AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

H.R. 3327, CABIN USER FEE FAIRNESS ACT OF 1999

HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS AND FOREST HEALTH

OF THE

COMMITTEE ON RESOURCES

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

MARCH 23, 2000, WASHINGTON, DC

Serial No. 106–77

Printed for the use of the Committee on Resources



Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://www.house.gov/resources

U.S. GOVERNMENT PRINTING OFFICE

65–437 ⇆ WASHINGTON : 2000

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN J. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
BARBARA CUBIN, Wyoming
HELEN CHENOWETH-HAGE, Idaho
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
CHRIS CANNON, Utah
KEVIN BRADY, Texas
JOHN PETERSON, Pennsylvania
RICK HILL, Montana
BOB SCHAFFER, Colorado
JIM GIBBONS, Nevada
MARK E. SOUDER, Indiana
GREG WALDEN, Oregon
DON SHERWOOD, Pennsylvania
ROBIN HAYES, North Carolina
MIKE SIMPSON, Idaho
THOMAS G. TANCREDO, Colorado

GEORGE MILLER, California
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
NEIL ABERCROMBIE, Hawaii
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELO, Puerto Rico
ROBERT A. UNDERWOOD, Guam
PATRICK J. KENNEDY, Rhode Island
ADAM SMITH, Washington
CHRIS JOHN, Louisiana
DONNA MC CHRISTENSEN, Virgin Islands
RON KIND, Wisconsin
JAY INSLEE, Washington
GRACE F. NAPOLITANO, California
TOM UDALL, New Mexico
MARK UDALL, Colorado
JOSEPH CROWLEY, New York
RUSH D. HOLT, New Jersey

LLOYD A. JONES, *Chief of Staff*
ELIZABETH MEGGINSON, *Chief Counsel*
CHRISTINE KENNEDY, *Chief Clerk/Administrator*
JOHN LAWRENCE, *Democratic Staff Director*

SUBCOMMITTEE ON FORESTS AND FOREST HEALTH

HELEN CHENOWETH-HAGE, Idaho, *Chairman*

JOHN J. DUNCAN, JR., Tennessee
JOHN T. DOOLITTLE, California
WAYNE T. GILCHREST, Maryland
JOHN PETERSON, Pennsylvania
RICK HILL, Montana
BOB SCHAFFER, Colorado
DON SHERWOOD, Pennsylvania
ROBIN HAYES, North Carolina

ADAM SMITH, Washington
DALE E. KILDEE, Michigan
OWEN B. PICKETT, Virginia
RON KIND, Wisconsin
GRACE F. NAPOLITANO, California
TOM UDALL, New Mexico
MARK UDALL, Colorado
JOSEPH CROWLEY, New York

DOUG CRANDALL, *Staff Director*
ANNE HEISSENBUTTEL, *Legislative Staff*
JEFF PETRICH, *Minority Chief Counsel*

CONTENTS

	Page
Hearing held March 23, 2000	1
Statements of Members:	
Chenoweth-Hage, Hon. Helen, a Representative in Congress from the State of Idaho	1
Prepared statement of	2
Nethercutt, Hon. George, a Representative in Congress from the State of Washington	3
Prepared statement of	10
Statements of witnesses:	
Betts, Richard M., MAI, ASA, SRA, Betts & Associates, Berkley, CA	52
Prepared statement of	54
Brouha, Paul, Associate Deputy Chief, National Forest System, U.S. Forest Service	100
Prepared statement of	102
Mead, David R., President, Sawtooth Forest Cabin Owners' Association, Twin Falls, ID	11
Prepared statement of	14
Ver Hoef, Mary Clarke, Chair, Governmental Liaison Committee, National Forest Homeowners, Sacramento, CA	40
Prepared statement of	41
Schultz, J. Carl, The Appraisal Foundation, Washington, DC.	88
Prepared statement of	90

H.R. 3327, CABIN USER FEE FAIRNESS ACT OF 1999

MARCH 23, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FOREST AND FOREST HEALTH,
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to call, at 2 p.m., in room 1334 Longworth House Office Building, Hon. Helen Chenoweth-Hage (chairman of the Subcommittee) presiding.

