capital to fund the purchase of conservation easements by approved not-for-profit organizations. Unlike depending on the gift of specific land or the exemption of the tax for one estate, this allows a coordinated effort where private ownership is maintained, but controlled and coordinated conservation easements may be purchased so as to manage our riverways, migratory habitat, our farms and ranches in the West.

Mr. Chairman, I believe in this passionately because it has worked in other examples approved by this Committee in other

areas. There is no greater need than creating a public/private partnership to pass on the legacy of our environment and its quality. Once destroyed, we can never pass it on.

In my last business act in Atlanta, Georgia, I was the developer of a subdivision called Wild Timber, a unique piece of land on the Chattahoochee River that I referred to earlier. Early on in that development, we made an investment in the land and an investment in our environment. We sold the river frontage to the Trust for Public Lands and then we preserved 20 percent of the remaining acreage for greenways throughout the neighborhood to accentuate the streams, the topography, and the other natural assets.

Mr. Chairman, instead of investing in acres of tennis courts, multiple swimming pools, and clubhouses, we preserved what God gave us, and an interesting thing happened. People came to our subdivision not to see what we had built, but to appreciate what we had not destroyed. In my entire career, it was the most popular, most rapidly absorbed development we ever did.

I believe passionately that the public and private sector can work together. I believe concretely that conservation easements purchased and coordinated nationwide can preserve our riverways, our migratory habitat pathways between national parks, and preserve individual ownership and the family passing of ranches and farms. With the leadership of this Subcommittee and the consideration of this initiative, I believe we can make a major step forward for my children, for your children, and for the heritage we would all like to pass on to them, and I thank the Committee for giving me this opportunity.

[The prepared statement of Mr. Isakson follows:]

Statement of the Hon. Johnny Isakson, a Representative in Congress from the State of Georgia

Mr. Chairman and ladies and gentlemen of the Subcommittee, I want to express my thanks to you for allowing us the opportunity to discuss H.R. 882.

Mr. Chairman, I represent the 6th Congressional District of Georgia, which lies in the heart of the greater metropolitan Atlanta area. My district has been developing rapidly over the last 20 years, and is the home to many of America's major corporations. It is also the home of the most significant urban river park and greenway in America. To a certain extent, I reflect both of these characteristics of my district because prior to my election to Congress I was the president of a major real estate and development company, and upon my election to Congress, the very first accomplishment I committed myself to was the expansion of the Chattahoochee River Greenway Program, which Congress passed in the 106th Congress.

I am one who firmly believes that all of us have a responsibility to preserve our environment and our quality of life. I am also one who believes that tax policy has a major influence on the way the American people and American business invests and spends their money. United States tax policy allows the American people to deduct the cost of interest on their home mortgage on their income tax return, and in turn, American home ownership is the highest of any country in the world. The United States tax policy exempts from taxation the interest in municipal bond debt, and because of that the capital investment in America's cities and counties provides us with the best quality of life and services of any country in the world. United States tax policy created the tax credit program for moderate and low income housing, and brought to America's poorest and less fortunate, better opportunities and better neighborhoods. House Resolution 882 makes the statement that a change in United States tax policy can, and will, have the same type of positive influence on our environment as each of these examples have had on other facets of American life.

Mr. Chairman, the Committee will hear later today from Mr. Christopher Sawyer, an Atlanta attorney recognized nationally as a leader in preserving the quality of our environment and finding creative ways for government and the private sector

to work together to preserve sensitive environmental lands and family farms and ranches. Mr. Sawyer is one of those who was principally responsible for creating the Chattahoochee River Greenway program which to date has raised $105 million in private funds and gifts to match a $25 million dollar Federal appropriation, which resulted in an expansion of the size of the Chattahoochee National Recreation Area and added an additional 60 miles of river frontage to the park. I urge the Committee to pay close attention to Mr. Sawyer and his observations, for his knowledge comes from experience, not theory, because he understands that the business community and the environmental community can work together for the entire community which we all share equally.

Mr. Chairman, I must admit that this legislation does not represent my original thought. This legislation is the work of many people who believe as I do that our environment is important, and that good policy can result in positive changes. The legislation was originally drafted by the late United States Senator Paul Coverdell. Paul came to believe, as I have come to believe, that there is a role for government to play to be a catalyst for positive change in environmental protection.

Mr. Chairman, I come from the southeastern portion of our great country, and we face, as much of America faces, severe water problems. We recognize how critical our rivers are, and how essential water quality is. This legislation would provide an unbelievable incentive for the formation of dollars used to purchase conservation easements along critical shorelines and river banks to protect the river, reduce erosion and preserve the environment that surrounds it. Conservation easements do not take the land from its owner, but do restrict the use of the area upon which the easement rests. In my last major development as a businessman before elected to Congress, I recognized the growing appreciation for green space and river corridors in our last development in Atlanta known as Wild Timber. We made the conscious decision to sell our river frontage to the Trust for Public Land, and to preserve 20% of the land area of the development in green space for common buffers behind houses and along streams. In essence, we banked on making the environment our amenity package, rather than multiple swimming pools, acres of tennis courts and houses built up against a riverbank. The result of that experience was gratifying as the subdivision set all records in absorption and popularity. People came as much to see what we had preserved as what we had built. I am confident the vision of Mr. Sawyer and countless others of our citizens is a vision that is right for America. Using tax policy as a catalyst for the raising of capital to purchase easements to protect sensitive areas makes sense. We all know there isn't enough money to buy, through parklands and wilderness areas, everything that is critical to the quality of our environment. The money just doesn't exist. But through the use of conservation easements funded by the tax credits recommended in House Resolution 882, we leverage every dollar spent or invested to protect the environment by ten-fold, while maintaining the ownership of those lands upon which the easement lies in the name of the families, many of whom are third or fourth generation owners of a beautiful ranch, a magnificent farm or countless acres of timberland.

Finally, Mr. Chairman, I am completely aware of the arguments that abound on the Floor of the Congress with regard to tax reductions, tax credits and tax rates. I also know the truth, and that is that tax policy drives people's decisions and people's investments. While this bill proposes a $20 billion tax credit program over five years, it's result will be a savings of far more money than it would cost to acquire the lands we need to preserve or reclaim the lands that have been damaged. It is time in this country that we encourage the investment of private capital in the preservation of our environment and use our tax policy, as we have in the past, to cause good decisions to be made for the common good and the betterment of our country.

Mr. Chairman, I thank you and the Committee for allowing us this time. I express my appreciation in advance for all the testimony you will hear from Mr. Sawyer and his years of work on behalf of my State of Georgia and our country.

Chairman MCCRERY. Thank you, Mr. Isakson. I thank all of you. I know that there are witnesses in the last panel today that will touch on every piece of legislation that you all have talked about, so I am going to reserve my questions for those witnesses when they come, but I would yield to my friend from New York, Mr. McNulty.

Mr. MCNULTY. Thank you, Mr. Chairman. I just have a couple of brief questions. First, to Congressman Isakson, I notice your bill

has a State cap and I was just wondering if you could describe how that would be determined on a State-by-State basis and how it would be administered within the States as far as who could take advantage of it.

Mr. ISAKSON. I thank you for the question. In the testimony submitted by Mr. Sawyer, in the backup documentation, there is a chart that shows that allocation, which basically, and I am going on my memory here, goes from the highest cap allocation of $200 million in the largest State to one that was somewhere in the area of, I believe, $47 million in terms of the lowest allocation in the lowest State. It is basically a ratio of the farms and land and timberland in that State as a percentage of the land available in that State and allocated on that basis.

Mr. Sawyer is going to discuss in his testimony, and at length in the written part, the allocation. The cap—did I answer your question?

Mr. MCNULTY. Well, then a subpart of that question would be, once you determine the cap, how do you determine the administration of who gets to apply for the credits in order to get up to that cap.

Mr. ISAKSON. Well, ultimately——

Mr. MCNULTY. That sounds like that would be hard to administer.

Mr. ISAKSON. Well, I think not hard to administer, but ultimately, one of the things the Committee will do will be to work through that project. Although I understand the difficulty, we had no problem obtaining from the United States Government the number of acres in each State that fell in those categories, and I think you will find through both the U.S. Department of Agriculture (USDA) and other departments a pretty good monitoring of the use of land in the country.

One other point that I want to make, each year, if a State does not utilize up to its cap, then the remaining funds can be allocated over other States who have. So, this is a type of situation where the incentive is to use conservation easements to conserve vital lands and see to it the money is used by those that are truly partnering and taking initiative. If one State did not for one reason or another, the money would be reallocated across the others based on the formula.

Mr. MCNULTY. Thank you Congresswoman Dunn, in H.R. 1711, what types of entities would issue the bonds and is there a Federal revenue cost?

Ms. DUNN. Thank you for the question, Mr. McNulty. It would be a State public agency would administer the bonds, and the revenue cost would be $6 million in 2003 and over 10 years it would be $487 million. You might wonder about the Payments in Lieu of Taxes. They would be included in the purchase of the property.

Mr. MCNULTY. Thank you. That is all I have, Mr. Chairman.

Chairman MCCRERY. Thank you all very much. We appreciate your taking your time to share with us your ideas on how we can conserve open spaces and green areas in our country.

Chairman MCCRERY. Now, I would like to call forward Ms. Pam Olson, who is the Acting Assistant Secretary for Tax Policy, U.S. Department of the Treasury.

Ms. Olson, thank you very much for coming today. We assume you are going to share with us the proposals in the President's budget with respect to today's topic, and know that your full written testimony will be entered into the record and we would like for you to summarize that orally in about 5 minutes. You may begin.

STATEMENT OF PAMELA F. OLSON, ACTING ASSISTANT SECRETARY FOR TAX POLICY, U.S. DEPARTMENT OF THE TREASURY

Ms. OLSON. Thank you, Mr. Chairman, Mr. McNulty. I appreciate the comment about the size of the shoes that I am attempting to fill. Please bear with me to the extent I fall short from time to time.

I do appreciate the opportunity to appear before you today. As you know, the President has made a firm commitment to conservation and the environment. I would like to begin by commending you and the Subcommittee for holding today's hearing focusing on tax incentives to encourage responsible stewardship of the land and proposals designed to improve upon those incentives and further encourage the preservation of open spaces.

I also commend the Members of the Committee on Ways and Means, Ms. Dunn, Mrs. Johnson, Mr. Neal, Mr. Portman, Mr. Weller, as well as Mr. Blumenauer and Mr. Isakson for their thoughtful comments and for their leadership in introducing legislation to encourage responsible stewardship of America's land.

The Internal Revenue Code includes a number of conservation incentives, including brownfields deductions to encourage the cleanup of abandoned or under-utilized contaminated properties by allowing expensing of environmental remediation costs, a charitable deduction for the contribution of qualified real property for conservation purposes, an estate tax exclusion for qualified conservation easements, and a proposal to allow State and local governments to issue tax-exempt bonds for land conservation and preservation.

The Administration has included several tax-related proposals in the President's fiscal year 2003 budget that I will expand on later in my testimony. However, I would note that the President's commitment to advance policies to encourage land conservation and preservation extends well beyond the tax code. A description of the Administration's proposals to encourage land conservation and preservation is included in my written testimony.

The tax code includes a number of incentives to encourage responsible stewardship of the land. The President has included a number of proposals in his budget designed to improve on those incentives and further encourage the preservation of open spaces. We look forward to working with this Subcommittee as it considers those initiatives.

First, brownfields. The Administration's budget includes $200 million, twice the fiscal year 2002 level of funding, for the Environmental Protection Agency's brownfields program, $171 million of which is for grants for States and local communities. Moreover, the President proposes making the brownfields tax incentives permanent. This incentive is currently scheduled to expire on December 31, next year.

Brownfields are abandoned or under-utilized properties, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Since lenders, investors, and developers fear the high and uncertain costs of cleanup, they avoid developing contaminated sites. Blighted areas of brownfields hinder the redevelopment of affected communities and create safety and health risks for residents.

The obstacles in cleaning these sites, such as regulatory barriers, lack of private investment, and contamination and remediation issues, are being addressed through a wide range of Federal programs, including the tax incentive for brownfields remediation. To encourage the cleanup of contaminated sites, the brownfields tax incentives permits the current deduction of certain environmental remediation costs. The brownfields tax incentive applies to expenditures paid or incurred before January 1, 2004.

The Administration believes that encouraging environmental remediation is an important national goal. The brownfields provision encourages the cleanup of contaminated brownfields, thereby enabling them to be brought into productive use in the economy and mitigating potential harms to public health.

The current law incentive was made temporary to encourage faster cleanup of brownfields. Experience has shown, however, that many taxpayers are unable to take advantage of the incentive because environmental remediation often extends over a number of years. For that reason, the President's budget proposed a permanent extension of the brownfields tax incentive. Extending this special treatment accorded to brownfields on a permanent basis would remove doubt among taxpayers as to the future deductibility of remediation expenditures and would promote the goal of encouraging environmental remediation.

The Administration's proposal, as has been noted, was introduced by Mr. Weller and Mr. Coyne as H.R. 1439 and we appreciate their support of that provision.

The revenue cost of the proposal, we have estimated to be $1.1 billion over fiscal years 2003 through 2007. We estimate that the $300 million annual cost will leverage approximately $2 billion in private investment and return 4,000 brownfields to productive use each year.

The second item I want to mention is conservation sales. The Administration has also proposed to provide an exclusion for 50 percent of the gain when land or an interest in land or water is sold for conservation purposes. The proposal would apply to land sales after December 31, 2003. Some landowners may want their land to be protected for conservation purposes but cannot afford simply to donate either the land or an easement on the land, especially if the land is the landowner's primary salable asset.

By adding an incentive for sales to qualified conservation groups, the President's budget complements the existing provisions that encourage charitable donations. This proposal would encourage the sale of appreciated environmentally sensitive land and land rights to qualified conservation groups, thus achieving conservation goals through voluntary sales of property rather than imposing government regulation on land use.

Mr. Chairman, we believe that the Administration's proposed tax initiatives represent sound tax policy that can produce significant environmental benefits for decades to come. This concludes my prepared testimony. I would be pleased to answer any questions that you or Members of the Subcommittee may have. Thank you.

[The prepared statement of Ms. Olson follows:]

Statement of Pamela F. Olson, Acting Assistant Secretary for Tax Policy, U.S. Department of the Treasury

Mr. Chairman, Mr. McNulty, and Members of the Subcommittee:

I appreciate the opportunity to discuss with you today the Administration's proposed tax incentives for improving the environment. I would like to start by thanking the Subcommittee for holding a hearing on this important issue. I also commend Ms. Dunn, Ms. Johnson, Mr. Neal, Mr. Portman, and Mr. Weller of this Committee, as well as Mr. Blumenauer and Mr. Isakson, for their thoughtful comments and for their leadership in introducing legislation to encourage responsible stewardship of America's land. This is a goal the President shares.

Reflecting the President's firm commitment to conservation and the environment, the President's Budget for FY 2003 includes a number of proposals that will encourage land conservation and preservation. The budget includes the following initiatives for environmental conservation and stewardship: (1) over $910 million to fully fund the Land and Water Conservation Fund to support natural resource conservation and outdoor recreation, including $200 million for State grants—this proposal recognizes that Federal land acquisition is not the only way to conserve land and other natural resources, and allows funds to be used for conservation easements; (2) $665 million for the National Park Service to address the park maintenance backlog; (3) $67.5 million for Natural Resource Challenge, a science-based initiative to strengthen natural resource management throughout the National Park System; (4) $376 million for wildlife protection and public use opportunities at our National Wildlife Refuges; (5) $100 million for a new Cooperative Conservation Initiative to protect and conserve the environment by awarding challenge grants to landowners, environmental groups, land-user groups, communities and State and local governments; (6) $50 million for the Landowner Incentive Program, which provides funds to States, tribes and territories to make cost-sharing grants for the protection of habitat for endangered, threatened or other at-risk species on private or tribal lands; (7) $70 million for the Forest Legacy program to protect against the loss of forests from development; (8) $10 million for the Private Stewardship grant program to provide technical and financial assistance to landowners engaged in local, private and voluntary conservation efforts for the benefit of Federally listed or other imperiled species; and (9) $200 million—twice the FY 2002 level of funding—for the Environmental Protection Agency's brownfields program, $171 million of which is for grants to States and local communities.

The Budget proposes making the brownfields tax incentive permanent. Under current law, this incentive is scheduled to expire on December 31, 2003. The revenue cost of a permanent extension is estimated to be $1.1 billion over five years. The Administration also proposes to provide an exclusion for 50 percent of the gain when land (or an interest in land or water) is sold for conservation purposes. The proposal would apply to land sales after December 31, 2003, and its revenue cost is estimated to be $328 million over five years.

The President's Budget includes other proposals that will benefit the environment. These proposals are part of an overall environmental policy aimed at encouraging economic growth in ways that protect the environment. In February, the President announced the Clear Skies Initiative to cut power plant emissions of the three worst air pollutants—nitrogen oxides, sulfur dioxide, and mercury—by 70 percent. This initiative will improve air quality using a proven, market-based, cap-and-trade approach. The Budget also provides $4.5 billion for activities related to global climate change, including the first year of funding for a five-year, $5.0 billion commitment to tax incentives to encourage energy efficiency, reduce greenhouse gas emissions and develop renewable energy sources.

Thanks in large part to the leadership shown by the Ways and Means Committee, many of the Administration's tax proposals have been enacted or are included in legislation that the House passed last summer. We look forward to working with this Subcommittee as it considers the remainder of the Administration's environmental initiatives.

The remainder of my testimony will provide a more detailed discussion of the Administration's tax proposals.

LAND-RELATED INCENTIVES

Current law tax incentives for land conservation

As the Chairman noted in announcing this hearing, the Internal Revenue Code currently includes a number of incentives to encourage responsible stewardship of the land. They include the deductibility of brownfields remediation costs, special rules for qualified conservation contributions, an estate tax exclusion for qualified conservation easements, an exclusion for certain conservation cost-sharing payments, and rules permitting the issuance of tax-exempt bonds for land conservation and preservation purposes.

Brownfields remediation costs

A brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Because lenders, investors, and developers fear the high and uncertain costs of cleanup, they avoid developing contaminated sites. Blighted areas of brownfields hinder the redevelopment of affected communities and create safety and health risks for residents. The obstacles in cleaning these sites, such as regulatory barriers, lack of private investment, and contamination and remediation issues, are being addressed through a wide range of Federal programs, including the tax incentive for brownfields remediation.

To encourage the cleanup of contaminated sites, the brownfields tax incentive permits the current deduction of certain environmental remediation costs. Environmental remediation costs qualify for current deduction if the expenditures would otherwise be capitalized (generally costs incurred to clean up land and groundwater that increase the value of the property) and are paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site. A qualified contaminated site generally is any property (1) that is held for use in a trade or business, for the production of income, or as inventory; (2) at or on which there has been a release, threat of release, or disposal of a hazardous substance; and (3) that is certified by the appropriate State environmental agency as to the release, threat of release, or disposal of a hazardous substance. Sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) do not qualify as qualified contaminated sites. The brownfields tax incentive applies to expenditures paid or incurred before January 1, 2004.

Qualified conservation contributions

To encourage charitable donations, tax law provides a charitable contribution deduction not only for outright gifts but also in certain cases where the property is sold to a charity for less than its fair market value (that is, a "bargain sale"). In general, however, a charitable deduction is not allowed for income, estate, or gift tax purposes for a contribution of less than the donor's entire interest in property. There is an exception, however, for qualified conservation contributions. A qualified conservation contribution is a contribution of a qualified real property interest to a governmental unit or public charity exclusively for any of the following conservation purposes: (1) the preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation is (i) for the scenic enjoyment of the general public or (ii) pursuant to a clearly delineated Federal, State, or local governmental conservation policy; or (4) the preservation of an historically important land area or a certified historic structure. A real property interest is qualified for this purpose only if it is (1) the donor's entire interest other than a retained interest in subsurface oil, gas, or other minerals and the right of access to such minerals, (2) a remainder interest, or (3) a perpetual restriction on the use that can be made of the property.

Estate tax exclusion for qualified conservation easements

For Federal estate tax purposes, up to 40 percent of the value of land subject to a qualified conservation easement may be excluded from a decedent's estate at the election of the executor. The maximum exclusion permitted for qualified conservation easements is $500,000. In addition, if the value of the conservation easement is less than 30 percent of the value of the land (determined without regard to the value of the easement and reduced by the value of any retained development right), the exclusion percentage is reduced by two percentage points for each percentage

point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land.

A qualified conservation easement must meet the following requirements: (1) the land must be located within the U.S. or a possession of the U.S.; (2) the land must have been owned by the decedent or a member of the decedent's family at all times during the three-year period ending on the date of the decedent's death; and (3) a qualified conservation contribution of a qualified real property interest (see above) must have been granted by the decedent, a member of the decedent's family, the executor of the decedent's estate, or the trustee of a trust holding the land no later than the date of the executor's election. For this purpose, preservation of a historically important land area or a certified historic structure does not qualify as a conservation purpose. In addition, the qualified real property interest must include a prohibition on more than a de minimis use for a commercial recreational activity.

Property financed with acquisition indebtedness is eligible for the exclusion only to the extent of the net equity in the property, and the exclusion does not extend to the value of any development rights retained by the decedent or donor. To the extent the value of the land acquired at death is excluded from the decedent's estate under the qualified conservation easement rule, the land will receive a carryover rather than a stepped-up basis.

