Testimony of Rand Wentworth
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Hearing on the Charitable Deduction
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I am Rand Wentworth, President of the Land Trust Alliance. I want to thank the committee for the opportunity to testify. Today, I would like to describe the mission of my organization and land trusts; the public benefits from land conservation; why a cap on deductions would hurt thousands of communities nationwide; and why it's a smart investment to make permanent several of the "extenders" related to charitable gifts that promote cost-effective conservation partnerships.

The Land Trust Alliance and Land Trusts

The Land Trust Alliance is a 501(c)(3) publicly supported nonprofit, advancing voluntary conservation of private lands by serving the 1,700 nonprofit land trusts with 5 million members that are conserving land in communities around the country.

Our mission is to save the places people love by strengthening land conservation across America. We work with our members to increase the pace, quality and permanence of land conservation. The Alliance does not hold easements or buy land. Instead, we advance the work of our member land trusts that do this work. We provide training, and education for our members; we work with them to set professional standards for this work; we provide legal services to help them keep that land conserved; we organized and fund an accreditation program ; and we represent land trusts in federal policy matters.

Land trusts conserve many different kinds of land. They are citizen-led charities working on what is most important to their local communities. Many of our member organizations conserve wildlife habitats and protect water supplies. Many conserve parks and preserves for the public to use, including urban parks, gardens and trails that help build communities that are healthy places to live, work and play. We conserve historic sites including historic battlefields from the Revolution and Civil War. Manyof our members are dedicated to ensuring the survival of working lands – farms, ranches and forests whose owners produce food and fiber for our country. Together, our members have been quietly successful, conserving more than 47 million acres of land in the United States – an area larger than the state of Wisconsin.[1]

[1] Land Trust Census 2010, Land Trust Alliance; http://www.landtrustalliance.org/land-trusts/land-trust-census

Conservation Donations Require Special Treatment

Like other charitable institutions, each land trust is responsible for raising the funds they need to do their work, and donations are a very important part of that. But, even more important, our mission relies on donations of land and conservation easements from private landowners.

Conservation easements are contracts specifically enabled by state laws in each state[2]. These contracts retire development rights to protect natural, scenic or historic resources on those lands. In the 1970's, Congress specifically enabled tax deductions for such gifts with section 170(h) of the tax code, with the current version largely finalized in 1980. Land trusts hold about 12 million acres of conservation easements, and have recently been adding about a million acres a year.

Both land and conservation easements are unusually valuable gifts. According to the Internal Revenue Service (IRS) [3] that in 2009 the average value of a donated work of art for which a tax deduction was taken was about $7,000. The average value of a gift of appreciated stock was about $42,000. The average value of a gift of land, whether for conservation or for any other charity, was about $170,000. And the average value of a conservation easement was $460,000.

Why is that number so high? Because we are dealing with land values. The average size of these easements is about 300 acres. We are protecting the watersheds that provide communities with drinking water. We are providing places for children to experience the outdoors. We are providing places for wildlife. We are protecting scenic beauty that makes our communities more desirable places to live and work. And when we are protecting agricultural lands, we are protecting a sustainable industry that, despite its economic importance, simply can't compete with real estate development.

When we looked at easements in Chairman Camp's district last year, we found that farms there protected by easements were producing more than $2 million of cherries a year. Those cherries are the basis of food manufacturing in the district – the production of dried cherries -- that employs 1,300 people and has an annual payroll of more than $30 million. One of those food processors wrote us to say that the protected status of the cherry orchards they need to supply them was a major factor in their investing in a new cherry-drying facility there.

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[2] See "Conservation Easement Enabling Statutes", 2009, at http://www.landtrustalliance.org/policy/emerging-issues/conservation-easement-enabling-statutes

[3] Pearson Liddell and Janette Wilson; "Individual Noncash Charitable Contributions, 2009"; Internal Revenue Service Statistics of Income Bulletin, Spring, 2012; http://www.irs.gov/pub/irs-soi/12insprbulnoncash.pdf

The Impact of a Cap on Deductions

Because our mission depends on unusually large, once-in-a-lifetime gifts, we were alarmed to hear proposals to limit tax deductions to $17,000, $25,000, or $50,000 per year, and to have such caps considered for inclusion as part of the so-called fiscal cliff legislation. Given the other deductions taxpayers who itemize take -- many of which, like state and local taxes, are mandatory -- a cap on total deductions would virtually eliminate what has been a major incentive for our work, and it would have a devastating impact. Simply put, land trusts routinely receive gifts that far exceed the value of the proposed caps on deductions.

Those donations provide big public benefits and represent highly leveraged conservation, protecting important environmental and historic resources for one-third or less than the market price. That is possible because landowners who love their land partner with land trusts to protect it, for everyone’s benefit.

Tax Extenders That Directly Impact Land Trusts

It is natural to assume that conservation easements, being such high-value gifts, come from high-income people, and some do. But many do not. Many come from family farmers, ranchers and forestland owners who find that the land that their fathers or grandfathers purchased for a few dollars per acre is now worth thousands of dollars an acre on the open market. These families may have relatively modest incomes, but very high-value development rights, often worth 10, 20, or 30 times their family income.

These donors face an unusual situation. The tax code generally provides a limit on tax deductions for donations of property of 30% of the taxpayer’s Adjusted Gross Income, with a carryover of donations in excess of that limit for an additional five years past the year of donation. The trouble is that for a farmer or rancher working on land that has become valuable for development, this tax math simply does not work.