Members present: Representative Chenoweth-Hage.

STATEMENT OF HON. HELEN CHENOWETH-HAGE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Ms. CHENOWETH-HAGE. The Subcommittee on Forest and Forest Health will come to order. The Subcommittee is meeting today to hear testimony on H.R. 3327, the Cabin User Fee Fairness Act of 1999 introduced by Representative George Nethercutt.

Under Rule 4(g) of the Committee rules, any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. This will allow our witnesses to be heard sooner and help Members and our witnesses keep to their schedules. Therefore, if other Members do have any statements, they will be entered into the record under unanimous consent.

Now today's Subcommittee hearing is on H.R. 3327, the Cabin User Fee Fairness Act of 1999. I am pleased to be able to bring this bill before the Subcommittee for discussion as it is long overdue and most certainly needed to address the flawed Forest Service appraisal policies for recreation resident user fees.

In October 1997, when the Subcommittee met on the issue of recreation residence user fees, I made the observation that many would like to portray the cabin leaseholders as wealthy aristocrats making use of Forest Service land for well below fair market rates. Sadly, this observation is still the basis for many of the arguments that we continue to hear today.

But the truth of the matter is that the majority of cabin owners are either retired or middle-class working families. The incomes of these citizens do not allow for the excessive fee increases that the Forest Service is proposing. The result of the substantially higher fees will be to force out many middle-class cabin owners, allowing only the wealthiest of Americans to enjoy these recreational opportunities. I do not think that is what any of us want.

The key is to look at the appraisals themselves. Based on the ones that have been conducted, the Forest Service is making the

same mistakes with this round of appraisals that it made in the 1980's. The Forest Service wants to compare these cabins to privately-owned residences, but this obtains a false appraisal since the cabins are not on private property and not subject to the same constitutionally guaranteed rights we enjoy with private property.

Some simple differences are that cabin owners cannot use their cabins all year long, and they cannot use them for commercial purposes, and they cannot control access to their cabins, and they cannot make improvements or even modifications to their cabins with express approval from the Forest Service. In the marketplace, these factors would have a very different bearing on an appraisal. If fair market value is to be determined, then the key word here is fair. We need to give the cabin owners a fair appraisal, a fair review process and a fair user fee.

I would like to thank Mr. Nethercutt for introducing H.R. 3327 to correct this egregious situation and establish an appraisal process for the Forest Service that is fair to taxpayers, as well as, current cabin owners. I would also like to thank some folks who I see in the audience who have played a very important role in helping this bill along the way. Paul Allman, the director of Cabin Owner Affairs for the American Land Rights Association, and Joe Corlett, an appraiser from my home State in Idaho. Gentlemen, thank you all for your hard work. I really appreciate you and I would also like to add my thanks to the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers for their time and attention to the details of this legislation.

The Chairman now recognizes Mr. Adam Smith for any statements that he may have.

[The prepared statement of Ms. Chenoweth-Hage follows:]

STATEMENT OF HON. U.S. HON. HELEN CHENOWETH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Today's Subcommittee hearing is on H.R. 3327, the Cabin User Fee Fairness Act of 1999. I am pleased to be able to bring this bill before the Subcommittee for discussion as it is long overdue and most certainly needed to address the flawed Forest Service appraisal policies for recreation resident user fees.

In October of 1997, when the Subcommittee met on the issue of recreation residence user fees, I made the observation that many would like to portray the cabin leaseholders as wealthy aristocrats making use of Forest Service land for well below fair market rates. Sadly, this observation is still the basis for many of the arguments we continue to hear today.

But the truth of the matter is that the majority of cabin owners are either retired or middle-class working families. The incomes of these citizens do not allow for the excessive fee increases that the Forest Service is proposing. The result of the substantially higher fees will be to force out many middle-class cabin owners, allowing only the wealthiest of Americans to enjoy these recreational opportunities.