Cost-sharing payments

To further conservation, Federal and State governments implement a number of programs to share in taxpayers' costs of making improvements to land. These costs do not normally improve the income-producing capacity of the property. To encourage participation in these programs, taxpayers may exclude certain payments received under these programs from their gross income. To qualify for exclusion, the payments must be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife and may not increase substantially the annual income derived from the property. Taxpayers claiming the exclusion may not increase the basis of the improved property by the excluded amount and may not claim any deduction or credit for any expenditure associated with the excluded payment.

Tax-exempt bonds

States and local governments may issue tax-exempt bonds for land conservation and preservation purposes so long as: (1) no more than ten percent of the bond proceeds is used by private entities in a trade or business if payments or security associated with that use are available to pay principal or interest on the bonds; and (2) no more than five percent of the bond proceeds is loaned to private businesses or individuals. If these private activity requirements are not met, tax-exempt private activity bonds may nonetheless be issued, subject to per-State volume limits, for the following land conservation and preservation purposes: water, sewage, solid waste disposal, and hazardous waste facilities; and redevelopment infrastructure in blighted areas if the bonds are supported by incremental property taxes.

Administration budget proposals

The President's Budget for FY 2003 includes two proposals to improve upon these tax incentives and further encourage the restoration and preservation of America's land.

Brownfields remediation costs

The Administration believes that encouraging environmental remediation is an important national goal. The brownfields provision encourages the cleanup of contaminated brownfields, thereby enabling them to be brought into productive use in the economy and mitigating potential harms to public health. The current-law incentive was made temporary to encourage faster cleanup of brownfields. Experience has shown, however, that many taxpayers are unable to take advantage of the incentive because environmental remediation often extends over a number of years. For that reason, the President's budget proposed a permanent extension of the brownfields tax incentive. Extending the special treatment accorded to brownfields on a permanent basis would remove doubt among taxpayers as to the future deductibility of remediation expenditures and would promote the goal of encouraging environmental remediation. The Administration's brownfields proposal was introduced by Mr. Coyne and Mr. Weller as H.R. 1439.

The revenue cost of the proposal is estimated to be $1.1 billion over FY 2003–2007. Treasury estimates that the proposal, at a $300 million annual cost, will le-

verage approximately $2 billion per year in private investment and will return 4,000 brownfields per year to productive use.

Conservation sales

Some landowners may want their land to be protected for conservation purposes but cannot afford simply to donate either the land or an easement on the land, especially if the land is the landowner's primary salable asset. By adding an incentive for sales to qualified conservation groups, the President's Budget complements the existing provisions that encourage charitable donations. This proposal would encourage the sale of appreciated, environmentally sensitive land and land rights to qualified conservation groups, thus achieving conservation goals through voluntary sales of property, rather than imposing government regulation on land use. The proposal would achieve this goal by strengthening the ability of conservation groups to compete with other potential buyers of appreciated, environmentally sensitive land.

Under the Administration proposal, when land (or an interest in land or water) is voluntarily sold for conservation purposes (as defined below), only 50 percent of any capital gain would be included in the seller's income. The 50-percent exclusion is based on what the gain would have been without taking improvements into account (that is, the taxpayer may exclude 50 percent of the excess of (a) the purchase price allocable to the property other than improvements, over (b) the basis allocable to the property other than improvements). To be eligible for the partial exclusion, the sale must be to a qualified conservation organization. A qualified conservation organization is either a governmental unit or a charity that is a qualified organization under section 170(h)(3) and that is organized and operated primarily for conservation purposes. Conservation purposes are the preservation of land areas for outdoor recreation by, or the education of, the general public; the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; or the preservation of open space where the preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy.

The buyer must provide a written statement representing that it is a qualified conservation organization and that it intends to hold the property exclusively for conservation purposes and not to transfer it for valuable consideration other than to a qualified conservation organization in a transaction that would qualify for this 50 percent exclusion if the buyer/transferor were taxable. The partial exclusion would not be available for sales pursuant to a condemnation order but would apply to any gain recognized in a sale that is made in response to the threat or imminence of such an order. If the property sold is less than the taxpayer's entire interest in the property, it must satisfy requirements like those applicable to qualified conservation contributions under section 170(h). In addition, the taxpayer or a member of the taxpayer's family must have owned the property sold for the three years immediately preceding the date of the sale.

Similar proposals were introduced by Mr. Kolbe as H.R. 960 and by Mr. Portman (with a number of cosponsors) as H.R. 2290.

The provision would be effective for sales taking place on or after January 1, 2004. The revenue cost of the proposal is estimated to be $328 million over FY 2003–2007.

ENERGY-RELATED INCENTIVES

Current law tax incentives for energy efficiency and alternative fuels

Tax incentives currently provide an important element of support for energy-efficiency improvements and increased use of renewable and alternative fuels. Current incentives are estimated to total approximately $800 million for fiscal years 2003 through 2007. They include a tax credit for electric vehicles and expensing for clean-fuel vehicles, a tax credit for the production of electricity from wind or biomass, a tax credit for certain solar energy property, and an exclusion from gross income for certain energy conservation subsidies provided by public utilities to their customers.

Electric and clean-fuel vehicles and clean-fuel vehicle refueling property

A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000. A qualified electric vehicle is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electric current, the original use of which commences with the taxpayer, and that is acquired for use by the taxpayer and not for resale. The full amount of the credit is available for purchases prior to

2004. The credit begins to phase down in 2004 and does not apply to vehicles placed in service after 2006.

Certain costs of qualified clean-fuel vehicles and clean-fuel vehicle refueling property may be deducted when such property is placed in service. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction. The deduction begins to phase down in 2004 and does not apply to property placed in service after 2006.

Energy from wind or biomass

A 1.5-cent-per-kilowatt-hour tax credit is provided for electricity produced from wind, "closed-loop" biomass (organic material from a plant that is planted exclusively for purposes of being used at a qualified facility to produce electricity), and poultry waste. The electricity must be sold to an unrelated person and the credit is limited to the first 10 years of production. The credit applies only to facilities placed in service before January 1, 2004. The credit amount is indexed for inflation after 1992.

Solar and geothermal energy

A 10-percent investment tax credit is provided to businesses for qualifying equipment that (1) uses solar energy to generate electricity, to heat or cool or provide hot water for use in a structure, or to provide solar process heat or (2) is used to produce, distribute, or use energy derived from a geothermal deposit.

Ethanol and renewable source methanol

An income tax credit and an excise tax exemption are provided for ethanol and renewable source methanol used as a fuel. In general, the income tax credit is 53 cents per gallon for ethanol and 60 cents per gallon for renewable source methanol. As an alternative to the income tax credit, gasohol blenders may claim an equivalent gasoline tax exemption for ethanol and renewable source methanol that is blended into qualifying gasohol.

The income tax credit expires on December 31, 2007, and the excise tax exemption expires on September 30, 2007. In addition, the ethanol credit and exemption are each reduced by 1 cent per gallon in 2003 and by an additional 1 cent per gallon in 2005. Neither the credit nor the exemption applies during any period in which motor fuel taxes dedicated to the Highway Trust Fund are limited to 4.3 cents per gallon. Under current law, the motor fuel tax dedicated to the Highway Trust Fund will be limited to 4.3 cents per gallon beginning on October 1, 2005.

Energy conservation subsidies

Subsidies provided by public utilities to their customers for the purchase or installation of energy conservation measures are excluded from the customers' gross income. An energy conservation measure is any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit.

Administration budget proposals

The Administration's budget for FY 2003 proposes a number of tax incentives for renewable energy and more efficient energy use. The budget also proposes to modify the tax treatment of nuclear decommissioning funds. The Administration's budget proposals are described below.[1]

Electricity from wind and biomass

The President's Budget proposed to extend the credit for electricity produced from wind and biomass for three years to facilities placed in service before January 1, 2005. This proposal has since been enacted, in part, by the Economic Security and Worker Assistance Act of 2002, which provides a two-year extension of the credit. In addition, the President's Budget proposes to expand eligible biomass sources to include certain biomass from forest-related resources, agricultural sources, and other specified sources. Special rules would apply to biomass facilities placed in service before January 1, 2002. Electricity produced at such facilities from newly eligible sources would be eligible for the credit only from January 1, 2002, through December 31, 2004. The credit for such electricity would be computed at a rate equal to 60 percent of the generally applicable rate. Electricity produced from newly eligible biomass co-fired in coal plants would also be eligible for the credit only from

[1] For a more detailed description, see *General Explanations of the Administration's Fiscal Year 2003 Revenue Proposals*, Department of the Treasury, February 2002.

January 1, 2002, through December 31, 2004. The credit for such electricity would be computed at a rate equal to 30 percent of the generally applicable rate.

Residential solar energy systems

The President's Budget proposes a new tax credit for individuals who purchase solar energy equipment used to generate electricity (photovoltaic equipment) or heat water (solar water heating equipment) for use in a dwelling unit that the individual uses as a residence. The credit would be available only for equipment used exclusively for purposes other than heating swimming pools. The proposed credit would be equal to 15 percent of the cost of the equipment and its installation. The credit would be nonrefundable and an individual would be allowed a lifetime maximum credit of $2,000 per residence for photovoltaic equipment and $2,000 per residence for solar water heating equipment. The credit would apply only to solar water heating equipment placed in service after December 31, 2001, and before January 1, 2006, and to photovoltaic systems placed in service after December 31, 2001, and before January 1, 2008.

Fuel from landfill methane

The President's Budget proposes to extend the section 29 credit for fuel produced from landfill methane produced at a facility (or portion of a facility) that is placed in service after December 31, 2001. Fuel produced at such facilities would be eligible for the credit through December 31, 2010. The proposal would also expand the credit by permitting the credit for fuel used by the taxpayer to produce electricity. The credit for fuel produced at landfills subject to EPA's 1996 New Source Performance Standards/Emissions Guidelines would be limited to two-thirds of the otherwise applicable amount. In the case of landfills with facilities that currently qualify for the section 29 credit, this limitation would not apply until after 2007.

Ethanol and renewable source methanol

The President's Budget proposes to extend the income tax credit and excise tax exemption for ethanol and renewable source methanol through December 31, 2010. The current law rule providing that neither the credit nor the exemption applies during any period in which motor fuel taxes dedicated to the Highway Trust Fund are limited to 4.3 cents per gallon would be retained. As under current law, the credit and the exemption would each be reduced by 1 cent per gallon in 2003 and by an additional 1 cent per gallon in 2005.

Hybrid and fuel cell vehicles

The President's Budget proposes to provide temporary tax credits for certain hybrid and fuel cell vehicles.

A credit of $250 to $4,000 would be available for purchases of qualifying hybrid vehicles after December 31, 2001, and before January 1, 2008. A hybrid vehicle is a vehicle that draws propulsion from both an on-board internal combustion or heat engine using combustible fuel and an on-board rechargeable energy storage system. To qualify for the minimum credit, a hybrid vehicle would be required to derive at least 5 percent of its maximum available power from the rechargeable energy storage system. Larger credits would be available for vehicles that derive larger percentages of power from the rechargeable energy storage system and for vehicles that meet specified fuel economy standards.

A credit of $1,000 to $8,000 would be available for the purchase of qualifying fuel cell vehicles after December 31, 2001, and before January 1, 2008. A fuel cell vehicle is a motor vehicle propelled by power derived from one or more cells that convert chemical energy directly into electricity by combining oxygen with on-board hydrogen (including hydrogen produced from on-board fuel that requires reformation before use). To qualify for the minimum credit, a fuel cell vehicle would be required to meet a minimum fuel economy standard for its weight class. Larger credits would be available for vehicles that achieve higher fuel economy standards.

Combined heat and power systems

To encourage more efficient energy usage, the President's Budget proposes to provide a 10-percent investment credit for qualifying combined heat and power (CHP) systems. CHP systems are used to produce electricity (and/or mechanical power) and usable heat from the same primary energy source. To qualify for the credit, a system would be required to produce at least 20 percent of its total useful energy in the form of thermal energy and at least 20 percent in the form of electrical and/or mechanical power and would also be required to satisfy an energy efficiency

standard. The credit would apply to CHP equipment placed in service after December 31, 2001, and before January 1, 2007.

Nuclear decommissioning funds

The President's Budget proposes to repeal the current law provision that limits deductible contributions to a nuclear decommissioning fund to the amount included in the taxpayer's cost of service for ratemaking purposes. Thus, unregulated taxpayers would be allowed a deduction for amounts contributed to a qualified nuclear decommissioning fund. The Administration also proposes to permit funding of all decommissioning costs (including pre-1984 costs) through qualified nuclear decommissioning funds. Contributions to fund pre-1984 costs would be deductible except to the extent a deduction (other than under the qualified fund rules) or an exclusion from income has been previously allowed with respect to those costs. The Administration's proposal would clarify that any transfer of a qualified nuclear decommissioning fund in connection with the transfer of the power plant with which it is associated would be nontaxable and no gain or loss will be recognized by the transferor or transferee as a result of the transfer. In addition, the proposal would permit taxpayers to make deductible contributions to a qualified fund after the end of the nuclear power plant's estimated useful life and would provide that nuclear decommissioning costs are deductible when paid.

SAFE Act

The Administration is pleased that the House, following the lead of this Committee, has passed H.R. 4, the Securing America's Future Energy Act of 2001. The Administration said, when the House was considering H.R. 4, that it was an important step in ensuring the Nation's energy security. We should also note that the inclusion in H.R. 4 of incentives from the President's budget to encourage conservation, energy efficiency, and the use of renewable and alternative energy sources advances vital elements of the Administration's environmental initiatives.

CONCLUSION

Mr. Chairman, we believe that the Administration's proposed tax initiatives represent sound policy that can produce significant environmental benefits for decades to come. While this concludes my prepared testimony. I will be pleased to answer any questions you or other members of the Subcommittee may have.

Chairman MCCRERY. Thank you, Ms. Olson. In looking at the array of incentives in the tax code currently and those which the Administration and Members of Congress might be proposing, did you consider the effect of the alternative minimum tax on some of these incentives, and if so, can you describe what those effects might be and if they would have any effect on the conservation incentives themselves?

Ms. OLSON. Yes, we did. The Alternative Minimum Tax (AMT) generally allows charitable contributions to be deducted to the same extent as the regular tax. The AMT taxpayers generally face different marginal tax rates than if the AMT did not exist. Those marginal rates can be higher or they can be lower than regular tax marginal rates. If the AMT marginal rate is higher, then the AMT may increase the incentive to make charitable conservation contributions. If the AMT marginal rate is lower, the AMT may decrease the incentive.

Chairman MCCRERY. Again, in looking at the array of incentives to encourage conservation, did you consider the estate tax and the effect that the estate tax has on conserving land? As you know, the House just recently voted to make permanent the repeal of the estate tax. Can you tell us what effect that might have on the use of land generally and conservation of land in particular?

Ms. OLSON. Well, Treasury has estimated that the repeal of the estate tax would have some disincentive effects on charitable con-

tributions, but those disincentive effects are offset to some extent by the fact that individuals with the repeal of the estate tax have more cash available for purposes such as charitable contributions. In addition to that, we believe that the proposal for the exclusion in the President's budget would offset some of the effects of the repeal of the estate tax. If I might elaborate just a little bit——

Chairman MCCRERY. Sure.

Ms. OLSON. Part of the repeal of the estate tax includes a carryover basis, and so an heir would take the property with the same basis as the decedent and would, therefore, have the same built-in gain and at some point in the heir's life might have the same incentive to make a charitable contribution with respect to that property.

Chairman MCCRERY. What about the effect on conservation of that land posed by the burden placed on the heirs of the estate tax itself and having to come up with the cash to pay the estate tax?

Ms. OLSON. Well——

Chairman MCCRERY. If they are land-rich and cash-poor, what is the result?

Ms. OLSON. Well, I think if they are land-rich and cash-poor, they are sometimes put in a position of being compelled to sell something in order to raise the cash to pay the estate tax. If there is no compulsion to sell the property to pay the estate tax because there is not an estate tax anymore, they are left with more money in their pockets, which might ultimately mean that they have got a greater ability to make a charitable contribution.

Chairman MCCRERY. They might also keep their land, might they not?

Ms. OLSON. They might also keep their land, that is right.

Chairman MCCRERY. They might also continue to farm the land.

Ms. OLSON. That is right.

Chairman MCCRERY. To grow trees on it or whatever.

Ms. OLSON. That is right, which might go a long ways, as well, to conserving open space.

Chairman MCCRERY. Thank you, Ms. Olson. Mr. McNulty?

Mr. MCNULTY. Thank you for your testimony, Ms. Olson. I was wondering, why does your proposal to permanently extend the expensing of brownfields remediation costs not also include an expanded list of deductible expenses, such as those relating to petroleum, asbestos, and pesticide contaminations?

Ms. OLSON. With respect to items such as asbestos that are generally found inside of buildings, we have not suggested it should be expanded to items that are inside of buildings. I think that keeping the focus on the current list of items ensures that the most resources are devoted to cleanup of those kinds of items on contaminated sites. If you are looking at a contaminated site and you are trying to do the land cleanup, if it is not deductible under the brownfields remediation provision, it is going to go into the basis of that land and that cost is not going to be recovered at all until the land is disposed of. If it is something that goes into the building, then it does become depreciable or recoverable cost as part of the building. So, there is less of a critical need for that question to be answered with respect to things that are inside of buildings.

Another point is just administerability. Right now, the way that the provision works, taxpayers who want to do a cleanup and claim the 198 deduction go to a State agency that regulates, keeps track of the brownfields site and certifies the expenses. If we expand it beyond the current list, we have lost that bit of administerability that goes along with it.

Mr. MCNULTY. In your proposal to exclude 50 percent of the capital gains from the sale of property for conservation purposes, how do you define conservation purposes and what entity makes that determination?

Ms. OLSON. We would follow some of the proposals that have been followed in the past, where you have got organizations that are currently permitted under the tax code as conservation entities, and so it would be those same kinds of entities that would be making the decision about what to acquire in terms of the land that is offered for sale.

Mr. MCNULTY. That is all I have, Mr. Chairman. Thank you.

Chairman MCCRERY. Mr. Weller?

Mr. WELLER. Thank you, Mr. Chairman, and Ms. Olson, welcome. It is good to have you before the Subcommittee today and I very much appreciate the Bush Administration's commitment on brownfields cleanup and embracing the need to make permanent the brownfields expensing provision that we have all worked together on over the last several years.

Let me ask this. Based on your knowledge of brownfields cleanup and the data that you have and just looking at it from a national perspective, how do you feel that this expensing provision acts as a motivation for a private investor to be more inclined to purchase that old industrial site on the edge of town rather than a cornfield further out on the edge of town, which from the standpoint of just cost of the land, without having to do the environmental cleanup, they might be able to save money on. What do you see as a motivating factor as a result of this tax provision?

Ms. OLSON. Well, I think it has a significant effect. There is a big difference between taking the costs of cleanup and putting it into the basis of the land than having it just hang there for an indeterminate amount of time as a cost that cannot be recovered versus being able to deduct those out-of-pocket expenses up front. So, if you were comparing two parcels of land of equal value except that one had to be cleaned up considerably before it could be used, it is obviously significantly increased cost, and the fact that the taxpayer can deduct the costs of cleanup would give him an incentive to do that.

Mr. WELLER. Okay. You have interesting numbers there. You indicated that you feel that making permanent this provision would generate at least $2 billion worth of investment and over the next 5 years would clean up an additional 2,000 brownfields. From the standpoint of the Chicago area that I represent, that represents our entire current inventory of brownfields in the Chicago metropolitan area. I think there are about 400,000 brownfields nationwide, so we have a lot of work to do.

Ms. OLSON. That is right. We do have a lot of work to do. Our estimate is actually 4,000 per year, so——

Mr. WELLER. Four thousand per year would be——

Ms. OLSON. Yes.

Mr. WELLER. I need to correct that, but that would be a tremendous investment. I do want to thank the Administration for your commitment on this. I look forward to working with you.

I do wish that the Administration would take a look at expanding the types of materials that would benefit from this tax incentive when it comes to what types of materials can be cleaned up. Obviously, as we have experimented with how to make this tax incentive work, it has been quite evident that there is a need for expansion of the type of cleanup that would succeed in our goal of revitalizing brownfields, so I would very much like to work with you on identifying ways that we can expand the type of cleanup that would be eligible for this tax incentive, as well as making it permanent.

Ms. OLSON. We would be happy to give that further study.

Mr. WELLER. Thank you, Mr. Chairman. Thank you for holding this hearing.

Chairman MCCRERY. Thank you, Mr. Weller. I have not asked or advised Ms. Dunn or Mr. Blumenauer, but if you would like to ask the Administration's witness anything, feel free to do that. Ms. Dunn?

Ms. DUNN. Thank you very much, Mr. Chairman. I did not expect to have a chance to ask the Administration witness a question, but I would simply say that we have sat down and had a good briefing with Mark Weinberger on H.R. 1711 and I am hopeful that we can sit with you, Ms. Olson, and go through this in detail. Do you have any sense of what the position would be in general on this type of legislation?

Ms. OLSON. I would be happy to sit down with you and discuss it. We have been through the legislation and we do have some suggestions that we have discussed with some of the folks who are interested in your proposal that we think would make it a little bit tighter and make it work a little bit better, make it more administrable, because we do have a few administerability concerns. We also have some ideas that might help bring the cost of it down, as well.

Ms. DUNN. That is great, and that is exactly the sort of feedback we are looking for, so we will look forward to making that meeting happen.

Ms. OLSON. Thank you.

Ms. DUNN. Thank you, Mr. Chairman.

Chairman MCCRERY. Thank you, Ms. Dunn. Ms. Olson, thank you very much. We look forward to seeing you again and again and again in the future.