If a farmer or rancher has an AGI of $50,000 a year, they may take no more than $15,000 in charitable deductions for donating their development rights in any one year. Given the year of donation and the five years’ carryover, that is a total of $90,000 in tax deductions for a gift that averages $460,000, and is often worth $1 million or more. Their actual tax benefit, of course, is but a fraction of the $90,000.

In 2006, the Pension Protection Act addressed this with a provision sponsored by Senators Max Baucus (D-MT) and Charles Grassley (R-IA) to make the tax code fairer for moderate income landowners. This allowed conservation easement donors to deduct 50% of their AGI and carry over their deductions for 15 years instead of 5. That would enable the family referred to above to deduct a maximum of $400,000 over 16 years instead of $90,000. In addition, if the donor's income was primarily from agriculture or forestry, it allowed them to deduct 100% of their AGI, doubling the amount they could deduct over time.

This is a tax policy success story. It was intended to spur new donations of conservation easements, and it has. In its first two years the Pension Protection Act provision doubled the number of conservation easement donations made compared to the two years prior, and increased the acreage conserved by about 32%.[4]

I want to thank each of the Members of the Committee who cosponsored The Conservation Easement Incentive Act in the last Congress to make this provision permanent, and particularly Representatives Jim Gerlach (R-PA) and Mike Thompson (D-CA), who have been the authors of the legislation in the House and have worked hard to move it forward. Their bill, HR 1964, had 311 members signed on as sponsors, including a majority of both the Republican and the Democratic caucuses, and both Chairman Dave Camp (R-MI) and Ranking Member Sander Levin (D-MI).

An Example

Dennis Maroney is a rancher in Arizona. His operation, the 47 Ranch, is in Cochise County, bordering Mexico and New Mexico. His cattle share desert grassland and mountain pasture with about a dozen different species that are listed by the US Fish and Wildlife Service as either endangered or as "species of concern". They include a rare cactus and rare frogs – but they also include the aplomado falcon and the jaguar. This land is important wildlife habitat. It used to be in the middle of nowhere. But the growth of Tucson and the development of Sierra Vista as a military base and a sunbelt retirement community have changed that.

Raising cattle and sheep is Dennis' primary business. In 2007, he gave a 960 acre conservation easement to the Arizona Land and Water Trust. The development rights to the property were worth about $560,000.

Without the Conservation Easement Incentive Act, he probably would receive little or no tax benefit for donating his easement, because his income is relatively small. Because he could only deduct 30% of his income in any one year, for no more than 6

[4] Land Trust Alliance data, comparing years 2004-2005 with years 2006-2007, based on our 2005 Land Trust Census data and a 2010 survey of the 250 land trusts with largest easement holdings

years, the total deductions he could take would be a small fraction of the value of his donation.

With the Conservation Easement Incentive Act, he is able to deduct the entire value of his donation, over time. That provision makes a big difference for donors like him. "We have years when we have no income," he says. "We have years when we do well. Being able to carry over deductions to when it can actually help us is huge."

That ranch is now protected, and that's good for the wildlife. But this isn't just about wildlife. It is about keeping this land in productive agriculture. Mr. Maroney is providing grass fed beef and other farm products to Tucson and Sierra Vista, through farmers markets, food coops, and restaurants. That's a business that is good for his family, and good for business in the communities around him. This is a win-win situation for wildlife and agriculture.

The Need for Certainty

A conservation easement often means giving away a family's largest financial asset. Since the easement will control what can happen on the land for generations to come, it often takes a landowner two years or more to come to the decision to explore donating an easement, and then another nine months or more to actually plan and execute the gift.

We advise any landowner considering such a gift be represented by an attorney in the process of negotiating the specifics of the easement. Professional help is also advisable in regard to the tax treatment of an easement donation. The IRS is very particular about how such a gift is made and how it is documented, so great care must be taken in the process. In addition, the IRS requires a professional appraisal that may cost $5,000 or more.

Landowners need time to carefully consider what they are doing. We don't want landowners to rush to a decision because of a short-term renewal of a tax extender – that's bad tax policy and bad conservation policy. We want them to be confident they have covered all the details and done what makes sense for them, for their community, and for conservation.

Unfortunately, it is very hard for landowners and their advisors to even consider this option when land trusts cannot tell them if the tax incentives they need to make their donation possible will still be available after they invest the considerable time and money it takes to properly plan a conservation easement. These landowners need certainty in tax policy so that they can do long range planning with their families, and we encourage Congress to make the Conservation Easement Incentive Act a permanent part of the tax code.

S-Corporations

We also have supported continuation of the recently extended provision allowing S-corporations to deduct the fair market value of charitable donations, rather than limiting their deductions to the corporation's basis in the donation. Simply enough, this allows S-corporations to do what other pass-through entities such as partnerships and limited liability corporations already can: pass through the full fair market value of a charitable donation to their stockholders or partners.

We have supported this because we continue to find family farms that have put their land into S-corporations. These conversions were done to adapt to particulars of the income and estate tax that may no longer be relevant, but once such conversions are done, they are often very hard to undo. Allowing them to treat their charitable donations in the same manner as other pass-through entities simply makes sense.

Conclusion

People give gifts of land and easements because they love their land and want to protect it. The tax incentives the Congress has provided for those donations make it possible for many more landowners to make such donations. They represent a smart public investment that allows landowners to protect land and resources that provide a multitude of public benefits to their communities. These landowners need that incentive, they need certainty in the tax law so that they can carefully plan their donations, and they – and we – will be very grateful to the members of this committee if the tax law does impose new limits on charitable giving and makes the conservation incentives a permanent part of the tax code.

Thank you for the opportunity to present this testimony.