The key is to look at the appraisals themselves. Based on the ones that have been conducted, the Forest Service is making the same mistakes with this round of appraisals that it made in the 1980s. The Forest Service wants to compare these cabins to privately owned residences, but this obtains a false appraisal since the cabins are not on private property and not subject to the same constitutionally guaranteed rights we enjoy with private property.

Some simple differences are that cabin owners cannot use their cabins all year long, they cannot use them for commercial purposes, they cannot control access to their cabins, and they cannot make improvements or even modifications to their cabins without express approval from the Forest Service. In the marketplace, these factors would have a direct bearing on an appraisal. If fair market value is to be determined, then the key word is fair. We need to give the cabin owners a fair appraisal, a fair review process, and a fair user fee.

I would like to thank Mr. Nethercutt for introducing H.R. 3327 to correct this egregious situation and establish an appraisal process for the Forest Service that is fair to taxpayers as well as current cabin owners. I would also like to thank some folks who I see in the audience who have played an important role in helping this bill along the way. Paul Allman, the Director of Cabin Owner Affairs for the American Land Rights Association, and Joe Corlett, an appraiser from my home State of Idaho. Gentlemen, thank you for all your hard work. I would also like to add my thanks to the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers for their time and attention to the details of this legislation.

Mr. SMITH. Actually, I do not have a statement at this time, Madam Chair. I will just wait for the testimony. Thank you.

Ms. CHENOWETH-HAGE. Thank you, Mr. Smith. And now I would like to recognize the author of this legislation, Mr. George Nethercutt.

STATEMENT OF HON. GEORGE NETHERCUTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. NETHERCUTT. Thank you, Madam Chairman and Representative Smith. Thank you for being here and for holding this hearing on our bill, the Cabin User Fee Fairness Act of 1999. I also want to thank the staff, Veronica Rolocut and the other staff members who have made this hearing possible. You have worked very well with our staff and we appreciate that very much.

Madam Chairman, in 1915, Congress authorized the Recreation Residence Program through the Term Permit Act, which allows families to construct rustic cabins on small lots in areas of the forest set-aside for that purpose. Twenty years ago, the U.S. Forest Service began its first appraisal cycle, basing the annual fees determined by 5 percent of the sites' land only appraised sites. This cycle of appraisals is now underway and I have heard from cabin owners on Federal lands throughout Washington, Idaho and other areas in the West who are experiencing enormous increases in their annual fees. I suspect that every Member of this Panel who may be here today has had constituents who have been affected by this reappraisal that is currently going on. So it is of interest to us as Representatives and of interest to those of us who represent people who are affected by this issue.

In Washington, Oregon and Idaho there are more than 3,400 recreation residences on U.S. Forest Service lands and today many of these cabins on Forest Service lands are still owned by the original family. They have been passed down from generation to generation and used by a wide range of people in varying economic conditions. I think this tradition is worth preserving. Speaking personally, I as a young boy had parents who felt that recreation activity at Priest Lake, Idaho was valuable and a valuable lifestyle to experience on weekends and in summers.

And so from a young age, I can recall my parents taking us to our cabin, and it was not a Forest Service cabin or a State of Idaho cabin. It was a fee simple cabin that had great freedom for the landowner to do what we wished on our lot. And I know as a young boy and now as an adult, I appreciate those times for families and for people of modest income to have a place to go in the summertime that is clean and healthy and enjoyment of our natural resources in our part of the world.

In many cases under the current appraisal procedures, these families are being unfairly penalized because of problems in the appraisal process. I currently have an ownership interest in a State of Idaho lease on the east side of Priest Lake, ID and I think the Forest Service people, cabin owners have problems. You have got to be in the State of Idaho. Our annual fees have been severely increased in our appraisals and it is my own darn fault, because I am working on this job and I am not able to be out where I like to live and enjoy the summers like we have in the past. But it is a tremendous financial burden for those of us who have State leases as well as those who have Federal leases.