Ms. OLSON. Thank you.

Chairman MCCRERY. Now, I would like to call our third and final panel, Mr. Chris Sawyer, Mr. Steven McCormick, Timothy Brazell, Charles Bingham, Eugene Duvernoy, Rand Wentworth, and Jim DeCosmo.

Thank you, gentlemen, for coming today to share with us your views on some of the legislation that we have already heard discussed today and some other ideas for us to consider.

Our first witness on this panel is Mr. Chris Sawyer, who is President of the West Hill Foundation for Nature, Inc., in Atlanta,

Georgia. Mr. Sawyer, welcome. Note, all of you, that your written testimony will be incorporated into the record and we would like for you to summarize orally in about 5 minutes. Mr. Sawyer?

STATEMENT OF CHRISTOPHER GLENN SAWYER, ATLANTA, GEORGIA

Mr. SAWYER. Thank you very much, Mr. Chairman. Thank you and your Members for the invitation and opportunity to appear before your Subcommittee. You are considering a number of important and thoughtful bills today, but my focus will be on H.R. 882.

My name is Chris Sawyer and I am from Atlanta, Georgia. I also work with real estate companies across America relating to issues of development and institutional real estate investment. For over a decade, I have also been active with land conservation issues throughout America, serving at both the State and national volunteer leadership levels with the Nature Conservancy and the Trust for Public Land.

While I am here today as a private citizen and not as a representative of these various organizations, these experiences with both the profit and nonprofit sectors have certainly informed and shaped my opinions. My fundamental perspective is that America is now in the middle of an insidiously devastating land use crisis that without immediate and dramatic action guarantees a greatly degraded and irrevocably altered natural estate for all generations to come. While I have offered much more extensive support for this assertion in materials that I have submitted with this testimony, let me briefly offer support here.

Over our 225-year history, the lower 48 States have lost 52 percent of their original wetland areas and continue to lose these areas at the rate of 109,000 acres per year. This is costing us billions of dollars annually, which annual cost compounds each successive year. Of the 14 major living groups of organisms, including all vertebrates and vascular plants in the United States, one-third of them are either extinct, imperiled, or significantly vulnerable. Of the 76 ecoregions in the 48 contiguous States, only 9 are considered not to be critical, endangered, or in a vulnerable condition as habitat for the species that they contain.

These statistics do report the critical condition of our natural state, but it is not just our natural state. It is also our culture and our quality of life. For example, from 1982 to 1997, we converted over 21 million acres of farmland to residential and other development uses. In the last two decades, over one million acres of rangeland in the greater Yellowstone area alone have been split into plots of 200 acres or less. In the 5-year period from 1992 to 1997, the United States created 15 percent of its total urban footprint while the other 85 percent took 225 years.

As a nation, we have simply worked our land and natural estate hard for 225 years, a fact that would stress any system. This stress is greatly exacerbated today by the fact that we now have 281 million people and it is anticipated that that number will increase by at least 58 million, or 21 percent, by 2020, only 18 years away.

Collectively, this is an extraordinarily disturbing picture. When we fully admit that this is also the picture of the physical platform for the future strength, power, and wealth of our great Nation, it

becomes simply unacceptable. It demands a national response today that guarantees dramatic, immediate, and permanent improvements in the condition of our natural estate.

H.R. 882 offers a national response that includes just that guarantee. It does so by building a plan around those elements that will be necessary to achieve this critical national goal on the most financially efficient basis, consistent with our heritage of private property rights. Those elements include the participation of every State, public/private partnerships, use of conservation easements for the purchase of development rights, allocation of capital that scales to the problem, specific deadlines that will motivate States and landowners alike, the participation of everyone, and the use of tax credits to involve more citizens directly and to provide for a much more immediate and locally driven response.

Through this plan, H.R. 882 will direct and empower all levels of government, land trust, taxpayers, and landowners to work in an aligned partnership, focused at the local level to conserve and restore our natural infrastructure for all generations to come, and the investments made through H.R. 882 will also bear economic results. They will filter our water and protect it. They will clean our air. They will keep our fisheries and foodstocks healthy and productive. They will help assure genetic diversity. They will provide the much needed relief of greenspace for all of us while simultaneously allowing us to avoid the costs of artificially replacing these same services. These savings and returns will significantly lower, if not, in fact, exceed the entire cost of this program.

These are complex issues, but given what we have lost, what we are losing, and what we urgently need, we must embrace an administratively and financially efficient plan that honors private property rights and guarantees immediate, dramatic, and permanent improvements to our Nation's natural state. H.R. 882 is just such an opportunity. Thank you for your consideration.

Chairman MCCRERY. Thank you, Mr. Sawyer, for being so concise and getting just in your 5 minutes. Very well done.

Mr. SAWYER. Thank you, sir. Thank you, Mr. Chairman.

[The prepared statement of Mr. Sawyer follows:]

Statement of Christopher Glenn Sawyer, Atlanta, Georgia

Mr. Chairman: Thank you and your Members for the invitation and opportunity to appear before your Committee.

My name is Christopher Glenn Sawyer. I reside in Atlanta, Georgia, where I have practiced law for 24 years.

During this period of time, I have had a unique experience with land usage in America. As a lawyer, I have advised and represented real estate companies across America relating to issues of development and institutional real estate investment. In addition to the experience of this legal practice, I also represent and serve today as a member of the Board of Directors of one of the largest, privately held development companies in America. I have also been nominated to serve on the Board of Trustees of the Urban Land Institute.

Over the last twelve years, I have also been active with land conservation issues throughout the United States. In addition to serving on the Georgia boards of the Trust for Public Land and The Nature Conservancy, I have also served as chairman of the National Real Estate Advisory Board of The Nature Conservancy, as current President of the West Hill Foundation for Nature in Wyoming, and currently and for the last six years as the National Chairman of the Trust for Public Land headquartered in San Francisco.

While these experiences have certainly exposed me to the broad issues of our environment, I have also worked on specific projects. Most notably, five years ago I

helped start the Chattahoochee River Greenway Program, an effort to create a greenway along the banks of the Chattahoochee River from Helen to Columbus, Georgia, a linear distance of approximately 180 miles. As part of that effort, we came to Congress and received an appropriation of $25 million to increase significantly the size of the Chattahoochee River National Recreation Area. Since that time, we have taken those funds and, through creating an active partnership among Federal, state and local governments, a number of nonprofits, and many businesses and individuals, we have not only essentially doubled the size of the Chattahoochee River National Recreation Area, but by leveraging those Federal dollars we have also raised over $130 million in addition to the Federal grant and, now four years later, have acquired by gift or acquisition a total of 60 miles of river frontage. As founding and current chairman of the Chattahoochee River Coordinating Committee, the organizing body of this effort since its inception, I have learned a lot about our environmental needs and what we, I believe, must do to respond to them.

This work, as well as work with other national organizations, has required me to travel 40,000 to 60,000 miles a year within the United States over the last ten years working on, and learning about, land use and environmental issues. While I wish to make it clear that I am here today as a private citizen and not as a formal representative of these various organizations, these experiences have certainly informed and shaped the opinions that I wish to share with you this afternoon.

My fundamental perspective as a result of these experiences is that America has a very significant land use crisis that threatens the bounty of our natural resources and the rich diversity of our culture. This crisis poses an immediate threat to us today and the promise, without immediate and dramatic action that scales to the true needs of our country, of a greatly degraded and irrevocably altered natural estate for all generations to come.

While I have offered more extensive support for this assertion in materials that I have submitted with this testimony, let me offer some support here for this position, as well as a sense of the current pace of this degradation and depletion.

- Over our history, the lower 48 states have lost 52% of their original wetland areas and they continue to lose these areas at the rate of 109,000 acres per year; because each acre of wetland provides significant annual economic benefits,[1] this continuing annual loss of 109,000 acres amounts to a loss of billions of dollars each year, losses that continue and compound with new losses year after year. Geologically significant grasslands have and are disappearing at similar rates.
- When one surveys the environment regionally, the loss seems, if possible, even greater: the Central Valley of California has lost 95% of its original wetlands and 90% of its riparian corridors have been lost or severely degraded; 50% of the forest and wetlands have been cleared and drained around the Chesapeake Bay, severely deteriorating the quality of its water; 80% of the original 24,000,000 acres of forested wetlands in the Mississippi Aleuvial Valley are gone; 96% of the original 167,000,000 of the tallgrass prairies in the Midwest are gone; 98% of the formerly dominant long-leaf pine in the Southeast region are gone; and the Pacific Northwest has lost 90%, or 25,000,000 acres, of its ancient forests.
- Of the 14 major living groups of organisms, including all vertebrates and vascular plants in the United States, ⅓ of them are graded of "conservation concern," meaning that they are either extinct, imperiled or significantly vulnerable. Similarly, of the 76 eco-regions in the 48 contiguous states, only nine are considered not to be critical, endangered or in a vulnerable condition as habitat for the species they contain. Indeed, an astounding 30% or more of the natural communities in areas such as Hawaii, Oregon's Willamette Valley, and vast portions of the Midwest and Southeast are in danger of vanishing from our natural landscape.

While it is easy to read these as statistics, these statistics report the condition of our natural estate. That estate has been the remarkable physical platform for our wealth and our strength, and it is obviously diminished and imperiled. But it is not just the natural estate; it is also our culture and our quality of life. For example:

- From 1982 to 1992, more than 1,000,000 acres of agricultural land across the United States was converted annually to residential and other development purposes, one-third of which was classified as prime and unique farmland.

[1] See, e.g., the attached article: "The Value of Conservation Easements: The Importance of Protecting Nature and Open Space," by Amanda Sauer, World Resources Institute, April 9, 2002.

From 1992 to 1997, the conversion rate doubled, with 11.2 million acres converted from farmland to other purposes.

- In the last two decades, over one million acres of rangeland in the Greater Yellowstone area have been split into plots of 200 acres or less, changing irrevocably those ranching communities and fragmenting the landscape that some say defines America.
- From 1992 to 1997, the United States created 15% of its total urban footprint—the other 85% took approximately 220 years.
- This development pattern is dependent on the automobile and the result of that is that the average American now spends approximately 445 hours in a car annually or the equivalent of 55 eight hour work days—all at a great cost to our land, our air, our water, our families, and our communities.

While we need economic growth, to continue to develop in this same pattern not only wastes our land base, but it also diminishes our water quality, our air quality, our sense of community, our natural habitat for plants and animals, and our culture. It is especially harmful to our ranching and farming communities because so much of their land is being irreparably lost to other land uses.

Without dramatic change, the future bodes no better for the future of our beautiful country:

- For example, the scientists at Yellowstone National Park report that, unless development patterns are addressed in the three states surrounding the park, the large mammals within the park will no longer be able to exist naturally. They will, in effect, become museum pieces because they will no longer be able to follow their migratory trails in and out of those spectacular areas that their natural existence requires.
- The demographers in the Southeast are now reporting that we should anticipate that there will be one metropolitan area that connects Birmingham to Atlanta to Greenville to Charlotte to Raleigh in the very near term. Not only will this change the culture of the Southeast forever, but it will obviously affect the natural communities as indicated above.
- Recent flooding of the Mississippi reminds us of the astounding costs of channeling these great rivers and losing the wetlands that cushion and absorb the natural flood stages of our riparian systems. This will become an even greater problem throughout the nation.
- If current development and population trends continue, it is estimated that by 2050 our farmers and ranchers will be required to produce food for 50% more Americans on 13% less land.

As a nation, we have simply worked our land and natural estate hard for 225 years, a fact that would stress any system. This stress, however, is greatly exacerbated today by the fact that we now have 281,000,000 people, a 13% increase since 1990, and it is anticipated that that number will increase by 58,000,000, or 21%, by 2020.

Collectively this is a very difficult picture. It is the result of many causes and stresses and will require new and dramatic solutions that scale to the depths and breadth of these challenges to restore fully a balance that is worthy of this great land and nation that we share.

It is, however, an especially disturbing picture, not just from the perspective of what we have lost, which is extraordinarily significant, but even more so when we fully realize that this is also the picture of the physical platform for our future strength. We are the beneficiary and the product of our natural estate. And just as it has been throughout our history, the strength, power and wealth of our nation in the future is absolutely dependent upon its condition.

This disturbing conclusion is underscored by the fact that we no longer have any time left for wasted opportunity or misguided activity.[2] It is the same as when we started the Chattahoochee River Greenway project. We simply looked at the aerial photographs and realized that unless we began that day to create our Greenway, we would lose the opportunity to create those parks and conserve and enhance those river and water resources forever. As one travels over our country, one knows that there are identical aerial photographs in every state. It certainly is so around Yellowstone National Park; as the South morphs into one metropolitan area from Birmingham to Washington, it is certainly true there; as one looks at development leap up the Hudson River or consume more of the desert of Arizona or as another ranch

[2] See, e.g., the attached lecture: "The Cascading of Environmental Consequences: Are We Running Out of Time?", by James Gustave Speth, Dean, Yale School of Forestry & Environmental Studies, April 11, 2001.

or farm family elects to sell its land, we know that it is true in those places and elsewhere in America as well.

As we consider all of this and wonder how we might effectively respond, we must admit one clear fact. We must acknowledge these statistics as a troubling report card at best on our generation's stewardship of our natural estate. We must also agree that it is a report card that demands response today and a response that is predicated on the certain knowledge that we can no longer afford any course that does not begin to improve this report card dramatically, immediately and permanently.

So the question is not, do we need to make a reinvestment, or when, it is simply what is the best way to do it? And even this question has its own urgency because we are at a point in our history where the economy is difficult, there is heightened turmoil in the world, and governmental dollars are especially precious. We need to make certain that every dollar we spend on conservation is wisely invested. And every dollar we spend, whether it is through direct appropriation or through tax policy, should be tested through the prism of whether or not that dollar best assures us of a significant and lasting improvement in our natural estate report card.

This new course will require over time many things. There will be new conservation opportunities to seize, maintenance and operational issues to address, and new park needs to be met. But business as usual will clearly not by itself achieve our goal.

We must begin today a thoughtful new national initiative, on a scale that is beyond any historical standard, that allows us to conserve and allow for the restoration of our natural estate. And it must be an initiative that gives all of us confidence that its inevitable result will be significant improvement in the protection of our rivers, conservation of our forests, the providing of sufficient habitat for the diversity of species that we need to survive, the setting aside of our precious farm and ranch land, and the enhancement of cities through appropriate "green space." To fail to create such a program, or to create a new program that is not structured and coordinated to achieve these results nationally, will not work.

The question then is how do we craft such an initiative that will best spend our dollars, most effectively and most expeditiously, with the greatest chance of success against our goal?

While one can debate many of the details, my experiences have taught me that the following principles, strategies and values must be incorporated in any plan for us to be successful against this goal. Those include the following:

1. Hybrid land estate: We must recognize that our emphasis on land being either public or private has been too simple and a real part of the problem. A great deal of the required solution is coming to understand that we need a greater emphasis on the creation of a larger hybrid land estate throughout America that can achieve our conservation needs and in many instances connect our fully public land to our fully private and enhance them both. This hybrid land estate must remain privately owned and managed, but simultaneously must also be burdened with the loss of certain development rights that the public has acquired voluntarily from the owner at fair market value and holds in perpetuity for the benefit of all of us. These hybrid lands, while staying in private ownership and supporting private purposes, would also serve the public and its collective needs by protecting our water, cleaning the air, conserving habitat for our natural species, maintaining our farm and ranch lands, and by offering "green" space to all of us. Fortunately, we have a 25-year or more history of working with conservation easements, which is the legal tool that creates this hybrid estate. Funding conservation easements must therefore be at the center of any such program.
2. Leveraged Focus: The program's focus must be sharp and it must be on reinvesting in, and thereby strengthening, our natural estate. The use of conservation easements would allow us to acquire from the landowner only that portion of the real estate necessary to accomplish our goals. Use of conservation easements would therefore offer the substantial advantage of allowing us to accomplish a great deal more conservation than we would with equivalent dollars expended for the full acquisition of the property. This strategy would also allow us to avoid the on-going costs associated with managing and operating the property.[3]

[3] This is more succinctly stated in the attached report published by the Western Governors' Association, The Trust for Public Land, and National Cattlemen's Beef Association, entitled "Purchase of Development Rights: Conserving Lands, Preserving Western Livelihoods," January 2001: "[Purchase of development rights through conservation easements] makes economic sense

3. State Involvement: Every state must be involved and incented to participate in this program. While a portion of this reflects that every state has environmental stresses that must be addressed, this also recognizes that environmental systems, such as rivers, prairies, forests, and all of the species that they support, do not know state lines. To be successful over time, and to protect our overall investment, we must therefore have every state moving in a similar direction.
4. Partnerships: We must recognize that the most effective conservation has been the result of public/private partnerships and therefore any plan must put their creation at its center. Congress must set the strategic direction and must set both the importance and pace of the program by the amount of capital that it allocates to it; the states must be involved in coordinating the activities at their level and in helping to set local priorities; and the private sector must lead the execution. As part of this, we must understand and appreciate that conservation easements are bought and sold one family landowner at a time. The best and most expeditious way to negotiate and close those transactions will be to leverage the existing resources of the nonprofit conservation community, including the community leaders across America that serve on their board of directors. The nonprofit organizations therefore must also be at the center of any such plan.
5. Use and scale of capital: Use of capital under this program should be limited to the acquisition and requirements of conservation easements. By doing so, Congress would be putting specific restrictions on the use of the capital in accordance with existing law that happens to be consistent with our program's objectives. The scale of the capital should reflect the deep needs of our country but should also be calibrated between what is possible to execute as well as what is needed to unlock the focus, imagination and energy of the most people to respond to this challenge.
6. Urgency: The dollars should be allocated to states pursuant to specific deadlines and, if the money is not spent within those deadlines, it should be redistributed to those parts of our country with more pressing needs and that also have the immediate capacity and desire to execute.
7. Equity: We must recognize that the conservation and restoration of our natural estate is everyone's responsibility. Paying for it rather than simply accomplishing it through regulation or relying on the generosity of the few reflects this value. We should certainly keep our current donation system in place and encourage its generous use. But by creating a system that is based on acquisitions of conservation easements at fair market value, we can move to a program that not only allows everyone to participate, but also allows us to negotiate for clearer results, act more strategically, and establish our own pace of execution: all critically important to the success of our effort.
8. Tax credits: To be successful, we must get as many people involved in America as possible. The best way to achieve this is not through direct appropriations, which is a process involving relatively few people, but instead to use tax credits, which is a process that ultimately includes a lot of people. A program based on tax credits will invite and incent those organizations that wish to deploy the credits to get more individuals and businesses involved in these issues and their solutions. This will require a process of education and engagement that will result in much more attention, understanding, and commitment to the resolution of these issues. It will also allow us to move at the much quicker response pace that our natural estate crisis requires.
9. Strategic conservation: Because of the way in which we have financed a great deal of conservation in this nation, much of it has been done opportunistically as distinct from strategically. What this means by example is that we have acquired a site here and there as they have become available or as someone has been able to afford to give them, but collectively they do not necessarily support or maintain an ecosystem. In those instances, not only do they not fully accomplish a natural estate goal, but by failing to do so they devalue, in some instances, the investment or gift that has been made. The system that we establish must allow us to move to strategic con-

in the West: it is a compensatory approach to conservation that protects land from development pressure at prices that are more affordable for the public than outright purchase, and it helps keep farmers and ranchers on the land, providing essential stewardship and contributing to the tax base." (Page 5) and "The dire need to create substantial, dedicated funding sources for state and local [Purchase of Development Rights] programs can hardly be overstated." (page 12)

servation. By allocating a set amount on an annual basis on a state-by-state basis with appropriate sunset provisions, we would allow and incent states and landowners to respond strategically to these issues. This is essentially what happened with our successful Chattahoochee River project.

These are the nine elements that I believe must be included to craft a plan that will dramatically improve our natural estate report card immediately and permanently. That is why I am here to urge consideration, and ultimately, passage of H.R. 882.

H.R. 882 prescribes a plan that reflects each of the nine values, strategies, and principles stated above. It is entirely centered on conservation easements; dollars are allocated to every state on a fair basis which assures the participation of every state; it puts a non-profit conservation organization at the center of the plan, but in the context of a direct working partnership with Federal and state government; the capital that it allocates may only be used for the acquisition and requirements of conservation easements; it proposes a spending level that scales to the need as well as communicates the importance of the need; there are specific deadlines that will motivate states and land owners alike; it allows each of us to participate in the conservation and restoration of our natural estate; it is centered on tax credits rather than direct appropriations; and it will allow strategic conservation planning and execution.

While over time experience may require us to alter some of its provisions, all dollars spent in the interim will move us closer to our goal. The reason for this is that under H.R. 882 dollars can only be expended for the acquisition of conservation easements and their requirements. This will assure two results. Because of the current legal limitations on conservation easements, whatever dollars are spent during that period will have resulted in significant conservation goals having been met. In addition, because we can achieve a great deal more conservation for the equivalent dollar with conservation easements than through outright acquisition of property, we will have substantially leveraged all of the dollars that we have spent.

It is also important to appreciate that this is not just an investment in "America the Beautiful." While that might be reason enough to make such an investment, given the beauty and wonder of this great land, these investments will bear economic results: they will filter our water and protect it; they will clean our air; they will keep our fisheries and food stocks healthy and productive; they will help assure genetic diversity and a healthy array of species; and they will provide the much needed relief of "green space" to us all, while simultaneously allowing us to avoid the costs of artificially replacing these same services. These savings and returns will significantly lower the cost of this program if not pay for it altogether.