I think it is also having a negative impact on the tradition of families who use these recreational residences as much during the year as they can. We do not want, I do not believe to have people priced out of the markets so that we only have millionaires or people of means who are able to use these Forest Service lands. And so with an enhanced appraisal process that results in the Forest Service or other State agencies like the one I face, looking at bottom lines and as a source of income rather than considering the value to families to have—and moderate income families to have a place to go in the summer and to enjoy the outdoors, I think we are misplacing our priorities as a Federal Government.

I think as the appraisal process are inconsistent and increase, they diminish the ability of a broad range of use of people to use these facilities.

I spoke just yesterday with a gentleman who is a retired teacher. His name is Jim Nestle, lives in Spokane, has a cabin up in Idaho on Priest Lake and has lost his wife to cancer last year. They have come up to this cabin in Priest Lake since 1952 and he said his fee is now $4,000 a year. He said I am probably going to have to sell this cabin, much to the chagrin of my grown daughters, who are not people of means, and he said I am not a person of means. I have got some retirement coming in from teaching over the years, but I cannot afford it. He said it breaks my heart to lose this tradition of ownership.

So there is a real life example of a person who is in a tough situation under the circumstances of this increase fee appraisal. This bill establishes a new appraisal process to set what I believe is a fair fee for Forest Service cabins. Under the formula established by the bill, appraisals would be based on the raw value of the land, adjusted for structures and services provided by the Forest Service. It addresses two major concerns with the current appraisal process. The appraisal methodology currently used by the Forest Service is not arriving at an appropriate value for the use of a lot by a cabin owner. A Federal property differs from private land as the Chairman stated. You have a great deal of freedom if you own the land in fee simple. If you are leasing it, you have great restrictions in terms of what you can and cannot do. You cannot cut a tree. You cannot paint the cabin. You cannot do a lot of things without getting approval which makes sense, but on the other hand, it is a reduction in value. So these modifications are important and the traditional objectives of the Forest Service under the new appraisal process, it seems to me, may not be being met because we are going to lose these older families who have been on this property for

years and really value the opportunity for middle income people to have a chance to use it.

I want to hasten, as I close to say there should not be a fee, Madam Chairman, and Members of the Subcommittee. There must be a fee. I think that is fair. But the current, I think disparity in the fee appraisal process today is problematic and that is what this bill seeks to remedy—inconsistency in appraisal values in different parts of the country and different States and it must, I think, in a fee appraisal process take into account again, this very valuable resource of having people of all income levels, not being shut out from the ability to use our Forest Service lands for recreation purposes, and the enhancement of their family needs and the family needs of all people of all income.

As I said, I do not think we want to have every cabin on Priest Lake, ID, for example, only used and owned by millionaires who can afford the exorbitant costs in some cases where others cannot.

So with that I am delighted to have a chance to testify. I appreciate your attention and would be happy to answer any questions.

Ms. CHENOWETH-HAGE. I would thank the gentleman for his fine testimony on this very important issue to those of us in the Northwest areas. The Chair would remind all parties in the hearing room that all cell phones must be turned off and that now you can put cell phones on vibrate and still get the message that somebody wants you.

So with that I would like to again thank Mr. Nethercutt and ask Mr. Smith, do you have any questions?

Mr. SMITH. Thank you, Madam Chair, I think everyone certainly agrees, George, that we do not want to send people off the land who have been there for a while for economic means and I think there would be wide support for figuring out some way to try and avoid that. But that does not necessarily, by itself, mean that fair market value is not being found here. It does happen sometimes in a given piece of property that is being leased goes up in value past the means of the person who is there to afford. It just happens, economically happens even on privately-held land, the value of the land goes up. If you are leasing it, you cannot stay there. So it can happen even if the fair market value is being accurately assessed.

And what I am most interested in is to figure out if the fair market value is being accurately assessed and if not, why not. If there is a problem here, like I said, and we have to come up with some subsidy to allow some people to stay there who have been there for a while, certainly that is something we can talk about, but it is a little different than getting into whether or not the land is being assessed. And I guess I am not really sharing clearly what it is about the market-value process right now that is wrong other than the fact that some of the properties happen to go. I think as you know, not all of them. Some of them go down, some go up a little bit and some go up a great deal, but you would think that would naturally happen in terms of assessing the value of land.

And as far as the restrictions on the use, the Forest Service at least has told me that is something they consider in determining the fair market value of the land. So I would just like to sort of get a clearer answer on what about the process is unfairly setting

the value of the land? Because if we change that, it gets into a whole lot of other issues. I will let you answer that question.

Mr. NETHERCUTT. Thanks for the question. It is a fair one. I think what bothers me about it is the rapidity of the potential for a change in the market that is not reflected in the appraisal process, as well as the discount for whether you can use it all year round. There has got to be a discount that says you have to get approval in order to do what you might want to do on your land.

I know people on Priest Lake, ID who have a public path in front of their cabin and that is not taken into consideration in my best judgment, I am informed, that you have traffic going in front of your cabin all day as opposed to having privacy in your cabin. That is not reflected in the market value appraisal and then what happens if there is a dip in the market? Is there an automatic reappraisal that takes into account that dip?

My judgment is you look at the value of the land, you discount for I guess the inability to have full control over the property that you are leasing. You take into account a discount for the ability, the inability to use the property all year round and that has got clear reduction in value that I do not think is being observed. I think they are looking more at what is the property worth here versus next door for a fee simple or other property around the corner? And so I do not think, as I understand it, adequate consideration is not given to those factors as well as when you have an increase in value and somebody sells out just because they have to sell out. I think that then puts—if the prices are so high—that it is going to have, I think, an impact on the value that you may be able to get for your cabin in 6 months. I think there is a seasonal difference in when you sell your cabin. Is it worth $300,000 today or is it worth $300,000 in the middle of winter? It probably is not worth $300,000 in the middle of winter. I think that has to be taken into account.

Mr. SMITH. You understand all that stuff, it cuts both ways. I mean I do not think if there was a sudden spike in value of the landowners, who want you to come in at that point and reappraise.

Mr. NETHERCUTT. The question then becomes: Is the Forest Service in the business of getting the highest market value it can or should it just get a reasonable value?

Mr. SMITH. That is a question I wanted to ask. Do you agree or not that the policy of the Forest Service ought to be to get fair market value?

Mr. NETHERCUTT. I think the question of fair market value is subject to different definition.

Mr. SMITH. Certainly.

Mr. NETHERCUTT. But I think that the market is subject to such change that it is very difficult to get fair market value at the time that the appraisal is made. So how do you know what the fair market value is going to be today? It may be different in 2 weeks. So we do not want the Forest Service doing reappraisals every month. So I think what they had best be advised is to look at the historical value of the land, consider the potential for increases in market value and then build in some kind of an inflation factor so there is some certainty on the part of the lessee so they can say, "All right, I can accept the fact that it is worth $100,000 today, but

then let us set over the term of the lease some sort of incremental increase that does not subject me to a $3,000 increase in 2 years." Everybody agrees on a number and the lessee and the lessor come in and say, "Here is my value, here is your value," and they say, "OK, it is worth $100,000, but we are going to increase it 2 percent a year or factor in inflation or something," rather than say in 2 years, "Gosh, it is worth $3,000 more a year. You have got to pay that."

Mr. SMITH. Right, and I guess in looking at the bill I am not sure we completely capture all of the things that you just said. I would be interested in getting there. It seems to me to be a little bit less specific what is contained in the bill and you talk about a fair fee. What is that? It just seems to me I am kind of hearing two messages. No. 1 is we want to get fair market value. No. 2, we do not want that fair market value to be too much.

Mr. NETHERCUTT. Right.

Mr. SMITH. And I hear that, OK, but it is kind of a contradictory statement and maybe there are things that we need to work out for a specific situation here like I said, to say, "OK, fair market value is not going to be the goal. We have got some people who we need to protect here." But if we are doing that, maybe we should specify who it is we are going to protect as opposed to protecting everybody regardless of economic means.