These are complex issues, but, given what we have lost, and what we are losing and what we urgently need, this complexity should not keep us from taking dramatic action today. Where there is a sound idea with a certain promise of significant improvement in these critical issues, we must seize it and put it into place. H.R. 882 is just such an opportunity.

[The attachments are being retained in the Committee files.]

Chairman MCCRERY. Our next witness is Mr. Steven J. McCormick, who is President of The Nature Conservancy, from Arlington, Virginia. Mr. McCormick, welcome, and might I say thank you for all the work that your organization does in helping us in Louisiana and other places to conserve some of our wetlands and other areas which are vital to our future. Thanks.

STATEMENT OF STEVEN J. MCCORMICK, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATURE CONSERVANCY, ARLINGTON, VIRGINIA

Mr. MCCORMICK. Thank you very much, Mr. Chairman, and thank you for all your help in establishing, among other things, the Red River National Wildlife Refuge in your home State. Thank you, Members of the Subcommittee, for the opportunity to amplify on my written testimony and to speak from some personal experience.

The Nature Conservancy, as the Chairman suggests, is an organization dedicated to protecting land that captures the rich natural

heritage that enriches our life, and our natural heritage around the world.

We are increasingly working at a much larger scale because we want to ensure that the impact of our work in protecting land really has a meaningful consequence for all people. As we work at that larger scale, we are finding that it is imperative that we embrace and include and engage local communities and people in those communities in our work because they derive their livelihood and certainly the quality of their life from that natural landscape.

In many rural communities in which we and our colleague organizations are engaged, there are landowners who, as have been identified in earlier testimony, do not really have the wherewithal to make gifts of their property or gifts of conservation easements, the permanent restrictions that protect their lands. Yet, they really are terrific stewards of their property and in many cases would like to do the right thing.

My testimony, therefore, focuses principally on support for H.R. 2290, the Conservation Tax Incentives Act, and I want to acknowledge and thank Congresswoman Dunn for her cosponsorship of this legislation. This legislation would really be a profound and dramatic incentive for landowners who have properties that are exceedingly important from a biological perspective or a natural open space recreational perspective.

Again, from my own experience, in many cases it is their concern about the financial consequences of selling fee title or partial interest in the form of a conservation easement that is an enormous inhibition. As we have talked with private landowners about the concept of a favorable capital gains treatment, it is quite clear that they would be very, very enthusiastic in embracing this idea and so motivated to sell their property for the right purpose.

This would, therefore, provide an enormous solution to the impediment that many landowners face, and frankly, constitutes a terrific opportunity for a truly bipartisan legacy of natural lands in this country, a legacy that will grow in increasing value over time. So, we, as an organization which picks our political emphasis very, very carefully, are quite excited about the prospect of this legislation and very much appreciate your conducting a hearing on it today. Thank you.

[The prepared statement of Mr. McCormick follows:]

Statement of Steven J. McCormick, President and Chief Executive Officer, Nature Conservancy, Arlington, Virginia

Mr. Chairman and Members of the Committee, thank you for the opportunity to present testimony on the critically important issue of tax incentives for land conservation. I am speaking today on behalf of The Nature Conservancy, an international, science-based, non-profit organization that protects the land and water needed to protect the diversity of life on earth. The Conservancy has more than one million individual members and over 1,500 corporate members; we have programs in every state and in 27 nations. For half a century we have worked with the private sector, using business principles and the best available scientific information to conserve the special places that ensure the long-term survival of plant and animal species on earth. To date, our organization has protected more than 12 million acres in the United States and has helped local partner organizations preserve approximately 80 million acres internationally. Our experience working hand-in-hand with private landowners in diverse communities has convinced us that changes in the Federal Tax Code are necessary to more effectively encourage and reward private conservation actions.

Just last week we celebrated Earth Day. Many of us visited and reflected on the many special places that have been saved since the first Earth Day 30 years ago. For example, thanks to the work of the Chairman, the Red River National Wildlife Refuge was established to preserve land critically important for neotropical migratory birds and waterfowl. We also contemplated the challenge ahead of us to protect those places essential for a thriving, healthy environment for our children. The Nature Conservancy's science-based approach has led us to the understanding that we cannot accomplish our mission by saving isolated pockets for individual species. We now know that diversity of life thrives in larger, more complex, functioning landscapes that sustain natural processes and healthy land, water, flora and fauna.

This approach means that we work in partnership with private landowners who are an essential component to ensuring the health of the larger landscape. In fact, half of the land essential to the conservation goals we have set for ourselves in the coming years is in private hands. Many of these special places are farms, ranches and forests.

These landowners have a right to realize economic benefits of their private investment in land. The conservation and sustainability of such places could also provide a broad public benefit. Federal and state environmental laws and regulations such as the Endangered Species Act, the Clean Water and Clean Air Acts are important tools to help preserve the environmental quality of land, but they can place economic and regulatory burdens on individual landowners.

Although current Federal tax law does provide some financial compensation to landowners for the conservation of their land, these provisions were not designed with the so-called land-rich, cash-poor landowners in mind. The tax code provides for tax-advantaged charitable contributions of conservation easements and land for those landowners who have enough income to make such gifts financially worthwhile. Wealthier landowners who are able to make charitable conservation contributions can realize tax benefits that make it possible for them to achieve both conservation and financial goals.

Most farmers, ranchers and family timber operators on the other hand, lack sufficient income to take advantage of the current tax deductions. Moreover, for many of these landowners, most if not all of their financial assets are tied up in their land value and cannot be relinquished as a conservation contribution. For them, the sale of the land for development may be the only viable financial choice in order to realize the full economic return of the investment in their land.

Unfortunately, under current tax laws, a sale—even for a conservation-related use—triggers a capital-gains tax and can severely reduce the landowner's net return. If a tax reduction on the sale of land or a conservation easement were available, the farmer or rancher could realize the financial value of his or her land and at the same time achieve lasting conservation of importance to the community.

In addition, a Federal capital gains tax conservation incentive would help leverage funds that state and local governments raise to protect open space, farm and ranchland. For example, in 2000 voters in the State of Ohio approved the expenditure of $25 million under the Clean Ohio bond program for the purchase of agricultural easements. If there were a conservation provision that reduced the capital gains tax that farmers have to pay on the sale of those easements and thus increased their financial return, it is likely that more farmers would remain on the land to protect important areas in Ohio.

Thus, a new financial incentive is required to encourage protection of critically important lands that are in the care of some of the original and best conservationists—the farmers, ranchers, foresters and others who work the land for a living.

Congress now has before it several proposals that would create such incentives. The Nature Conservancy's top priority is enactment of the Conservation Tax Incentives Act, H.R. 2290, sponsored by Representative Rob Portman, along with Representatives Jennifer Dunn, John Tanner, Robert Matsui, Richard Neal, Nancy Johnson, J.D. Hayworth, and others. In addition, President Bush included the proposal in the Administration's FY 2003 budget. Moreover, the bill is supported by such diverse organizations as the American Farm Bureau Federation, Ducks Unlimited and Defenders of Wildlife. The Portman bill and companion Administration proposal would reduce the amount of capital gains tax if land or easements were sold for conservation purposes, thereby providing a landowner with a more attractive financial return from such sales and conserving the land in perpetuity.

I would like to congratulate Representative Portman for his leadership on this issue. His legislation is a fiscally conservative, market-based approach to land conservation. It achieves environmental objectives without imposing new land use regulations. The provision is strictly voluntary, administratively simple, and uses definitions and tests for conservation purposes that are already contained in the tax code. It provides capital gains tax relief for sales of land for conservation to government

agencies or qualified conservation nonprofits. The bill would allow landowners to preserve permanently their property's environmental value without foregoing its financial value. It would exclude 50% of any gain realized from private, voluntary sales of land or interests in land for conservation. The land must be used to protect fish, wildlife or plant habitat or open space for agriculture, outdoor recreation or scenic beauty.

Another worthy proposal is H.R. 1309, which would change the individual and corporate charitable giving laws to improve the tax benefits of conservation gifts. Because it would increase from 30% to 50% the amount of the taxpayer's adjusted gross income that could be offset by a conservation donation, and allow the unused deduction to be carried forward indefinitely, it would be of particular benefit to the "land-rich, cash-poor" taxpayer. The Conservancy supports this legislation and thanks Representative Johnson for her continuing role as a conservation leader.

As we seek innovative, environmentally and economically compatible uses of land, creative solutions such as sustainable timber operations hold real potential. Representative Dunn's Community Forestry and Agriculture Conservation Act would allow the issuance of tax-exempt, private activity bonds to finance the acquisition of land with renewable resources such as timber, crops and water rights, provided that the land is subject to a conservation easement. The Nature Conservancy endorses this proposal, H.R. 1711, and commends Representative Dunn for her leadership in this legislation.

The public has a real interest in the health of private lands. These voluntary, incentive-based conservation proposals achieve meaningful, lasting results with modest investments and without new regulatory control of land. We appreciate your serious consideration of these proposals. By giving incentives to private landowners we can help ensure that our natural heritage is protected for future generations.

Mr. MCCORMICK. One last thing. I have been asked by our colleague organization, Ducks Unlimited, who unfortunately could not be here today, if I could submit for the record written testimony on their behalf.

Chairman MCCRERY. Certainly, without objection.

Mr. MCCORMICK. Thank you.

[The statement of Ducks Unlimited follows:]

Ducks Unlimited
Memphis, Tennessee 38120
April 29, 2002

House Committee on Ways and Means
The Honorable Jim McCrery, Chairman, and
The Honorable Michael McNulty, Ranking Member
Subcommittee on Select Revenue Measures
U.S. House of Representatives
1135 Longworth House Office Building
Washington, DC 20515

Dear Representatives McCrery, McNulty, and fellow Subcommittee Members:

On behalf of our one million supporters, we believe that providing tax relief on private lands that enjoy a protected conservation status is an effective and efficient way for the government to foster land conservation. Ducks Unlimited supports voluntary, incentive based approaches to encourage landowners to secure their lands for future generations. We have a long history of working with private and public landowners across the country and continent to achieve and secure conservation values on their lands.

It would be incorrect to assume that the government can accomplish all the conservation that will be needed to assure the healthy continuation of North America's wildlife resources by using their agencies and funding. While that effort is extremely important using that as the sole strategy for ensuring a conservation legacy would unfortunately leave us short of what will be needed. Measures like those being considered by you on April 30. The Nature Conservancy's President Steve McCormick's testimony mentions good examples of how your vision and leadership can help respond to this challenge. We appreciate the leadership shown by Representatives Portman, Johnson, Dunn and their cosponsors toward finding solutions.

To acquaint you with who we are, Ducks Unlimited was formed over 65 years ago and is the world's leading wetland and waterfowl conservation group. We have members, supporters and conservation projects in all 50 States and have contributed

directly to the conservation of over 10 million acres of habitat in North America. Despite current conservation efforts, United States continues to lose more than 100,000 wetland acres every year.

Ducks Unlimited asks that this letter be placed in the record of the hearing to be held on April 30, 2002 considering proposals that will create new tax relief for landowners that wish to protect future use of their lands in ways that benefit wildlife conservation and hence the American public.

Sincerely,

Scott Sutherland
Director of Governmental Affairs

Chairman MCCRERY. Our next witness is Mr. Timothy Brazell. He is the Tax Manager for Lowe Enterprises and he is here on behalf of the Real Estate Roundtable. Mr. Brazell?

STATEMENT OF TIMOTHY BRAZELL, TAX MANAGER, LOWE ENTERPRISES, INC., LOS ANGELES, CALIFORNIA, AND MEMBER, REAL ESTATE ROUNDTABLE

Mr. BRAZELL. Thank you, Mr. Chairman. I am a tax manager for a privately held real estate development firm in Los Angeles and it is interesting to be on the same panel with all these conservation—it is nice to be on the same side for once.

[Laughter.]

Mr. BRAZELL. I am also here today on behalf of the Real Estate Roundtable, which is a large organization of private real estate owners, developers, lenders, and they are the primary reason that I am here today.

I want to thank Mr. Weller of Illinois for sponsoring this legislation. I am speaking of H.R. 2264. I am also happy to hear that President Bush is in support of at least a part of this legislation, the extension of the expensing part of it.

I think as a tax manager, I cannot speak any more eloquently on this legislation than Mr. Weller did, but I can kind of tell you where the rubber hits the road. One of the things that Lowe Enterprises does is value-added development. We are not a big company and we do not have the resources to compete in large capital transactions. We look for infill transactions. We look for places where we can add value. One of those places is developments on so-called brownfields sites, inner-city developments, other types of developments where we can add value.

When we look at a project, we look at the after-tax return of that project. It is very difficult to develop any kind of real estate project. You have to do a lot of planning. You have to get a lot of entitlements. You have to get a lot of financing. It all starts with, can you make the project work, and one of the things you do when you sit down and put the numbers down, you look at the after-tax returns.

This bill, H.R. 2264, by allowing expensing of brownfield cleanup costs, increases the after-tax return to a developer and makes it more likely that these projects will happen. I think we all want these projects to happen because we have seen the sites that they are sitting at and they are not doing anybody any good if they are sitting fallow.

So, the primary emphasis for us is to obviously get the tax benefit. We would like to see the expansion, also, of the definition of hazardous substances, which Ms. Olson alluded to. There are several substances that are not included in the current definition of

hazardous substance, and that is because the original definition, I believe, was based on the Superfund liability cleanup legislation and was not very broad in scope. When you look at some of the items that are not included, like petroleum products, pesticides, lead paint, and asbestos, I think we can all agree that these are pretty commonly known to be hazardous substances.

If you buy a building that is on a brownfields site and you want to recondition or you find that there is asbestos in the building, the fact that you are not able to expense those costs is a large cost to you. She did indicate that you could recover these costs over the life of the building. Unfortunately, the recovery period for commercial real estate is 40 years, so it is a pretty small recovery period.

There is another portion to the bill, H.R. 2264, which deals with a recapture provision. The existing section 198 forces you to recapture the ordinary expense that you have taken when you made the cleanup costs when you sell the project. We think that this should be repealed, as well.

You have expensed the costs but you have not increased your basis in the property. So, when you sell the property, you are going to have a gain, and that will be the same whether you recapture or not. This recapture portion of the existing tax code section simply forces you to treat it as ordinary income instead of capital gain. This impacts primarily individuals and partnerships, not corporations, because corporations do not have capital gains in the same sense that we do as individuals. So, we think that this repeal is consistent with the legislation to continue the brownfields expensing.

In my own neighborhood in Los Angeles, we have seen a lot of aerospace companies that have packed up and moved out as times have changed. My own company is involved in redeveloping a large piece of property adjacent to Los Angeles airport. We know there is contamination there, but we have not, in 2 years, we have not even been able to quantify the amount of the cost yet. This provision to allow continuing expensing of brownfields costs would definitely give us some assurance that the tax risk will be minimized should we incur more costs than we presently think we are going to.

In conclusion, I want to urge Congress and this Subcommittee to specifically enact H.R. 2264, along with all of its provisions. I think the result will be injection of new capital into these projects, as Mr. Weller said, potentially over 400,000 nationwide, and also benefits job creation and improving the infrastructure and the close infill property and not having to develop these properties on the outside, the greenfields. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Brazell follows:]

Statement of Timothy Brazell, Tax Manager, Lowe Enterprises, Inc., Los Angeles, California, and Member, Real Estate Roundtable

Introduction

Mr. Chairman and Members of the Subcommittee, my name is Timothy Brazell. I am Tax Manager of Lowe Enterprises, Inc. a Los Angeles based real estate company with offices across the country and in Europe.

I am here today on behalf of The Real Estate Roundtable. The Real Estate Roundtable is the vehicle through which the leaders of the real estate industry come together to identify, analyze and advocate policy positions on capital, finance, environmental, investment and tax issues. Roundtable members are the Chairmen, Presi-

dents or Chief Executive Officers of the nation's 100 leading commercial, retail and multifamily real estate companies and the managing directors of major financial institutions.

The Roundtable also includes the elected leaders of Washington's major real estate trade organizations. Collectively, Roundtable members hold portfolios containing over 2.5 billion square feet of developed property valued at more than $250 billion. The industry represents over one million people involved in virtually every aspect of the real estate business.

Joining The Real Estate Roundtable in these comments are: American Institute of Architects; Building Owners and Managers Association International; International Council of Shopping Centers; Mortgage Bankers Association of America; National Association of Industrial and Office Properties; National Association of Real Estate Investment Trusts; National Association of Realtors; National Apartment Association; National Multi Housing Council; The Associated General Contractors of America.

Over the past 30 years, Lowe has developed, acquired or managed more than $6 billion of real estate assets. Lowe currently employs over 7,000 people, with a management team of approximately 250 men and women.

The firm operates through three wholly owned divisions:

Lowe Enterprises Investment Group directs the company's capital and investment activities, including more than $3 billion of fiduciary investments on behalf of nine public and private pension plans;

Lowe Enterprises Real Estate Group oversees the development and property management of the firm's commercial and residential projects throughout the U.S., including over 13 million square feet of commercial assets currently under management and more than 4 million square feet of commercial space currently being developed, and;

Lowe Hospitality Group is responsible for its hotel and resort development and management activities.

Lowe Commercial Development Company ("LCDC") is a joint venture between Lowe Enterprises and Teachers Insurance Annuity Association, which was formed in August 1999 to pursue new commercial development opportunities. LCDC targets 100,000 to 500,000 square-foot office and industrial development opportunities in suburban and urban locations.

Mr. Chairman, I am here today to testify in strong support of H.R. 2264, a bill to extend and expand the expensing of environmental remediation costs. This bill is sponsored by Mr. Weller of this Subcommittee and is cosponsored by Ways and Means Committee Members Nancy Johnson and Bill Coyne. S. 1082 is the companion bill sponsored by Senator Torricelli.

H.R. 2264 would do three things:

1. Make permanent Internal Revenue Code Section 198, which allows the expensing of brownfield clean up costs, but is currently scheduled to sunset January 1, 2004.
2. Broaden the definition of "hazardous substances" in Section 198 so it covers petroleum, pesticides, lead paint and asbestos contaminants.
3. Repeal the provision in the law requiring the recapture of the Section 198 deduction when the property is sold.

Making Section 198 Permanent

Redevelopment of existing sites and properties is an important component of any community's development plans. The U.S. Conference of Mayors estimates that there are over 400,000 brownfields sites across the country. Development of these sites would help restore many blighted areas, create jobs where unemployment is high and ease pressure to develop beyond the fringes of communities. Small, urban centered businesses often benefit most directly by this redevelopment. Many brownfields properties are located in inner cities—precisely where many businesses want to be. The economics are often right. Critical infrastructure, including transportation, is already in place and the workforce is in close proximity.

In 2000, the above listed real estate organizations backed the provision in the Community Renewal and Reinvestment Act of 2000 that removed the geographic targeting requirements of Internal Revenue Code Section 198. This allowed developers of "brownfields" to expense the clean up costs of brownfields wherever they are located. Prior to this change, these clean up costs had to be added to the purchase price of the land ("capitalized") unless the contaminated site was located in an empowerment zone or other designated low-income area.

Capitalization means there is no deduction for these expenses until the building is sold. Since this could be several years, this increases the overall tax burden of

the redevelopment project. This higher tax burden hinders redevelopment efforts—particularly in areas that need them most.

We are pleased that in 2000 Congress determined that these clean up costs should be deductible in the year they are incurred and do not have to be capitalized. However, for revenue reasons, Congress scheduled the expensing provision to expire in 2004. We strongly believe clean up cost expensing for all brownfields should be extended permanently. H.R. 2264 would do this and we urge its immediate enactment.

Broadening the Definition of "Hazardous Substance"

Petroleum and Pesticides

In addition to extending Section 198 permanently, we also believe Section 198 should be amended to work more as intended by Congress. One such amendment would be to broaden the types of hazardous substances that are eligible for expensing treatment if cleaned up to include petroleum, lead paint asbestos and pesticides.

The current version of IRC Section 198 relies on the term "hazardous substance" used in the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") to identify which contaminated sites would be eligible for tax relief: Section 98(c)(1)(A)(iii) defines a "qualified contaminated site" as one "at or which there has been a release (or threat of release) or disposal of hazardous substance." The term "hazardous substance" is defined in Section 198(d)(1) to have the same meaning as in sections 101(14) and 102 of CERCLA. Section 198(d)(2) further states that the term "hazardous substance" shall not include any substance for which a removal or remedial action is not permitted under section 104(a)(3) of CERCLA.

At first blush, it appears logical for the drafters of Section 198 to simply borrow the term "hazardous substance" as used in CERCLA, the principal Federal statute concerning environmental remediation, rather than coming up with a new term or a new definition. But, the problem created by this approach is that it assumes that the CERCLA definition of the term is broad enough to encompass all types of toxic materials that might be found at a brownfield site. That is not the case.

When CERCLA was adopted in 1980, Congress made the decision that it did not want the Federal Superfund used to clean up certain types substances—such as petroleum and certain pesticides—or to be spent cleaning up the interiors of buildings. While the decision not to authorize the spending of Federal funds on these types of cleanups had significance for the administration of the Superfund program, the same rationale does not apply to a statute intended to provide a tax incentive to private parties cleaning up brownfield properties.

When CERCLA was adopted in 1980, the term "hazardous substances" was expressly defined not to include "petroleum." Also, although the term "hazardous substance" was defined to include a variety of substances considered toxic under various other environmental laws, it did not include most pesticide products and a variety of other toxic materials.