So as I look through this further and I know I am out of time, but I want to sort of answer that question because it seems to me like the main part of the argument is there are some people who are being priced out by the fact that fair market value is being assessed at a high level that they simply cannot afford. As you know in our State, we have the same problem with property taxes.

Mr. NETHERCUTT. Sure.

Mr. SMITH. With people whose properties—they may have bought a house on Mercer Island for $20,000 30 years ago, but now it is worth a couple of million, we should all have such problems, by the way——

Ms. CHENOWETH-HAGE. The gentleman's time is up.

Mr. SMITH. OK, can I just wrap up, 10 seconds. Anyway, I just want to look at the bill and make sure that we assess that and also I want to hear from you and from the sponsors. What are we trying to do here? Are we trying to get a fair market value or are we trying to protect people who are being hurt by economics. Those can be two different things and I want to make sure we account for that. Thank you.

Ms. CHENOWETH-HAGE. Mr. Schaffer is recognized.

Mr. SCHAFFER. Thank you, Madam Chairman. I actually do not have any further questions. I think the gentleman from Washington has covered any questions I might have had in his opening remarks, but I would yield him with time I have if he has any additional response to the previous question.

Mr. NETHERCUTT. Well, thanks, Representative Schaffer. I would justm state that I do not think it should be the sole objective of the Forest Service to get fair market value. I think there is great value that ought to be factored into the appraisal process about whether the tenant has been a good tenant, whether they have taken care of the property, whether they are good stewards of the land. There

ought to be some equity with respect to what is their economic condition, what are we going to face with respect to hardships on people, in particular.

Now I have not drafted that all into this bill, but I leave it to the good judgment of the Subcommittee and the Committee to work with us and we work with you and others who have an interest to try to figure that out. But I think there has to be some sensible determination that includes these various factors of lack of freedom over your property and lack of annual full-time use and hardship on families and ability to have people have access to the land and the tradition of having a tenant have that property continue in their control.

Ms. CHENOWETH-HAGE. Mr. Schaffer, did you yield your time to Mr. Smith? OK.

Ms. Napolitano, you are recognized for questions.

Ms. NAPOLITANO. Thank you, Madam Chair. In reading some of the background material and looking at some of the information that has been given to us, it seems that there is an issue with cabin holders' ability to pay in some instances.

Could you tell me in that particular instance because I understand that it was indicated that nationally more than 58 percent of the people with cabin permits have either had decreases or relatively moderate increases in permit fees. What do you consider moderate increase?

Mr. NETHERCUTT. I do not have any definition of moderate increase because it goes across the board. I think it is kind of like pornography. I know it when I see it. I think $4,000 increase is too high. And a lot of it depends—if you are a millionaire, it does not bother you, but if you are a person of moderate income, it is going to have an impact on you.

Ms. NAPOLITANO. Then again, I bought my home again for $14,500 almost 40 years ago. It is now up in the quarter of a million. I pay taxes.

Mr. NETHERCUTT. Sure.

Ms. NAPOLITANO. All of us have to pay taxes and I am assuming that these individuals who live in these cabins are not there full time. This is not their full time home or residence.

Mr. NETHERCUTT. I cannot speak for the entire country, but I would say you are right, for most of them it is not their full time residence, but they do not own it either. You own yours. You own your home. You can paint it any color you want. You can put trees on it. You can cut them down.

Ms. NAPOLITANO. This is by choice.

Mr. NETHERCUTT. Sure, well, sure it is.

Ms. NAPOLITANO. Right. So essentially, and I agree—especially if those individuals who are on fixed incomes—that they should have some kind of ability to not necessarily negotiate, but be able to be considered less able, if nothing else, to be able to meet those obligations, if it goes up by a tremendous percentage.

The estimate of the amount of money that the Department is going to lose is somewhere in the vicinity of $4 million?

Mr. NETHERCUTT. I do not know that. Is that the case?

Ms. NAPOLITANO. Eight to twelve million dollars is what we are hearing.

Mr. NETHERCUTT. Assuming that the appraisals are accurate and the appraisal process is fair. I mean you could set the appraisal at $500,000 a cabin and then argue that they are going to lose an awful lot more.