There were various reasons for the decision to exclude from the definition of "hazardous substance," these materials which are nonetheless considered toxic. In the case of petroleum contamination, for example, Congress made a decision to rely on other statutory mechanisms to effectuate cleanups. In 1984, Congress adopted subtitle I of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. section 6991 et seq., which addressed the cleanup of releases from underground storage tanks, many of which contain gasoline, fuel oil, or other petroleum products. In 1990, Congress adopted the Oil Pollution Act, 33 U.S.C. Section 2701 et seq., to address oil pollution into navigable waters. Thus, the exclusion of "petroleum" from the CERCLA definition of "hazardous substances" was not an indication that Congress believed that petroleum pollution did not need to be cleaned up. Petroleum simply was covered in other statutes.

Petroleum and pesticide pollution are common at brownfield sites. Petroleum products in the forms of fuel oil, heating oil or gasoline, were often used at these sites. Indeed, these materials were often stored in above ground or underground tanks. Also, some of these sites have been contaminated by migrating gasoline spills from nearby service stations.

Pesticide residues are also frequently found at brownfield sites. Pesticides were often used to control weeds or insects at these sites when they were operating industrial plants. Moreover, some of these sites may be contaminated by pesticides run-off from other properties. While it may make sense not to authorize the use of Federal funds under the Superfund program to clean up petroleum and pesticides, these substances often have to be cleaned up at brownfield sites before those properties can be returned to beneficial use. There is no reason not to extend the same type of tax incentive to a private party who is cleaning up petroleum waste or pes-

ticide residues on a brownfield site as to one who is cleaning up other types of contaminants.

Asbestos and Lead Paint

Also, Congress in adopting CERCLA in 1980 did not want EPA to spend Superfund dollars cleaning up the interior of buildings. Accordingly, Congress adopted section 104(a)(3)(B) of CERCLA which prohibited EPA from cleaning up the interior of structures. Congress did not adopt this limitation because it believed that contaminated interiors did not require cleanups. Rather, Congress believed that the use of the limited funds set aside for Superfund cleanups should be prioritized to deal with contamination that had escaped into the general environment. Once again, Congress used other Federal programs to address interior contamination, such as the asbestos regulations under the Clean Air Act.

IRC Section 198, as currently drafted, states that the term "hazardous substance" does not include a substance that EPA would not be permitted to cleanup under section 104(a)(3) of CERCLA. Because of the applicability of the limitation in subsection 104(a)(3)(B), no expensing is allowed for the removal of asbestos, lead paint or other hazardous materials inside the buildings that are located at otherwise qualified sites. But brownfield restoration often involves the cleanup of existing buildings on the property. Expensing of costs to clean up buildings would give developers more reason to invest in brownfield properties. Thus, the expensing treatment IRC section 198 should be expanded to cover the removal of hazardous substances from buildings.

Also, as a point of clarification, the definition of lead-based paint and lead-based paint hazards is more accurately described and defined in "Identification of Dangerous Levels of Lead; Final Rule 66 Fed. Reg. 1206." We would urge that S. 2264 be amended so that section 1(b)(2)(D) reads: any asbestos (whether friable or nonfriable), oil (as defined in section 1001 (23 of the Oil Pollution Act of 1990), pesticide (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act), radon, lead-based paint and lead-based paint hazards as defined in Lead: Identification of Dangerous Levels of Lead; Final Rule 66 Fed. Reg. 1206.

Recapture

Finally, another amendment that H.R. 2264 would make to Section 198 is to repeal the recapture requirement of Section 198(e). Currently, any qualified environmental remediation expenditure expensed under Section 198 is subject to recapture as ordinary income when the property that was contaminated is sold or otherwise disposed of.

In effect, the amount expensed as a cleanup cost is treated as depreciation on IRC Section 1245 property. Thus, when the property is sold, gain to the extent of the cleanup cost deduction is treated as ordinary income.

Example

In 2001, Owner purchased an acre of land that was contaminated with a hazardous substance. The land cost $10,000 and Owner spent $5,000 in remediation expenses. Currently, he is allowed to claim a current deduction for the $5,000 instead of adding it to his basis in the land. If he sells the land for $16,000, he would be required to treat $5,000 of his $6,000 gain ($16,000 sale proceeds less $10,000 cost) as ordinary income taxable at 39.6%. The remaining $1,000 gain would be taxed at 20%.

When Does Recapture Matter?

In the example above, if Owner sold the land the year after he cleaned it up, he would receive little or no benefit from having deducted the clean up costs. This immediate repayment to the government leaves Owner with little tax incentive to clean up the property.

We believe that a more appropriate result would be to treat any gain in excess of Owner's original investment/acquisition cost in the property ($5000 in this case) as capital gain by repealing the recapture requirement. This provides an incentive for Owner to clean up the property without having the deduction effectively rescinded after the improvement is made.

If the clean up expenditure were recaptured as a capital gain, rather than as ordinary income, each party is in a stronger position. It would allow the government to recover a portion of its tax incentive from the developer, the developer retains a significant incentive for bearing the expense and associated risks of the clean up activity, and the community receives an improved property with the prospect of job creation.

This treatment would be particularly helpful for developers who acquire brownfield properties with the intent of reclaiming them and then selling the improved property shortly thereafter. If a developer were to acquire a brownfield, clean it up and restore it to a viable market use, but then immediately lose the benefit of the clean up deduction at the time of sale, the developer is left with little, if any, incentive effect. If the recapture provision were repealed, Section 198 would become far more of a redevelopment incentive than it is now.

Conclusion

In conclusion, we urge Congress and this Committee specifically to enact H.R. 2264. The result will be the injection of new capital into rehabilitation projects. Many small, urban centered businesses will benefit resulting in substantial job creation and economic revitalization. Also, the viability of existing space will improve and ease the pressure to develop "greenfields" allowing for the preservation of more open space.

Chairman MCCRERY. Thank you, Mr. Brazell. I am told by staff that our next witness is actually a tandem act and Mr. Bingham and Mr. Duvernoy are going to share some time to share their views. I will first call on Charles W. Bingham. He is a Board Member of Evergreen Forest Trust from Seattle, Washington. Mr. Bingham?

STATEMENT OF CHARLES W. BINGHAM, BOARD MEMBER, EVERGREEN FOREST TRUST, SEATTLE, WASHINGTON

Mr. BINGHAM. Mr. Chairman, thank you very much for having me and my cellmate here together. I think it is symbolic that a tree cutter and a tree hugger could appear together at the same time supporting the same legislation.

I am a member of the board of the Evergreen Forest Trust, a nonprofit conservation company chartered in the State of Washington. For the last 20 years of my professional life before I retired, I served as Weyerhaeuser Company's Executive Vice President responsible for forest management. I am here urging your consideration of H.R. 1711 that you have heard about from Congresswoman Dunn, who, incidentally, has done a fantastic job in helping to bring this needed legislation to a point of consideration. It will make possible the opportunity for private nonprofit organizations to issue tax-exempt bonds to acquire and manage forestlands for a whole array of economic and environmental benefits.

Nearly two-thirds of the forested lands in this country are privately owned, yet well over 90 percent of the timber harvest comes from these lands. Even though that is true, we are still a net importer of forest products. In some years, a third of our lumber comes from outside of this country. One of the reasons is the conversion of forestlands to higher-value uses. Another reason, of course, is the increasing environmental restraints that causes capital to move away from forestland investment.

Because of the long-term nature of the investment, usually, companies that are in the business to stay require about an 8 percent real rate of return on their investment in this very important asset. If a private nonprofit organization could issue tax-exempt bonds at roughly a 6-percent rate, we could borrow at a capital cost rate which permits us to pay, a private organization to pay a private owner the full market value of that company and also provide the opportunity for enhanced public benefits through time.

This legislation would permit bonds to be issued on behalf of our organization. They will require a permanent conservation easement to be placed on the property, and so there is no misunderstanding, this property is going to be managed for timber production. It is going to be harvested and reforested. It is going to support family wage jobs in the forest, in the mills. It is going to pay the same local and State land and harvest taxes that would be paid by any other private owner. The only source of income is the harvest of timber and the sale of logs to retire the debt and the bonds through time.

I would urge you respectfully to consider this very, very carefully. It is another source of needed capital to protect these valuable resources. Gene, you are on.

[The prepared statement of Mr. Bingham follows:]

Statement of Charles W. Bingham, Board Member, Evergreen Forest Trust, Seattle, Washington

Mr. Chairman and Members of the Subcommittee; my name is Charles W. Bingham. I am a board member of the Evergreen Forest Trust, a nonprofit conservation company based in Washington State. During the last 20 years of my professional life I served as the Weyerhaeuser Company's Executive Vice President responsible for forest management.

I want to thank you for holding this important hearing today on conservation tax incentives. It is a subject that holds great promise to bring the forest products and environmental interests together in an era that has most recently been characterized by deep conflicts.

I am here today to testify in strong support of *H.R. 1711—The Community Forestry and Agriculture Conservation Act of 2001*. Passage of this legislation will help private nonprofit conservation organizations acquire and manage forestlands for an array of the environmental, economic and social benefits they provide. More specifically, this bill will help the Evergreen Forest Trust acquire nearly 100,000 acres of forestland in Washington State that hold important conservation and economic benefits and is threatened by conversion to non-forest uses.

Before I go into more detail, I would like to express my sincere appreciation to Congresswoman Jennifer Dunn and Congressman John Tanner for their leadership in working to secure passage of H.R. 1711. Your tireless efforts have been recognized by all of us who care so much about this particular transaction and the broader need addressed in the bill. I would also like to thank the other original cosponsors of this bill—Congressmen McDermott, McInnis, Herger and Matsui—as well as the rest of the Washington, Oregon and Idaho delegations for their support.

Forest Products Industry

Nearly 400 million acres—nearly 65%—of our nation's forests are privately owned, yet well over 90% of the timber harvest originates from private lands. These forestlands are valued at roughly $300 billion and, therefore, are one of the largest agricultural commodities in the nation.

Even with these impressive economic statistics, the United States is a large importer of forest products. For example, up to one third of the national softwood lumber used each year is imported from Canada. While there are many macro and micro-economic reasons for this, some in the industry believe that one factor we must recognize is the erosion of working forestlands that are available to grow trees in a cost efficient manner. Thus, we must maintain a critical mass of working forestlands so that we can remain competitive with other producers.

Changes in Industrial Ownership

Over the last 15 years the forest products industry has seen important changes cause by restructuring, increased value of non-forest uses and environmental regulations. Collectively these changes have resulted in almost one quarter of the industrial forest land base changing hands in the 1990s.

Real-Estate Conversion—Forest fragmentation and conversion to non-forest uses is taking place high rates. For example, according to American Forests, a national conservation group, 107 thousand acres or 50 percent of the greater Seattle, Washington area has been converted to non-forest uses since 1973. And such conversion is not just taking place in urban areas. If you travel to the Bitteroot Valley

in Montana, Bend, Oregon or many parts of the southeast you will find that higher financial values are increasingly being placed on forests' real estate value than on their timber value. In other words, especially around urban areas and rural recreational acres, forests do not compete with real estate or with annual agriculture on a per acre basis.

Environmental Regulations—Despite their tremendous public benefits that result from the nation's environmental laws, it is a fact that local, state and Federal regulations can significantly impact the cost of acquiring and managing forestlands. For example, the citizens of Washington State and the nation generally agree we should save salmon. There is, however, a cost to forestland owners for doing so. In Washington State new forest practice rules directly and indirectly require that that 10% to 15% of a landowner's land must be taken out of production to protect riparian areas. In some cases, this has the impact of making once profitable forest operations unprofitable. Thus, forestland owners, especially industrial forestland owners, will look to monetize their assets by selling it off to other timber investors, developers or those who want to subdivide for recreational properties.

Legislative Need

Notwithstanding the trends outlined above, tens of millions of acres of commercial forestlands are being and will continue to be responsibly managed by industrial and non-industrial landowners. Yet, because of the trends outlined above we still have tens of thousand of acres where unplanned urban sprawl is forcing conversion or where regulation or the needs for public benefits exceed what a private owner can afford. What we need is a financial vehicle that makes less intensive forestry pay and the *Community Forestry and Agriculture Conservation Act* does just that.

Financial—Because of the long-term nature of a forestland investment (generally 30 to 60 years) the real rate of interest on borrowed capital is the greatest single variable in the price one can afford in acquiring and re-investing in a forest asset. While fluctuations occur, such capital cost are generally around 8%. Applying tax-exempt rates at 6% could provide qualified nonprofit conservation organizations with a capital cost that allows them to buy forestland, assure that public environmental and economic benefits are maintained and enhanced and allow property rights to be preserved. In addition, the tax-exempt market is very large and established. Based on our discussions with underwriting companies there is a financial market for the type of conservation bonds we must access in order to purchase the property.

Stop the Conflict—We are all acutely aware of the conflicts over the use of our great National Forest lands. We are still struggling to find an acceptable balance between commercial harvesting and preservation of these lands. On private lands, so far, we have either set-aside from harvest relatively small parcels of private forestlands or we have devised regulations that would permit harvest at reduced levels but within the economic parameters of a long-term forest investor.

Legislative Provision

The *Community Forestry and Agriculture Conservation Act* will allow tax-exempt revenue bonds to be issued on behalf of a private nonprofit conservation organization to acquire a renewable resource. Such bonds will require that a permanent conservation easement that complies with Section 170(h)(4)(A) be placed on the property and that environmental laws are exceeded. Thus, Mr. Chairman and Members of the Subcommittee, the *Community Forestry and Agriculture Conservation Act* will allow me as a strong advocate for private commercial forestry to join with strong advocates of the environment to do two very important things:

- First, when we finally have the financial wherewithal to work together on a goal we both strongly support—acquiring large-scale forestlands to keep them forested.
- Second, we will be forced—in a very positive way—to make joint economic and environmental decisions on how those forestlands are managed.

These actions will be afforded by our private non-profit conservation organization's ability to, in certain situations:

- Borrow at a lower cost of capital so that it can acquire a forest property at its current market value,
- Operate the forest while providing a higher level of public benefit, including but not limited to wider stream side buffers, alternative silviculture for fish and wildlife habitat, longer holding periods for trees to store carbon, and more thinning and less clear cutting.

Also to be clear, our forest will be managed. When I joined this board I said I would do so only if we recognized that this state has some of the most productive

forestland in the Nation. I want to be a part of something that shows the positive benefits of active forest management. My Evergreen Forest Trust colleagues agree. The Evergreen Forest at Snoqualmie will be managed, it will be harvested and it will be reforested. There will continue to be family wage jobs in the forest and there will be raw material to sell to converting plants to support those jobs as well. The owner will pay the same local and state land and harvest taxes as that of any other private forestland property owner. These are issues that I know are very important to Members of this Committee not only in the Northwest but also around the Nation.

These decisions will be made within economic parameters because all of the board directors will have 40 +/− years of debt to pay back. The only source of income to pay the dividends and to retire the bonds will come from harvesting trees. Whatever the background of the directors, whether in commercial forest management or preservation of forests, they will have to come face to face in the running the operation in the boardroom and not with sound bites on television. They will have to balance the terms of the easement on the property which in a very real and beneficial way requires a high level of public benefit with the realities of the commodity market for logs, the need for cash reserves, interest payments, and bond refinancing or retirement.

Mr. Chairman and members of the Subcommittee, in my 35 year career in the forest products industry I have yet to see a private market vehicle that truly brings industry and environmental interests together in support of both the economic and environmental benefits forests provide.

In Washington State we have an opportunity to show the Nation that jobs and the environment can be produced. And we don't have much time. Our purchase and sale agreement with the seller is contingent on a tax clarification. I would again, respectfully request that you seek prompt passage of *H.R. 1711—The Community Forestry and Agriculture Conservation Act of 2001*.

Thank you for this opportunity to appear before your Committee today and I would be pleased to answer any questions you may have.

Chairman MCCRERY. Mr. Eugene G. Duvernoy, President of Cascade Land Conservancy and also from Seattle, Washington. Mr. Duvernoy?

STATEMENT OF EUGENE G. DUVERNOY, BOARD MEMBER, EVERGREEN FOREST TRUST, SEATTLE, WASHINGTON, AND PRESIDENT, CASCADE LAND CONSERVANCY, SEATTLE, WASHINGTON

Mr. DUVERNOY. Thank you, Mr. Chairman, Subcommittee. I suppose I must be the tree hugger component of this tandem presentation.

In any event, I am here to voice strong support for H.R. 1711 and I want to thank Congresswoman Jennifer Dunn and Congressman John Tanner for their leadership on this legislation. I would also like to thank Congressmen McDermott, Herger, Matsui, and McInnis for their original sponsorship and acknowledge the legislation's many other cosponsors.

I want to touch base quickly on the problem that H.R. 1711 addresses, the solution it presents, and then the benefits it provides.

First, the problem. In recent years, as Ms. Dunn correctly pointed out, differing ideas about how forestland should be used and managed have polarized our Northwest communities. On private timberlands, this rancorous debate has centered on clear cutting, water quality, and the protection of salmon habitat.

Now, in the Puget Sound basin, the problem has become even more complex with the rapid conversion of forestland to other uses. As these lands are converted and the debate about how to best manage a resource, either for timber or for the environment, is silenced and replaced by a community's recognition of a loss, a very

significant loss of landscape that provided a multitude of environmental, recreational, and economic benefits.

While there is growing consensus finally on the importance of keeping land in forests, it is still a fact that, too often, environmentalists and owners of private forestlands still sit at opposite sides of the table. I think as you see this panel here today, it is the demonstration that the conservation community is working with private landowners to forge solutions to this very vexing problem and creating the foundation of trust that has led to today's joint appearance by Mr. Bingham and me. Now, H.R. 1711 is a hallmark of this collaborative effort.

I have just briefly touched on the problem. In order to illustrate the solution provided by H.R. 1711 to this problem, I am going to focus on the transaction that, again, Congresswoman Dunn mentioned that has great promise to the Puget Sound community.

Puget Sound community leaders with backgrounds in business, timber management, environment, and government have joined to create the Evergreen Forest Trust. In January of this year, the trust signed an agreement with the Weyerhaeuser Company to purchase the 100,000-acre Snoqualmie Tree Farm, which is a scant distance from Seattle, a very vibrant and growing metropolitan area. In collaboration with the Cascade Land Conservancy, the Evergreen Forest Trust has developed a very strong statement of principles that will guarantee in perpetuity the careful stewardship of this property as it produces wood fiber. The trust has also worked with forestry and financial advisors to ensure a harvest regime adequate to fulfill the debt obligation it will assume to finance the transaction.

Now, how did we provide both these significant benefits while also meeting our business obligations? To do that, the trust proposes to finance the purchase of property by selling a tax-exempt bond. The bond would be repaid through the revenue stream expected from the harvest flow from the timber operations. Consequently, this transaction hinges on the clarification of the tax code provided by H.R. 1711 that clearly authorizes this sort of financing.

Now, I have touched on the problem. I have mentioned the elegant solution provided by H.R. 1711. Let me conclude with an overview of its remarkable benefits.

By establishing a mechanism for the forest to pay for its own conservation, which is remarkable, this transaction and H.R. 1711 leverages the very small public cost of tax-exempt financing and produces a very large public benefit. Retaining this vast landscape and forest will sustain its air and water quality benefits and provide recreational opportunities. The forest will continue to support herds of elk and runs of salmon, and as Mr. Bingham said, at the same time, the working forest will also provide local tax revenues and jobs critical to forest-dependent communities.

H.R. 1711 demonstrates that we can marry sound environmental stewardship and business acumen to secure meaningful conservation and the continued productivity of forestlands.

I want to thank you for the opportunity to testify in front of this Committee and I respectfully urge your passage of H.R. 1711 with the many other fine bills discussed today. Thank you very much.

[The prepared statement of Mr. Duvernoy follows:]

Statement of Eugene G. Duvernoy, Board Member, Evergreen Forest Trust, Seattle, Washington, and President, Cascade Land Conservancy, Seattle, Washington

1. Introduction

Mr. Chairman and Members of the subcommittee, my name is Eugene Duvernoy. I am the President of Cascade Land Conservancy operating in the east-central Puget Sound area of Washington. I also join Charley Bingham as a board member of Evergreen Forest Trust. Both these organizations are private, nonprofit Washington corporations. Cascade Land Conservancy conducts voluntary, cutting edge transactions to conserve critical landscapes in King, Pierce and Snohomish counties. Evergreen Forest Trust is a separate, but related organization that was created to acquire, manage, and protect Washington's forestland.

I am here to voice strong support for H.R. 1711, The Community Forestry and Agriculture Conservation Act of 2001. This bill will allow nonprofit conservation companies to acquire working forestlands in order to advance the conservation, economic and social benefits these lands provide our local communities.

I want to thank Congresswoman Jennifer Dunn and Congressman John Tanner for their leadership on this legislation. I would also like to thank Congressmen McDermott, Herger, Matsui, and McInnis for their original sponsorship of this effort. And, of course, we would like to thank the legislation's other co-sponsors for their support of our efforts. It is a credit to this concept that there is such broad bi-partisan support.

2. The Problem

Early pioneers saw the Pacific Northwest as a land of abundant natural resources including what seemed at the time an endless supply of timber. In recent years, a growing recognition of the limits of our natural assets has created conflicts among groups with differing ideas about how these forest lands should be used and managed, polarizing our Northwest communities.

On private timberlands, this rancorous debate has centered on clearcutting, water quality and protection of salmon stream habitat. In the Puget Sound Basin the problem has appeared to become even more complex with the rapid conversion of forestland to other uses. This new threat particularly looms over the working forests along the foothills of the Cascade Mountains. These lands are among the most productive timber lands in the world and have provided clean water wildlife habitat and recreation for generations of citizens. As these lands are converted to urban uses the debate about how to best manage a resource for timber and environmental benefit is replaced by the general community recognition of the loss of a once vibrant landscape that provided a multitude of benefits to our citizens.

While there is a growing consensus on the importance of keeping the foothills in forest, too often environmentalists and owners of private forestland still sit at opposite ends of the table. One side will focus on the stark ecological concerns while the other side emphasizes the production requirements for the property. Fortunately, the conservation community, working with progressive private landowners, is forging solutions to this vexing problem; creating the foundation of trust that has lead to today's joint appearance by Mr. Bingham and me. Earlier cooperative experiments included the negotiations the Conservancy completed in 2001 involving the City of Snoqualmie, King County, Weyerhaeuser Real Estate Company, and Puget Western, Inc. to create the Snoqualmie Preservation Initiative. The Initiative secured the permanent preservation of the 145-acre forested viewshed directly behind Snoqualmie Falls, the state's second-most visited tourist site and has also secured the future of a nearby 9,000 acre landscape as an active tree farm. Importantly the Initiative also paved the way for a significant new community within the City of Snoqualmie allowing needed growth to flourish where it can be supported by existing infrastructure and services.

3. The Solution for One Critical Property that can be Applied Nationally

Over the years, these strong relationships the conservation community has established with landowners, as illustrated above, has opened the door to projects of a scale that can truly serve our local communities and enhance the region's ecosystems and landscapes. H.R. 1711 is the hallmark of this collaborative effort.

After a feasibility study demonstrated the viability of revenue-backed forestry bonds, community leaders with backgrounds in business, finance, timber, academia, the environment, and government worked together to create the Evergreen Forest Trust ("the Trust"). The Trust's board of directors include B. Gerald Johnson, the

board's president and managing attorney at Preston Gates Ellis LLP, Charley Bingham, retired Executive Vice President for Weyerhaeuser, King County council members Rob McKenna and Larry Phillips, environmental activist Bill Pope, retired University of Washington Dean of Forestry David Thorud, civic leader and Cascade Land Conservancy Chair Carol James, and myself.

In January of 2002, the Trust signed a purchase and sale agreement with Weyerhaeuser Company to acquire the 100,000-acre Snoqualmie Tree Farm ("the Tree Farm"). In collaboration with Cascade Land Conservancy, the Trust developed a statement of principles for a conservation easement to be placed on the land which guarantees the careful stewardship of the property in perpetuity. The Trust also worked with US Forest Capital, a forestry and financial services company, and The Campbell Group, a timber investment and management firm, to meet our conservation objectives for the property while carefully planning its harvest regime in order to fulfill the debt obligation it will assume in order to purchase the Tree Farm.

In order to provide the significant public benefits secured by the Conservation Easement and meet its business obligations, the Trust proposes to purchase the property with a tax-exempt bond and repay the bond through revenue from forest operations. Consequently, this agreement hinges on two contingencies: tax clarification, which we are here to discuss today, and the financial logistics of a bond sale in excess of $200 million. With your support, the sale of the Tree Farm will be the first application of the tax provisions laid out in H.R. 1711.

4. The Benefits of H.R. 1711

By establishing a mechanism for the forest to pay for its own conservation, this transaction leverages the small public cost of tax-exempt financing to generate a very large public benefit. Retaining this vast but close-to-home landscape in forest will maintain valuable open space that contributes to air and water quality and provides recreational opportunities. The habitat values of the forest will be maintained and enhanced, supporting herds of elk and runs of salmon, and supplementing forest conservation efforts on adjacent state and federal lands. At the same time, a working forest will maintain the forest tax base and provide jobs that are critical to forest-dependent communities over the long term.

The model created by Evergreen Forest Trust is a vehicle for bringing environmentalists and industry together to protect working forests. It will be a critical tool to secure meaningful conservation and the continued productivity of forestlands across our county. The benefits to our citizens indeed will be great and importantly will require neither public land ownership nor significant public expenditures. H.R. 1711 would make this opportunity available not only in the Pacific Northwest but across the country. I respectfully request that you pass H.R. 1711, The Community Forestry and Agriculture Conservation Act of 2001. Thank you for the opportunity to appear before the Subcommittee.

Chairman MCCRERY. Thank you, Mr. Duvernoy. Now, we will hear from Mr. Rand Wentworth, the President of the Land Trust Alliance. Mr. Wentworth, it does not say where you are from. Perhaps you will tell us that when you start. Please share with us your testimony.

STATEMENT OF RAND WENTWORTH, PRESIDENT, LAND TRUST ALLIANCE

Mr. WENTWORTH. Another from Atlanta, Georgia. Thank you for the opportunity to testify today. I am President of the Land Trust Alliance, the national organization representing 1,263 land trusts in every State of this country. These are nonprofit, private conservation organizations that work with private landowners who voluntarily protect their land as farms, forests, wildlife habitat, parks, and trails. They have over one million members and have protected over six million acres throughout the United States. With two million acres of land being developed each year in America, we need to accelerate the pace of conservation if we hope to leave our children the best of our American landscape.

Now, for many years, I, like Representative Isakson, was President of a commercial real estate development company in Atlanta and I appreciate the many economic benefits of growth. In that role, I have also seen how land conservation actually enhances economic development and real estate values. In many cases, keeping land in agriculture, forestry, protecting scenic beauty is the best thing we can do for our economy and our communities.

Many landowners that we work with are willing to protect their land for conservation purposes, but they need help. We, the Land Trust Alliance, strongly endorse H.R. 1309 introduced by Representative Johnson, H.R. 2290 introduced by Representative Portman, H.R. 1711 introduced by Representative Dunn, and H.R. 2279, introduced by Representative Hefley. Each of these bills would provide a careful measure of such help. They are complementary bills, each addressing a different set of landowners and a different approach to land conservation.

I also want to thank my fellow Georgian, Representative Isakson, for introducing an even more far-reaching proposal in H.R. 882. He has seen, as I have, the astounding loss of greenspace around Atlanta in the past two decades and has sought to find a mechanism bold enough to meet the challenge, and I hope that this Committee will look favorably at those kind of bold and fresh ideas.

Now, since others have spoken eloquently on the other bills, I want to specifically address my comments to Representative Johnson's bill, H.R. 1309. This bill will encourage some truly extraordinary charitable donations in the public interest.

Currently, the deduction allowed for conservation contribution under section 170(h) is limited to no more than 30 percent of a taxpayer's adjusted gross income and can be carried forward for no more than 5 years. The current limits mean that a landowner of modest means gets next to no reward for making an extraordinary donation. A rancher, for example, earning $50,000 a year may own land with development rights worth more than $1 million. Yet, because of the rancher's lower income, the current rules mean that the most they could deduct is $90,000, no matter how valuable their gift to the public interest.

Section 1 of H.R. 1309 would allow the donors of qualifying conservation donations to deduct up to 50 percent of their adjusted gross income for as many years as it might take for them to deduct the entire dollar amount. Now, obviously the tax benefits spread out over 20 years or more are nowhere near as valuable as those taken all at once, but by increasing the percentage of the adjusted gross income, a taxpayer may deduct for a conservation gift to 50 percent, which is the same percentage limit the law currently allows for cash donations, this will allow taxpayers an incentive more closely related to the value of their extraordinary donations.

I have been asked by 50 land trusts from Connecticut to present to Mrs. Johnson their letters in support of her legislation, which I have attached for the record. All of us thank her for her work on this and we hope to see it come to fruition soon.

I would urge the Committee to go even further and adopt incentives included in H.R. 2279. This bill would allow taxpayers whose income is primarily from farming and ranching to deduct up to 100 percent of their adjusted gross income in any 1 year for up to 15

years. Are we asking too much for these donors? The average farmer, according to the Department of Agriculture, has an income of only $34,000 a year and pays less than $3,000 a year in income tax. Allowing them full tax relief is the only way they will get a meaningful incentive to make a gift for conservation.

The tax incentives in the bills I have talked about will produce tangible, visible, permanent results. You will see those results in working farms, natural beauty, clean water, and livable communities throughout America. Thank you.

[The prepared statement of Mr. Wentworth follows:]

Statement of Rand Wentworth, President, Land Trust Alliance

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before this subcommittee on the subject of new tax incentives for the conservation of land.

I am President of the Land Trust Alliance (LTA), the national association representing the 1,263 land trusts around the country. These local nonprofit conservation organizations work with private landowners who voluntarily protect their land as working farms, forestland, wildlife habitat, parks, trails, and greenways. These organizations have more than one million members and have protected more than six million acres across the U.S.

But with two million acres of land a year being developed, we need to accelerate the pace of conservation if we hope to keep pace, and succeed in protecting a heritage of land for our children.

For many years, I was president of a commercial real estate development company in Atlanta, and I appreciate the many economic benefits of development. I have also seen how land conservation enhances economic growth and the value of real estate. In many cases, the highest and best value of certain lands is for the continuation of agriculture and forestry as a viable economic activity; for the protection of wildlife and plant habitats; for the continued availability of clean water; for historic preservation, including the preservation of historic battlefields; for recreation and outdoor education; and for the protection of scenic beauty.

Many landowners are willing to protect their land for conservation purposes, but they need help. We strongly endorse H.R. 1309, introduced by Representative Johnson; H.R. 2290, introduced by Representative Portman; and H.R. 1711, introduced by Representative Dunn. Each of these bills would provide a careful measure of such help. They are complimentary bills, each addressing a different set of landowners, and a different way to achieve land conservation.

Each of them will now have had hearings in the House in two successive Congresses; and each of the elements in these bills has had hearings in the Senate. We believe this legislation is sorely needed, and that it is ready, right now, to be enacted into law.

I also want to thank Representative Isakson for introducing an even more ambitious proposal, H.R. 882. He has seen the astounding scale of the loss of open space around Atlanta in the past two decades, and has sought to find a mechanism bold enough to protect open space under such circumstances.

The incentives already in place in our tax code have been a major contributor to the work land trusts have done. Those incentives start with IRC 170(h), which provides for special treatment for conservation donations of land and of partial interests in land as charitable deductions from income tax. They also include the deductibility of conservation easements from estate tax under IRC 2055(f), and an exclusion from estate tax for a portion of the value of land protected by a conservation easement provided by IRC 2031(c), the American Farm and Ranch Protection Act.

But rising land prices and changes the Congress has made to the general tax law make it necessary for us to update the current incentives. Rising land prices have greatly diminished the incentive provided by IRC 170(h),[1] and rendered that incentive almost meaningless to many farm and ranch families.

I want to specifically address the changes H.R. 1309 would make to IRC 170(h), because they would make truly extraordinary charitable donations possible.

[1] IRC 170(h) defines which contributions of appreciated real property qualify for treatment as a charitable donation. Permanent conservation easements meeting the 170(h) standards are the only partial interest in property allowed to be counted as deductible from income tax. Congress has also provided estate tax benefits for landowners whose lands are protected with conservation easements, through IRC 2055(f) and IRC 2031(c).

Currently, the deduction allowed for a contribution of appreciated property to charity is limited to no more than 30% of a taxpayer's adjusted gross income (AGI), and can be rolled forward for no more than 6 years. This provides a good incentive for high-income individuals, but discriminates against working ranchers and farmers with lower incomes. Many farmers, ranchers, and other landowners of modest means would be willing to donate their development rights for conservation if they received a tangible tax incentive for doing so. They love their land and they would like to see the fruits of their stewardship protected into the future by a conservation easement.[2] But they cannot afford to just give away their family's most valuable asset.

That's what the current limits require. A rancher earning $50,000 a year may own land with development rights worth $500,000, or $1 million, or more. Yet, because of the rancher's lower income, the current rules dictate that the most they could deduct is $90,000, no matter how valuable the gift.

We applaud Representative Nancy Johnson for recognizing this and introducing legislation to update the incentives for landowners to donate land or a conservation easement on land, to protect that land for the future.

Section 1 of H.R. 1309 would allow the donors of qualifying conservation donations to deduct up to 50% of their AGI, for as many years as it might take for them to deduct the entire dollar value of their donation. That would enable many more landowners to consider donating their land for conservation, or donating a conservation easement to restrict future development of their land. It would provide a major boost for conservation across the country.

Unlimited carryover means that the taxpayer will get a reward that is proportional to their gift. Obviously, tax benefits spread over twenty or more years are nowhere near as valuable as those taken all at once. But increasing the percentage of AGI a taxpayer may deduct for a conservation gift to 50%—the same percentage limit the law currently allows for cash donations—will allow taxpayers to get more of a reward for making these extraordinary donations.

In the coming years, we predict that these changes would make a significant difference in donations of land, and of conservation easements on land. I have been asked by Connecticut land trusts to give Mrs. Johnson a series of letters of support for her legislation. The changes she has proposed would enable them to help their communities protect open space and farmland that is more valuable with every passing day. All of us thank her for her work on this, and we hope to see it come to fruition soon.

I would urge the committee to go even further in helping farmers and ranchers, and adopt the further incentives included in H.R. 2279, introduced by Congressman Hefley. That bill would allow taxpayers donating a valuable conservation easement, and whose income is primarily from farming or ranching, to deduct up to 100% of their AGI in any one year, for up to 15 years. A similar bill has been introduced in the Senate by Senator Max Baucus (S. 701).

While the concept of a 100% of AGI deduction may appear extraordinary at first glance, the lower tax rates the Congress has enacted mean that in reality this proposal is not nearly as generous as it may appear. The Economic Research Service of the U.S. Department of Agriculture says that the average income of a farmer or rancher in the U.S. is around $34,000 a year. Such a taxpayer may pay less than $3,000 a year in taxes when the income tax cuts enacted in 2001 are fully phased in. Zeroing out such a taxpayer's AGI for 15 years would give them less than $45,000 in benefits, spread out over 15 years, for a gift to the public worth $450,000 or more.

That isn't a very high incentive, but it would provide a tangible reward in cash flow to these landowners, and we know that this would result in some extraordinary donations of land. When Congress drafted the limits on charitable deductions, it may have seemed inconceivable that a taxpayer earning $30,000 a year could give

[2] A conservation easement is a contract between a landowner and a nonprofit conservation organization or a government agency that restricts future uses of land to protect conservation values important to the general public. While the contract restricts development options, the landowner retains title, control and use of the land. Conservation easements may and often do provide for continued commercial uses of the land for agriculture and forestry. They may, but need not, provide for public access to the land, so long as they protect publicly important values. As with any easement, a conservation easement follows the land and binds subsequent landowners. Forty-nine states have statutes defining and enabling the use of conservation easements, and in the only state without such a statute, Wyoming, conservation easements constructed under common-law principles are in widespread use. Nine states have enacted state tax credits for the donation of conservation easements (South Carolina, North Carolina, Virginia, Colorado, Connecticut, Delaware, Maryland, New Jersey and California).

a gift worth $1 million or more. But because of rising land values, this is a very real possibility for gifts of conservation easements.

Are we asking for too much for these donors? I don't think so. Compare the $45,000 in potential tax benefits described above to the benefits a high-income taxpayer already receives. If they are paying income taxes at the highest rate, they could receive almost $180,000 in benefits for a $450,000 donation under the current rules, and they would receive those benefits over a much shorter time.

In summary, let me ask the Subcommittee and other Members present for their continued help in conserving the landscapes that people love. Through the tax code, the federal government has long been a partner in encouraging voluntary land conservation on private lands. We now have the opportunity to protect the best of America's landscape before it is too late, but we need your help.

The tax incentives in H.R. 1309, H.R. 2290, and H.R. 1711 will produce tangible, visible, permanent results. You will be able to see those results in the form of working farms, natural beauty, clean water, and livable communities that will benefit all Americans.

Thank you again, Mr. Chairman, for the opportunity to appear before this Subcommittee, and thank you very much for your interest in federal incentives for private land conservation.

Chairman MCCRERY. Thank you, Mr. Wentworth. Our last witness for the afternoon is Mr. Jim DeCosmo, who is Vice President for Forests for Temple-Inland Forests Products Corporation, Diboll, Texas.

STATEMENT OF JIM DECOSMO, VICE PRESIDENT–FOREST, TEMPLE-INLAND FORESTS PRODUCTS CORPORATION, DIBOLL, TEXAS, ON BEHALF OF THE AMERICAN FOREST & PAPER ASSOCIATION

Mr. DECOSMO. That is correct.

Chairman MCCRERY. That is somewhere between Shreveport and Houston, is it not?

Mr. DECOSMO. That is pretty close.

Chairman MCCRERY. Okay.

Mr. DECOSMO. It is about an hour and a half north of Houston, and I must also say that I was recently almost from Atlanta.

[Laughter.]

Chairman MCCRERY. Well, welcome to Washington.

Mr. DECOSMO. It is good to be here. I lived in Rome, Georgia, just outside Atlanta.

Thank you, Mr. Chairman and Members of the Subcommittee, for this opportunity to testify with you today. I am responsible for 2.1 million acres of forestland in Texas and Louisiana and Georgia and Alabama. We have approximately 350,000 acres of timberland in North Georgia and I know exactly what the other panel members and the witnesses are testifying to with regard to development and growth and expansion of these metropolitan areas.

I am here on behalf of the American Forest and Paper Association, which represents 240 member companies and over nine million non-industrial private landowners. I am here to strongly endorse the Reforestation Tax Act, H.R. 1581, which I contend has three primary and significant objectives and benefits.

First, it greatly supports the continued conservation and improvement of forest practices throughout the United States, and in turn, that leads to greater forest health.

Second, it provides incentives for corporations as well as large landowners to continue to hold timberland and manage it for the long term.

Third, it levels the playingfield for corporate and large landowners with regards to the effective tax rate when you look at our taxes with our competitors globally.

The Reforestation Tax Act has primarily two components. The first is an adjustment for gross income at the time of timber sales for inflation. Generally, when we make investments in timberland, it is in year zero or one or at the time of the establishment and timber revenues are generally not realized until 25, possibly 30, 50 years out. As you can imagine, the basis in cost considered in respect to the revenues after inflation create a fairly drastic and gross margin, which oftentimes inflates the taxes.

The second part of it is full amortization of reforestation costs. The current law enables those who invest up to $10,000 a year a 10-percent tax credit on reforestation expenses and the balance of that to be amortized over 7 years. To put $10,000 into perspective, that will regenerate about 50 acres a year. Temple-Inland regenerates close to 50,000 acres a year, so it is of some benefit, but not much.

Of course, the logical question is how does the Reforestation Tax Act provide the objectives and the benefits that I have stated? Specifically with regards to improving conservation and conservation practices, I think it is important to note and to say that conservation has costs associated with it. We manage much of our land, many of our acres strictly for conservation practices and there is a management cost associated with it.

I will also say that the greatest cost is an opportunity cost. Previous testimony said that, typically, forest investors look for an 8-percent real return on a market value, which means that timberland should grow somewhere around $60 an acre per year in value. Oftentimes, conservation acres do not grow any value and may even be a net cost, so this tax act would help us to even do a better job of managing for these conservation acres and would certainly provide some tax relief.

This tax relief would also provide some relief pressure in the incentive for landowners to sell property, which would be a significant benefit. When we sell property into the open market, we end up with further development, greater fracture, and even more fragmentation of these assets in these forested ecosystems.

Recently, a report was issued by the U.S. Forest Service along with other universities called the Southern Forest Resource Assessment. It identified that in the recent past, there were 12 million acres in the South that had been converted to development and other land uses for forest and the forecast is another 12 million acres to be converted by the year 2020.

You will also notice that if you look at other trends in the past, corporations have divested over nine million acres of timberland in the last 4 years and that has been divested to entities who primarily have tax structures that are far beneficial to the current tax rates for corporations. I would contend the corporations are good stewards. If you look at the role that we play and investments that we make in research and development, I would say that many of the new landowners and forest owners are not filling those footsteps.

With regard to leveling the playingfield, PricewaterhouseCoopers conducted a study looking at global tax rates. It was completed in January 2001. Effective tax rates vary from 7 percent to 55 percent. Unfortunately, we are the latter. The Reforestation Tax Act is targeted to bring us to the midpoint, somewhere between 25 to 28 percent.

Just in closing, I want to say that the Reforestation Tax Act is endorsed by the forest products industry, our non-industrial private landowners, labor unions, and the Conservation Fund.

On behalf of American Forest & Paper Association and the previously mentioned supporters, I just want to strongly encourage you, the Subcommittee, to include the tax act in any legislation moving to the full Committee that deals with sprawl or conservation tax issues. Our forests and our environment will be healthier as a result of your support. I thank you for this opportunity to testify.

Chairman MCCRERY. Thank you, Mr. DeCosmo.

Mr. DECOSMO. You are welcome.

[The prepared statement of Mr. DeCosmo follows:]

Statement of Jim DeCosmo, Vice President-Forest, Temple-Inland Forest Products Corporation, on behalf of the American Forest & Paper Association

Good Afternoon Mr. Chairman and Members of the Subcommittee. My name is Jim DeCosmo. I am Vice President-Forest for Temple-Inland Forest Products Corporation. Temple-Inland is a forest products company with significant timberland holdings in Louisiana, Texas, Alabama and Georgia. I am testifying today on behalf of the American Forest and Paper Association (AF&PA). AF&PA represents more than 240 member companies and related associations that engage in or represent the manufacturers of pulp, paper, paperboard and wood products, as well as the growers and harvesters of this nation's forest resources. America's forest and paper industry ranges from state-of-the-art paper mills to small, family-owned sawmills and some 9 million individual woodlot owners.

The U.S. forest products industry is vital to the nation's economy, providing approximately 7 percent of the U.S. manufacturing output, while ranking among the top ten manufacturing employers in 42 states. More than 1.5 million people are employed by the forest products industry with an estimated annual payroll of $64 billion. Sales of the paper and forest products industry top $250 billion annually in the U.S. and export markets, making us the world's largest producer of forest products. We are also a natural resource based industry responsible for planting, growing and harvesting trees, a basic renewable resource.

I would like to commend the Subcommittee for holding this hearing today on tax issues relating to urban sprawl and conservation. It could not be timelier.

In May 1999, the Southern Forest Resource Assessment (SFRA) was initiated to examine the status, trends and potential future of southern forests. The results of the SFRA study, led by the U.S. Forest Service, were released this past November. The conclusion was that southern forests are healthy and are being sustainably managed; though continued urban growth presents a substantial threat to the condition, health and long-term sustainability of these forests. The report confirmed earlier findings that urban growth is the primary cause of forest loss in the South. Between 1982 and 1997, developed land in the South increased by 45%, representing 12 million acres of forest lost forever to development. The SFRA report concluded that another 12 million acres could be sold and developed by 2020.

The report goes on to underscore the important role the tax system can play in keeping land in forest cover. There are two critical ways this can be accomplished that AF&PA urges your committee to consider. They include the treatment of timber gain and how reforestation costs are treated under the tax code.

AF&PA agrees with the SFRA conclusion that additional tax incentives are needed to encourage landowners to hold onto their forest land rather than be forced to sell to developers, thus worsening urban sprawl. Another reason for providing additional tax incentives for owners of timber is because the current tax laws governing the forest products industry in the U.S. place us at a great disadvantage vis-à-vis

our international competitors. A 2001 analysis by PricewaterhouseCoopers found that foreign-based competitors (in Indonesia, Brazil, Finland, Japan, Germany and Canada) of U.S. forest products companies enjoy effective tax rates as low as 8%. U.S.-based companies, by comparison, face an effective tax rate of 55%—25 percentage points higher than the average for the other competing nations and among the worst in the world. Similarly, non-corporate U.S. investment in timber is treated among the worst of our foreign-based competitors.

We do not believe this situation was intended by Congress. Rather it is more likely the result of years of tax policy changes without an analysis of the accumulated effect on either urban sprawl or international competitiveness. Unfortunately, the current rules discourage job creation in the U.S., promote imports and undercut the high environmental standards that the U.S. practices. Congress can go a long way toward improving this situation by enacting "The Reforestation Tax Act of 2001" (H.R. 1581) introduced by Rep. Jennifer Dunn, a Member of the Ways and Means Committee, and Rep. Sanford Bishop. This bipartisan legislation currently has 80 cosponsors in the House and 15 members of the Ways and Means Committee. Mr. Chairman, we also note that you are a cosponsor of this legislation, and we are grateful for your support.

The Reforestation Tax Act (RTA) recognizes the unique nature of timber and the overwhelming risks associated with an investment in this essential natural asset and attempts to place the industry in a more equal position with its international competitors. Trees can take anywhere from 25 to 75 years to grow to maturity. Fire, disease, weather—events that are unpredictable and uninsurable—can wipe out acres of trees at any time during the long, risky growing period. Good management practices can help mitigate some of nature's vagaries, but are costly over the entire growing period. The RTA does two things to remove disincentives for private investment in our forests and promote reforestation efforts: reduces the tax paid on timber for individuals and corporations; and it improves the tax treatment of reforestation expenses.

Specifically, the bill provides a sliding scale reduction in the amount of taxable gain based on the number of years the asset is held—3 percent per year, up to a maximum reduction of 50 percent. While this provision does not fully compensate for the negative tax impact of inflation, it does provide a significant incentive for landowners not only to re-plant their land after a timber harvest, but to keep their land in forest cover for generations to come.

Under current law, the first $10,000 of reforestation expenses are eligible for a 10 percent tax credit and can be amortized over 7 years. Reforestation expenses are the initial expenses required to establish a new stand of trees including expenses for site preparation, the cost of seedlings, and the labor costs required to plant the seedlings. Because amounts over $10,000 may not be amortized and do not qualify for the credit, most reforestation expenses are not recoverable until the timber is harvested. The RTA removes the $10,000 cap and allows all reforestation expenses to qualify for the tax credit and to be amortized over a 5-year period. This change in the law will provide a strong incentive for increased reforestation by eliminating the arbitrary cap on such expenses.

The RTA is enthusiastically endorsed by all elements of the forest products industry—individual landowners, large and medium sized forest and paper companies and our labor unions. In addition, the RTA has the support of the Conservation Fund since the bill directly encourages replanting resulting in not only reduced sprawl but also an improved environment due to trees storing carbon dioxide that would otherwise be released into the atmosphere.

A variation of the RTA was included in the 1999 Omnibus Tax Bill that passed Congress but was vetoed by President Clinton. Likewise, it was included in the Minimum Wage and Small Business Tax Relief Bill passed by the House in 2000.

AF&PA strongly urges the Subcommittee to include the RTA in any legislation you move to the full Committee dealing with sprawl/conservation tax issues. The RTA has the additional benefits of being bipartisan, helps our industry's competitive position, protects U.S. companies and the jobs they provide and promotes sustainable forestry in an environmental friendly way.

Thank you, Mr. Chairman, for this opportunity to testify, and I would be happy to answer any questions.

Chairman MCCRERY. First of all, would you run by me one more time the 5 percent, the 55 percent tax rate. Where did that come from?

Mr. DECOSMO. PricewaterhouseCoopers conducted a study for American Forest & Paper Association to look at the effective tax rates of corporations that own timberland across the globe. They benchmarked six other countries and the effective tax rates varied from the low of 7 percent to the high of 55 percent, and as I said, it is the United States who has a 55 percent effective tax rate. Actually, it is two taxations. One is at the corporate level and one is at the individual level that gets you to the 55 percent. If needed, that study is certainly available.

Chairman MCCRERY. Okay. So, it is not just Temple-Inland, it is American corporations doing business here——

Mr. DECOSMO. Absolutely.

Chairman MCCRERY. That are engaged in the forestry business.

Mr. DECOSMO. Absolutely, and that is probably the real driver in the number that I shared with you, with corporations divesting nine million acres in the last 4 years.

Chairman MCCRERY. Okay. Thank you. Mr. Duvernoy, would you try to summarize for me quickly the goal of Ms. Dunn's legislation.

Mr. DUVERNOY. Yes, I will. The goal of Ms. Dunn's legislation is to allow nonprofit corporations to access capital markets. It does that through allowing nonprofit corporations to issue tax-exempt debt. Now, the obligation of the nonprofit corporation in response for issuing tax-exempt debt is to provide permanent public benefit in its conduct of its timber operations on the land, and the way this legislation requires that benefit to be permanent is by the placement of a conservation easement, if you will, on that property that then will be held by another conservation organization.

Chairman MCCRERY. You went on to say in your testimony that the land that was purchased, or for which the bonds would be issued, would be managed for timber production and it was the sale of the timber that would pay the bonds, is that correct?

Mr. DUVERNOY. That is correct. We fully anticipate the property will be managed for timber production. The public benefit that would emanate from this in this instance would be the fact that the development potential of that property would be retired and the care and stewardship of this particular property would exceed State, and the State does a very good job, but exceed State standards. We can afford to manage this property for timber, but at a level higher than we could otherwise.

Chairman MCCRERY. So, in other words, the legislation would encourage timberland to stay timberland?

Mr. DUVERNOY. That is correct. In the face of a very difficult market to manage for timber, particularly on the urban fringe, this vehicle will allow us to keep this land in timber production and to keep jobs and that local tax base so important to the local community.

Chairman MCCRERY. So, would you say that the legislation that Mr. DeCosmo talked about, the reforestation tax credits and so forth, and the legislation that you are espousing, Ms. Dunn's, have much the same goal?

Mr. DUVERNOY. If I may, Mr. Chairman, I think a lot of this legislation, if you take it together, works very synergistically to create a set of very powerful tools to conserve forestland.

Chairman MCCRERY. Thank you. I think it is interesting that we have folks from what some might call the environmental community speaking favorably about corporate America. Maybe we could do more of this and actually make more progress.

[Laughter.]

Chairman MCCRERY. So, it is good that you all have done that today. Mr. McCormick, since I know your organization has a lot of experience in facilitating through the private sector, and sometimes using the public sector, as well, the preservation and conservation of lands, I want you to address the fact that you cannot make people sell their land, you can lead a horse to water but you cannot make him drink. How do we then accomplish our goals without government telling people what they can and cannot do with their own land?

Mr. MCCORMICK. That is a very good question and the Nature Conservancy, as you well know, does work in a very collaborative fashion with private landowners, and for that matter, with industry. As I suggested in my testimony, we very much believe in the free market system and, therefore, do not believe in any form of coercion. The Nature Conservancy does not attempt to tell landowners what they should or should not do with their property, but engage, as the land trust community does at large, in arms'-length transactions.

A very attractive inducement for that would be for those landowners, particularly in rural communities, who have very few financial assets, an attractive inducement would be the opportunity to have preferential treatment for the capital gains that they derive on those sales, largely because, again, these are multi-generational landowners, for the most part, very appreciated values on those properties, frankly, often reflecting the development potential. So, there is an enormous burden on the tax and preferential treatment for sale for conservation purpose would be a very, very attractive inducement and not a coercion at all.

Chairman MCCRERY. Thank you. Mr. Brazell, there was some, not confusion, I guess, but different opinions on how many brownfields sites might be cleaned up if we were to have Mr. Weller's legislation or the Administration's proposal enacted. Can you shed some light on that from the Roundtable's perspective?

Mr. BRAZELL. I think the figure of 400,000 brownfields was, as Mr. Weller said, coming from the U.S. Conference of Mayors. I am not able to tell you exactly how many of those are going to be cleaned up by continuing the legislation to allow expensing, but I would say more than would be cleaned up without that legislation.

Chairman MCCRERY. Can you give us some insight on what that means in terms of, number one, the resulting economic growth in those brownfield areas, which oftentimes are distressed economically, and number two, does the fact that we would be seeing more development in these brownfields sites take pressure off development in the suburban areas and pressing out into the rural areas?

Mr. BRAZELL. I would say yes to both. In the first case, when you redevelop an area that is fallow and unproductive, you bring property taxes up, you revitalize the neighborhoods, and along with that, you take the pressure off the greenfields because some clients

that can locate into those areas do not necessarily have to locate outside the city center where most of the brownfields are located.

Chairman McCRERY. Thank you. Mr. McNulty?

Mr. MCNULTY. Thank you, Mr. Chairman, and I want to thank all of the panelists for their testimony. I just have one question I want to pursue.

My friend, Johnny Isakson, who is still here, suggested that I pursue further with Mr. Sawyer this question about the State cap, and I just wanted to clarify in my own mind how that is determined, but more importantly, how it would be administered. In other words, once you determine what the State cap is, for example, if within that particular State the cap was $50 million in benefit and there were legitimate applications for $100 million, how is it determined who gets the benefit? Do you say to 50 percent of the people, you get the benefit, and the other 50 percent, you say, sorry, Charlie? Who determines that? How does that work?

Mr. SAWYER. Thank you for asking that question. On the cap, or the allocation, really, the way that is determined is that we look at the total amount of land in farms and woodlands in each State, pursuant to the Department of Agriculture census, and the denominator of that number for the whole country—the total acreage for the whole country is the denominator and the numerator is the State's total acreage of those figures. Then we apply a 4-percent cap, which basically allows it to level out and compress just a little bit. I think Texas gets a disproportionate amount if you do not have a 4-percent cap. So, that is how your fraction of the $4 billion a year is determined, is through that process.

The second part is it is really administratively quite efficient, because, basically, what we have done with this bill is we have taken two very accepted tax concepts, well proven tax concepts—one is the conservation easement structure—and have not changed that. So, that is going to limit any capital spent under this to accomplishing conservation goals because that is how the money has to be spent. It cannot be spent for any other purpose.

On the other side, in terms of the administration of it, each State will have a clearinghouse, just like we use with the low-income tax credit system, so that the State will be told. For instance, Georgia, I believe, has $60 million a year under this program. So, the State will be told, you have $60 million in credits. You now have to assign the administration of that credit pool to one of your agencies or one of your branches of government, and it is then up to that branch to help manage this process within the State. Now, obviously, that also allows the State to help determine the priorities in terms of whether you make this investment or that investment.

One other footnote is, of course, with the conservation easement, as Mr. McCormick pointed out, these are all voluntarily negotiated arrangements with private property owners, and so nobody is telling anybody they have got to conserve this or not. It is just that is what you work out.

Now, we do think by having a pool of dollars under this system, what is going to happen is that you will have strategic conservation, which is to say that the States, the Federal Government, the local governments, the land trust, and the business community will sit down and say, gee, we have got enough money now to really do

something about this problem, and so they will go out and strategically try to acquire land that actually complements the development needs of the community as well as protects the natural infrastructure of that community.

Mr. MCNULTY. Thank you very much. Mr. Brazell, while your testimony focuses mostly on the brownfields legislation, what are your views on additional tax incentives for conservation land sales?

Mr. BRAZELL. Well, it is not an area that I am familiar with, but I would say if it is in your interest to conserve open spaces and you want to use the tax incentive to do it, it sounds like a pretty good one to use.

Mr. MCNULTY. I thank all of the panelists. That is all I have, Mr. Chairman.

Chairman MCCRERY. Thank you. Mr. Weller?

Mr. WELLER. Thank you, Mr. Chairman. I appreciate the opportunity to question our witnesses here. Before I direct my questions to Mr. Brazell on the brownfields legislation, Mr. Sawyer, I just want to commend you on your proposal and also salute your champion here in the House, Johnny Isakson. He is a very articulate, hard working spokesman for your cause. We have talked about your legislation many times, and just to let you know, he is working very hard for you on your proposal.

Mr. SAWYER. Thank you, and I agree.

Mr. WELLER. Mr. Brazell, on the issue of the brownfields legislation, of course, I have worked with you and with your organization in finding ways to attract private investment and environmental cleanup of old industrial sites for the purpose of revitalizing blighted communities. Whether it is rural or suburban or middle class or low income areas or even urban areas, we have our share of these so-called brownfields, 2,000 in the Chicago region and the two largest are in the district that I represent.

The Administration, when they, of course, endorse the proposal to make permanent the existing provision, which expires in a little over a year, they point out that permanency would generate about $2 billion in additional investment as well as cleanup of an additional 4,000 brownfields a year, which it will take a while to get up to the 400,000 that are totally across this country, but it will make a tremendous amount of progress.

I was wondering, from your perspective, you work with business decision makers every day in your business. You talk with them, and one thing I think we have all learned is that the tax code influences business decision making. Now, there are consequences to the tax code. There are incentives to the tax code.

From the standpoint of a business decision maker who is trying to decide where to invest their dollars, whether or not to purchase an old industrial site, a brownfield, clean it up, or go to the edge of town and buy a cornfield or a soybean field outside the suburban area that I represent in Chicago, how do they factor in this expensing provision? How would a business decisionmaker use this to make their decision and decide it is in their advantage to purchase that old industrial site and clean it up and revitalize it?

Mr. BRAZELL. Mr. Weller, it is very difficult to compare parcels of land, different parcels of land. If you can imagine you had two sites, one of which was a brownfield and one of which was not a

brownfield, and the selling price of the non-brownfield site was $100 and you knew you had $20 of remediation costs, the other site is going to sell for $80. So, the fact that you are going to buy the other site for $80, you are going to spend $20 to clean it up, but then you are going to be able to expense that, your investment is $80 after-tax, so right away, you have got a jump on the other site, if there are suitable sites.

Obviously, development has to have a plan. It has to be viably functional, apart from the tax effects, and it probably is not going to drive every transaction. It may be the fulcrum that turns a transaction to be being done in favor of cleaning up the brownfields.

Mr. WELLER. One of the comments that I have received from economic development experts in the South Side of Chicago and the South suburbs that I represent, as they are attempting to recruit and lure private investors to invest in these sites, of course, is in the liability, the financial cost of the environmental cleanup. Of course, our hope is that this is working, and I see it working in the district that I am in, where private investors are now taking advantage of the ability to expense, to fully deduct in the year they incur the cost of environmental cleanup, to deduct that cost as a way of recovering it, so I appreciate that.

Let me ask another question here. As one of my colleagues mentioned, also, in the legislation, in H.R. 2264, we proposed broadening the type of environmental cleanup that would be covered and would be able to utilize the expensing provision that is in the brownfields incentive. We have learned over the last several years in working this legislation that there are other types of cleanup besides existing law that private investors run into. It was noted currently they would, of course, have to capitalize those costs over, what, 40 years, and that is the cleanup of petroleum and pesticides, paint, asbestos as part of that.

Can you explain the merits of broadening this tax provision, how that would be an incentive to attract investors who have to look at an old building that they may have to deal with on that old industrial site called a brownfield?

Mr. BRAZELL. Right. Just in the same way that the legislation benefits someone that is going to purchase a piece of land and expense the remediation cost. Often on those types of sites, those older sites, those infill sites, you are going to find buildings that probably have contamination like asbestos, and as our perceptions about asbestos have changed, we have had many more regulations that require us to clean them up.

So, being able to expense that cleanup cost in the year of acquisition or in the years in which you incur the expense, the present value of that is much, much higher than trying to recover that cost over a 40-year period.

Mr. WELLER. Thank you, Mr. Chairman. I see my time has expired. Again, thank you for conducting this hearing on a very, very important issue for all of us.

Chairman MCCRERY. Thank you, Mr. Weller. Mr. Hayworth?

Mr. HAYWORTH. Thank you, Mr. Chairman, and my apologies both to the Subcommittee and the witnesses. Flight schedules kept me away from hearing the testimony in its entirety, but I am no

stranger to the challenges we confront, especially in the Western States. I just must say, Mr. Chairman, how gratified I am that it looks like now we have reached a point where instead of drawing caricatures of each other and trying to shout past each other, it seems that now, based on the testimony I have heard today, people are actually talking to each other and working to solve problems.

To the extent that the tax code and this Committee, being the first Arizonan in history to serve on the Committee on Ways and Means and one of innumerable Arizonans to serve on the Committee on Resources, I appreciate the opportunity to champion legislation like the bills discussed today and I welcome in a broader context the fact that, at long last, we are agreeing to disagree in some areas, but working in an important way to produce results that can help all Americans and especially those who live in States like Arizona So, with that, I thank you and yield back my time.

Chairman MCCRERY. Thank you, Mr. Hayworth, and I could not agree with you more. I stated earlier that it is nice to have corporate America and some of the environmental community communicating and working together for bills that we all believe are laudable, so I concur with your remarks. Mr. Blumenauer?

Mr. BLUMENAUER. Mr. Chairman, I just want to express my appreciation for your courtesy in allowing me to participate and to listen to the testimony here today. I commend the Subcommittee. The record that is being developed is a very powerful one in terms of approaching this issue, and I think we have outlined here a range of choices.

I do hope that there is a way to consolidate some of these together for a bigger package. I just returned from Detroit a few hours ago, spending a couple of days talking to people, many of whom would buy into this, and I know that there is an interesting range of opinion and support for the work that the Subcommittee is doing.

I would just note, though, the comment from the gentleman a moment ago that he was almost from Atlanta, and as I think about what is happening with metropolitan Atlanta, if we do not get the legislation, Mr. Chairman, that you are talking about, we all might almost be from Atlanta.

[Laughter.]

Chairman MCCRERY. That is right.

Mr. BLUMENAUER. I appreciate your efforts.

Chairman MCCRERY. Yes, sir. Thank you, Mr. Blumenauer, for participating in today's hearing. Once again, I want to thank all of the witnesses for your excellent testimony and your responses to our questions and your patience in staying with us most of the afternoon. Thank you, and we look forward to working with you as we work together to solve the problem of encroaching urbanization across America, so thanks. Before adjourning, I would like to insert into the record a statement from Congressman Amo Houghton.

[The statement of Mr. Houghton follows:]

Statement of the Hon. Amo Houghton, a Representative in Congress from the State of New York

I appreciate the opportunity to comment on the efforts of many in Congress and others to continue to expand the tax incentives available to individuals and groups to preserve open space and promote conservation. I certainly have a strong interest

in protecting the environment and preserving the natural resources of our country for current and future generations. Also, I have a particular interest in tax provisions that exclude the value of land subject to conservation easements from the estate tax. I commend the Chairman for holding this hearing.

I was especially gratified that Congress enacted the basic provisions of the American Farm Protection Act (a bill I introduced), as part of the 1997 Taxpayer Relief Act. The bill added an exclusion from estate taxes for gifts of conservation easements. The relief is targeted. Because the measure was enacted in a time of budget deficits, some thought the limitations were too restrictive. In 1999, the Oversight Subcommittee held a hearing on the same subject as today's hearing. I am sure many of the points made in that hearing will be made today.

Since the estate tax relief law for permanent conservation easements was enacted, two significant changes have been made. The first was in 1998, when a change was made to allow the post-mortem election and granting of the easement to be made by the executor and heirs after the death of the decedent. The original law required the easement grant to be made prior to death. This change certainly facilitates the granting of land easements.

In addition, the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 removed the restrictive requirements as to location, i.e. within a metropolitan area determined by OMB or abutting national parks or wilderness areas, etc. The change allows land located in the United States or any possession to qualify, assuming the other requirements are met.

These changes have all contributed to making the exclusion more available and beneficial to taxpayers, which can only add to the increase in the granting of these conservation easements. Although the provision included in EGTRRA of 2001 will sunset in 2010, it is likely these changes will be made permanent in some manner, as was done in H.R. 586, which passed the House on April 18, 2002. In any event, 2010 is some distance away, and many will still find the tax incentive to grant a permanent land conservation easement to be advantageous. We should not cut back on the efforts to encourage such transfers. Ultimately if the estate tax is repealed, we will need to seriously explore other tax incentives to replace the current estate tax incentives, in order to preserve open space and promote conservation.

Rep. Nancy Johnson has a bill, H.R. 1309, which I am sure will be mentioned in today's hearing. The bill would further improve the tax incentives for granting permanent land conservation easements, and I support the bill.

Although it is difficult to determine the effect of the 1997 legislation, the IRS data for 2000 indicates that 43 estates elected the provisions to exclude easements with a value of $7.6 million. The prior year showed more estates electing, although the value was less. Of course, the number of estates will vary from year to year, and it will take some time for trends to develop. The Land Trust Alliance's data indicate that there has been a steady upward increase in the donated acres of conservation easements from the Piedmont area of Virginia from 1996 to 2001. The Piedmont Environmental Council has made a significant effort to educate landowners in their area of the benefits involved in donating the easements. So, I believe we are certainly on the right track.

Gifford Pinchot, the founder of the U.S. Forest Service under President Theodore Roosevelt, once wrote that a nation "deprived of its liberty may win it, a divided nation may unite, but a nation whose natural resources are destroyed must inevitably pay the penalty of poverty, degradation, and decay." As true today as a hundred years ago. Thank you.

Chairman MCCRERY. I would also like to include in the record prepared statements from the American Farm Bureau Federation and the Montana Land Reliance.

[The statements of the American Farm Bureau Federation, and the Montana Land Reliance follow:]

Statement of the American Farm Bureau Federation

The American Farm Bureau Federation, which represents over 5.1 million member families in all 50 States and Puerto Rico, is concerned over the loss of farmland. One million acres are lost each year to development. Concentrated around urban/suburban cores, farmland disappears when it is more lucrative to sell land for development than for agricultural purposes. If these losses are allowed to continue, one of our Nation's most valuable resources is threatened.

H.R. 923—SELF-EMPLOYMENT TAXES AND CONSERVATION RESERVE PROGRAM

Most farmers and ranchers are self-employed. Currently they pay a self-employment tax at the rate of 15.3 percent. Self-employment taxes apply to income from labor and employment and are assessed in order to collect for Social Security and Medicare. The self-employment tax does not ordinarily apply to income from cash rent because cash rental income represents the equity value of ownership in land.

The U.S. Department of Agriculture (USDA) makes Conservation Reserve Program (CRP) payments to owners and operators of land who sign a rental agreement and agree to refrain from farming the enrolled property in order to conserve and improve the environmental resources of that land.

In 1996, the Tax Court ruled in *Wuebker vs. Commissioner*, that CRP payments were considered rental payments and therefore would not be subject to the self-employment tax. However, in March 2000, the Sixth Circuit Court of Appeals reversed the Tax Court's opinion, placing an additional tax burden of 15.3 percent on farmers for their CRP payments and allowing the Internal Revenue Service to retroactively collect these taxes from the last 4 years on farmers participating in CRP.

It is unfair to treat active farmers and ranchers differently from other taxpayers when imposing self-employment taxes on rental income. Because of the *Wuebker* case, the IRS now singles out farmers and ranchers as landlords liable for the self-employment tax. For other taxpayers who receive CRP payments, and are not materially participating in a farming operation, the payments are considered to be rental income that is not subject to self-employment tax.

Farmers and ranchers are in a no-win situation concerning the application of self-employment taxes. Agriculture producers face confusion and uncertainty because it is not known if and when an appeal will be heard by the full Sixth Circuit Court.

Additional confusion arises over jurisdictional matters. The original case was brought before the Tax Court. The Tax Court ruling, which said that self-employment taxes are not owed, has nationwide application. The appeals case was heard in the Sixth Circuit Court of Appeals which only has jurisdiction over Ohio, Tennessee, Michigan and Kentucky. This means that farmers in other states are not directly affected by the appellate court decision to require self-employment taxes on CRP payments. But because the IRS believes that the tax should be paid, it could audit farmers in other states with the intention of securing favorable court rulings to collect the tax. If farmers and ranchers are audited and fail to satisfy the IRS, they risk paying back taxes, interest, penalties and the cost of amending as many as 4 years' tax returns.

This issue not only has impact on farmers and ranchers, but also on the environment. Self-employment tax on CRP payments may discourage a farmer from future participation in this program. Environmentally sensitive acreage that has been taken out of production to protect its natural resources may be forced back into production if CRP payments are subject to self-employment taxes.

Tax policy should not single out farmland owners to pay the self-employment tax on cash rental receipts. The IRS should not be able to impose new taxes on farmers and ranchers without congressional approval.

Congress should pass legislation to restore equitable tax treatment for farmers and ranchers by making it clear that CRP payments are not subject to self-employment taxes.

Farm Bureau supports H.R. 923 introduced by Reps. Moran (R–KS) and Pomeroy (D–ND) to clarify that CRP payments are not subject to self-employment taxes.

H.R. 2290—THE CONSERVATION TAX INCENTIVES ACT OF 2001

One farmland preservation tool embraced by some state and local governments and a growing number of private conservation groups are voluntary conservation easements. These programs compensate farmers and ranchers who are willing to give up the right to develop or to sell their property for development.

The value of a conservation easement is typically the difference between the development and agricultural value of a piece of property. Because farmers and ranchers tend to reinvest their earnings in their businesses, they consider their land to be their retirement savings. Few are willing to give up the right to develop, and thereby lessen the value of their land, without compensation.

Programs that purchase conservation easements from farmers overcome this issue and successfully protect farmland from development. But because income from the sale of conservation easements triggers capital gains taxes, farmland preservation programs are not as successful as they could be.

Efforts have been made to exclude 50 percent of the gain on sales of land or easements made for conservation purposes from taxation. This tax code change will encourage more landowners to designate land for conservation purposes because cap-

ital gains taxes will be lower than if the property were sold for development. The change will also encourage and assist farmers and ranchers who wish to voluntarily preserve land as habitat for endangered or threatened plants and animals. Rewarding landowners who choose to protect habitat is a much better approach than mandatory programs that restrict the use of land without compensating land owners.

Farm Bureau supports H.R. 2290 introduced by Reps. Portman (R–OH) and Matsui (D–CA) to exclude 50 percent of gain from the sale of land from gross income to an entity intending to put the land in a conservation use.

Statement of the Montana Land Reliance, Helena, Montana

Mr. Chairman:

The Montana Land Reliance commends you for calling this hearing to examine Federal tax policy governing land conservation and preservation. The Montana Land Reliance was founded in l978 as a private, non profit land trust that utilizes conservation easements to protect Montana's private lands from unbridled development. The Reliance has protected over 466,000 acres of land in Montana including 850 miles of stream and river frontage.

The primary focus of the Montana Land Reliance is the voluntary, private donation of conservation easements on sensitive agriculture and ranchland. Private land conservation is less expensive than public land conservation in that it involves the donation of an interest in property rather than the purchase of the property or its development rights. In some situations involving land with unusual beauty or fragility, land purchases by government or private conservation organizations can be more appropriate. All of these methods have their place and contribute to the overall goals of preserving unique lands. However, our comments today relate to some needed revisions to Internal Revenue Code sec. 170(h) to remove severe restraints on the ability of farming and ranching families with modest levels of income to donate the development rights on their land.

Rural communities across the United States are experiencing an accelerating demise of open space. This problem is visually apparent to anyone who remembers the open spaces of the American landscape of only a few years ago and is now confronted with views of tract housing and new construction on what were formerly working ranches and farms. This disappearing open space is occurring not only in the perimeters of our major metropolitan cities and suburbs, but also in the more sparsely populated areas of the intermountain west.

Changes in land use patterns have always occurred in America—they will continue—and they do not necessarily need to be feared or blindly prevented. What the Montana Land Reliance is increasingly concerned about is lack of balance in the incentives that we have at the Federal level in our tax policies that govern private and public land conservation efforts. This imbalance is encouraging the development of ranches and farms at an accelerating rate.

Many private landowners wish to keep their farms and ranches in their traditional uses. Development is not their preference. However, if the property is scenic or sensitive, the owners will come under intense financial pressures to sell for development. For these working landowners and their families, we must make certain that the available incentives that are provided for private land conservation treat their situation equitably.

We currently have a deduction in the Federal Tax Code (sec. 170(b)) that is designed to encourage the donation of conservation easements on sensitive lands and open spaces. These incentives tend to work well for individuals with high levels of adjusted gross income because the value of the donated easement is typically large and can be used to offset ordinary income from sources unrelated to the land itself. These provisions are responsible for a large portion of the private land conservation that has occurred in America today. The provisions work well as far as they currently go, but they do not adequately address the situation faced by a working farm or ranching family with a more modest level of income. For these landowners—who are often struggling to make a living on a ranch or tract of land that has enormous value for alternative uses—the restrictions on the availability of the deductions for conservation easements offer little practical economic incentive to counter the offers received from a developer. A landowner in this financial posture who places an easement on his or her ranch or farm will be left with little current tax relief and an immense unusable tax deduction. The solution to this dilemma (absent an outright subdivision and sale for development), is a sale of the family property to a high net worth individual who can use the deduction and the possible leaseback of ones' former property for ongoing farming or ranching purposes.

The Montana Land Reliance deals with these real life situations every day. Often, the only solution we have to recommend is the paring of a ranch family with a high net worth individual, the "so called" conservation minded buyer. The situation of the conservation minded, working ranch family of modest means has led us to recommend changes in our tax laws that would give these landowners a more liberalized tax deduction so that they, like their wealthier counterparts, have an equivalent economic incentive to undertake private land conservation, if they are so inclined.

In the the last session of Congress, Congressman Hefley introduced H.R. 2279, The Rural Heritage Conservation Act, a measure designed to rebalance the tax code so that everyone with sensitive land who is conservation minded has a like incentive. The Senate counterpart to H.R. 2279 is S. 701, introduced by Senator Baucus of Montana, Chairman of the Finance Committee.

The operative change in the tax code made by both bills would allow a working farmer or rancher, defined as someone who derives over 50 percent of their income from farming and ranching, to deduct the value of a donated easement against 100 percent of their taxable income. This liberalized deduction is targeted to the category of individuals that are land rich and cash poor, and is designed in such a way as to avoid abuse. The fact that the average income of a farming family in the United States is just over $32,000 means that any revenue loss associated with this expanded deduction is likely to be very modest.

The Montana Land Reliance appreciates the opportunity to present our views before the Committee today, and hopes that the Subcommittee will recommend the approval of the substance of H.R. 2279 in any markup that may be undertaken by the Ways and Means Committee on this subject. We do not have the luxury of postponing action at a time when the remaining open spaces in America are being developed at an alarming rate. Private land trusts respect the property rights of property owners to choose whether to preserve traditional uses or develop property for new uses. We are only asking that the network of existing tax incentives be reexamined so that they work better for all those taxpayers who wish to preserve their property. Attached is a list of land trusts in the United States who support this goal.

Chairman MCCRERY. The hearing is adjourned.

[Whereupon, at 4:06 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

Statement of Ralph Grossi, President, American Farmland Trust

Mr. Chairman, Mr. McNulty, and Members of the Subcommittee:

American Farmland Trust (AFT) appreciates this opportunity to provide your Subcommittee with its views on how to develop new tax incentives to encourage the conservation of open space and farmland. I am the President of AFT, and also a third-generation cattle rancher and grain producer in California.

American Farmland Trust is a national, nonprofit organization with 50,000 members working to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment. I make this statement on behalf of AFT's members and the vast majority of farmers who care deeply about resource stewardship.

For the past century land conservation in our country has largely focused on the acquisition of land for parks, wildlife refuges, forests and recreation areas. These efforts have protected over 89 million acres of parks, 80 million acres in national wildlife refuges and over 190 million acres in national forests. Although this is a tremendous accomplishment, our country is not addressing what many believe to be the conservation challenge of the 21st century—ensuring that the natural, economic, and aesthetic resources provided by *private lands* are not consumed by the ongoing rush of development.

The traditional approach to preserving our private working landscapes has been to regulate their use without providing compensation to the property owner. AFT believes that regulation alone is not the answer. To encourage responsible private land stewardship, we need to *expand funding* for the acquisition of voluntary conservation easements, *reduce tax disincentives* discouraging the sale of conservation easements, and *expand tax incentives* for the donation of conservation easements.

On the funding side, Congress has recently taken dramatic action to increase resources for the acquisition of voluntary conservation easements by including a significant increase in the funding for the Federal Farmland Protection Program in the farm bill. Nearly $1 billion will be made available to match funding provided by state and local governments for the acquisition of agricultural conservation ease-

ments. Perversely, however, a significant disincentive to the very conservation sales that this bill seeks to encourage will remain in place in the Federal Tax Code. Many of those sales will trigger significant capital gains tax liability for landowners with appreciated real estate.

H.R. 2290, sponsored by Rep. Portman, would help address this problem. It would exclude 50 percent of the gain realized from sales of land or interests in land to qualified conservation entities for conservation purposes, including the protection of open space for agriculture. AFT supports this bill. It will further leverage state and local funding for the protection of productive private agricultural land.

The existing tax incentives that encourage private land conservation through donated conservation easements include the deduction for qualified conservation contributions under IRC § 170(h) and the partial exclusion from estate tax for land protected by a conservation easement under IRC § 2031(c). While these incentives have been instrumental in promoting private land conservation, many farmers and ranchers do not have the income to take full advantage of them. The income tax deduction available for an individual donating land or a conservation easement is limited to 30 percent of adjusted gross income (AGI), and unused amounts can be carried over for up to five years after the date of the donation.

H.R. 1309, introduced by Rep. Johnson, would address this problem. It would raise the percentage limit for conservation gifts to 50 percent of AGI and eliminate the carryover limitation. It will make it possible for many more "land rich, cash poor" farmers and ranchers to take advantage of the tax benefits available for conservation easement donations. Indeed, **H.R. 2279**, introduced by Rep. Hefley, would go even further and raise the percentage limit to 100 percent of AGI for 15 years for taxpayers whose income is derived primarily from farming and ranching. AFT supports both these bills.

AFT also supports the following pending tax bills:

- **H.R. 882**, introduced by Rep. Isakson, which would provide $4 billion annually in tax credits to donors to nonprofit conservation organizations. This is the boldest conservation proposal that has come before Congress since the creation of the Land and Water Conservation Fund a generation ago.
- **H.R. 1711**, introduced by Rep. Dunn, which would give tax-exempt status to bonds issued to acquire renewable resources on lands subject to conservation easements. While we expect tax-exempt bond financing to be most useful in the preservation of forest properties, it has the potential to be used for the preservation of agricultural lands as well.

Over a million acres of privately owned farmland are lost to development each year. However much it may trouble them, this is a result of economic forces beyond the control of most ordinary Americans. But unlike most Americans, as Members of this Subcommittee you have it within your power to actually do something to stem this tide of farmland loss. And not only do you have that power, you also have a number of thoughtful pieces of legislation before you suggesting effective ways to use that power. So we urge you to act now to create additional tax incentives for the protection of farm and ranch land. Your children will thank you for it.

Thank you for the opportunity to submit this statement.

Statement of Lee R. Epstein, Director, Lands Program, Chesapeake Bay Foundation, Inc., Annapolis, Maryland

Thank you for the opportunity to provide our views on this important matter. The Chesapeake Bay Foundation (CBF) is the largest non-profit conservation organization dedicated to the restoration of the Chesapeake Bay. With 100,000 members in virtually all the states of the Union, and programs in environmental education, environmental protection, and restoration, CBF is vitally interested in promoting land conservation throughout our 64,000 square mile watershed.

We wholeheartedly agree with Chairman McCrery that sprawling urbanization, outpacing mere population growth in some places and occurring even with population decline in others, is threatening to overcome the nation's best resource lands. In our six-state watershed, the environmental impacts of uncontrolled growth threaten to overcome many of the gains that have been made cleaning up other sources of pollution. Communities and individuals do face great challenges in protecting and preserving their invaluable open spaces, and the Federal Government does have a role to play in helping communities realize such important objectives.

It seems only fitting, given the role that the Federal Tax Code plays in actually creating some incentives for urban sprawl—from accelerated depreciation, to five-year amortization, to the deductibility of "passive" real estate losses—for that same

code to better encourage and promote active land conservation. There are already some land conservation incentives embedded in the Code. Land conservation receives some favorable treatment, for example, with respect to the deductibility of conservation easement and fee donations.

We would propose that other approaches or extensions of these ideas be explored. Enhancing the tax deductibility of a conservation easement, up to a significant percentage of adjusted gross income, and allowing a carryover into (unlimited) future years, is one idea with merit. For farmers, an even higher amount of deductibility might be appropriate.

Another idea would be to reduce the capital gains on sales of land or easements to conservation entities. A third idea worthy of some examination might be to create a tax credit or partial tax credit, similar to that utilized for rehabilitating qualifying historic properties, for example, that would apply toward conservation transactions. Tax credits have the advantage of being able to be bundled together and sold to investors, so that REIT-like syndicates or other partnerships could actually be formed around solid land conservation objectives. A Federal tax credit could be matched with State tax credit programs to generate an even larger conservation impact.

In any case, we commend to you these various ideas for further study and exploration, and pledge our assistance should the Subcommittee deem that of some value. Thank you for the opportunity to provide our views.

Statement of Alan Front, Senior Vice President, Federal Affairs, Trust for Public Land, San Francisco, California

The Trust for Public Land (TPL) is a national nonprofit land conservation organization founded to protect land for public enjoyment. TPL helps citizens and government agencies identify and conserve lands in need of protection. We support H.R. 2290, H.R. 1309, and H.R. 1711 as measures that provide market-based incentives for land conservation, thus meeting the needs of landowners as well as the public good. TPL often works with landowners who feel pressured to sell their land for development, but who would nonetheless like to see the land preserved in its natural state or as a working farm or ranch. These landowners are frequently "land rich but cash poor," and the land conservation tax incentives legislation being considered by the Subcommittee on Select Revenue Measures will better enable them to make the choice to conserve land.

H.R. 2290, introduced by Congressman Rob Portman, would exclude from gross income 50% of the gain on sales of land or interests in land or water when sold for conservation purposes. This legislation is especially important for landowners of modest means, who need to sell rather than donate the land. In TPL's experience, there have been cases where significant parcels of land have been lost to development because of the obstacle posed by the tax burden faced by the landowner.

In one such case a few years ago, the Oconee National Forest was very interested in acquiring a tract along the Ocmulgee River in Georgia. The property was an 800-acre forest with river frontage. There were numerous ownership interests due to the land being passed down to heirs after death. All but one interest agreed to sell. The owner of that interest was an 80-year-old uncle, who would have been a willing seller but for capital gains tax considerations. While the entire family wanted to arrange a conservation transaction for their property, the uncle and TPL ultimately recognized that there was no way, given capital gains consequences, to structure a sales to meet his needs. A 50% reduction in the capital gains tax might have been enough to encourage the uncle to sell to protect the land, but when he died two years later, development pressures were such that The Trust for Public Land could not compete with developers for the property. The Oconee National Forest was unable to acquire this high-priority land, which will now be developed.

Ever-increasing amounts of land are consumed by the sprawl emanating from metropolitan areas. We believe that land conservation is a public value that should be promoted through tax policy as well as direct public expenditures. H.R. 2290 would permit government agencies and nonprofit land conservation organizations to compete for land threatened by sprawl development. State programs like Florida Forever and Great Outdoors Colorado would find their limited dollars going even farther in purchasing land for open space.

For those landowners who are able to donate land or an easement for conservation purposes, there is an income-based inequity in the tax benefits received for such a donation. H.R. 1309, introduced by Congresswoman Nancy Johnson, addresses this problem. Under current law, a taxpayer with a $300,000 adjusted gross income (AGI) could deduct over six years the entire value of a donated $500,000 conservation easement. A taxpayer with an AGI of $50,000 would only be able to deduct

$90,000 over six years for donating a $500,000 easement. Enactment of H.R. 1309 would mean that these two taxpayers with disparate incomes would both be able to deduct the full value of the easement. H.R. 1309 would permit the deduction of up to 50% of the taxpayers AGI with unlimited carryover. This legislation will provide the necessary incentive and reward for the generous donation of easements by taxpayers of all income levels.

The Trust for Public Land is also on record supporting H.R. 1711, introduced by Congresswoman Jennifer Dunn, which would enable communities to issue tax-exempt revenue bonds on behalf of private nonprofit organizations to purchase, or lease long-term, land for conservation purposes. The revenue to service these bonds would be provided by permitting the harvesting of resources, such as timber, crops, and water rights. This legislation provides an additional tool for conservation of working landscapes. TPL has worked with timber companies throughout the country to preserve lands from development when the companies need to divest some of their acreage for economic reasons. H.R. 1711 will further the goal of cooperating with industry to promote the preservation of open space.

As Congress considers further changes to the tax code in the coming weeks and months, I urge the passage of tax incentives for land conservation. Enactment of the provisions included in H.R. 2290, H.R. 1309, and H.R. 1711 will encourage land preservation at a time when there is widespread agreement on the necessity of protecting open space and natural resources against the encroachment of urban sprawl. I commend the Subcommittee on Select Revenue Measures for holding this important hearing, and The Trust for Public Land will be happy to work with you as you consider these proposals.

○