Ms. NAPOLITANO. Right.

Mr. NETHERCUTT. The challenge is what is the fair market, what is the fair appraisal?

Ms. NAPOLITANO. Just taking a low ball figure, who is going to make up for that added income for the Forest Service to be able to provide those residents with the support that they need?

Mr. NETHERCUTT. Well, as one who sits on the Appropriations Committee and the Interior Subcommittee, and looks at the resources that come into the Forest Service, I would think that that is a minor problem for the Forest Service, that amount of money, rather than a very major one.

What would happen would be, I am informed by my staff, it goes back to the General Treasury.

Ms. NAPOLITANO. OK. Well, I just needed some information to clarify where that additional funding would be able to come through. Thank you.

Mr. NETHERCUTT. Thank you.

Ms. CHENOWETH-HAGE. I want to say for the record that you sure have got a compelling case for the fact that the families that play together, stay together and I keep saying that about activities on our forest lands. I am also aware of the family traditions of people of ordinary means and the fact that it was the purpose, stated by Gifford Pinchot and President Theodore Roosevelt, to have people settled in the national forests so that they can be, in essence, watchdogs. Watchdogs for any mischief in our national forests and it is somewhat sad to see the way it has changed. But I think that you have brought a very well thought out bill to the Committee and I think that it will help straighten out some of the ambiguities in the process. Thank you very much for your good work.

Mr. NETHERCUTT. Thank you.

Ms. CHENOWETH-HAGE. On my time I would yield back to you, the witness, if you have any further statements that you might make for the record?

Mr. NETHERCUTT. Well, only to thank the Committee for its attention and for your gracious welcome. I just think it is a problem that cuts across the country. It really is something that I think the Congress should address and it should be done fairly and thoughtfully. I am not saying no fee. I am just saying I think the spikes are going to have lasting consequences, these spikes in income or valuation are going to have lasting consequences and may result in a different profile of person or family or individuals who use these lands for recreational purposes, contrary to the original intent and I think that original intent is a valid one. It should be sustained and I think it can be sustained if this Subcommittee comes forward with a markup on this bill, reporting it out in a way that is fair to the Forest Service, but also fair to the values that are established by family use of these properties at reasonable costs.

I thank you for your attention, your time, all of you, especially you, Madam Chairman.

[The prepared statement of Mr. Nethercutt follows:]

STATEMENT OF HON. GEORGE R. NETHERCUTT, JR. A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Thank you Chairman Chenoweth-Hage for this opportunity to testify today in support of legislation I introduced last fall, H.R. 3327, the Cabin User Fee Fairness Act of 1999. I appreciate your holding a hearing on this issue of great importance to the families that own cabins on U.S. Forest Service lands in the Pacific Northwest and on our public lands throughout the country. This hearing is an important first step toward finding a workable, permanent and fair solution to the problems raised in the appraisal process over the last few years. I want to thank you for working with us to make sure that happens.

In 1915 Congress authorized the Recreation Residence Program, through the Term Permit Act, which allows families to construct rustic cabins on small lots in areas of the forest set aside for this purpose. In fact, in Washington, Oregon & Idaho there are more than 3,400 recreation residences on U.S. Forest Service lands and today many of these cabins on forest service lots are still owned by the original family, having been passed down from one generation to the next. I believe this is a tradition worth preserving. Unfortunately in many cases under the current appraisal procedures, these families are being unfairly penalized because of problems in the appraisal process. This is having a negative impact on the tradition of family cabin ownership of these cabins—by pricing out the families this was set up to help. Let me be clear in stating that I do believe the cabin owner should pay a reasonable and responsible fee to use the lands. However, the current appraisal process will diminish opportunities for families to use these lands. This is why I introduced H.R. 3327, the Cabin User Fee Fairness Act of 1999.

Twenty years ago, the United States Forest Service modernized the fee determination process by providing for a twenty-year reappraisal cycle as the basis for periodically redetermining the user fees for occupancy of these forest lots. The first round of reappraisals began three years ago and unfortunately problems have arisen with the fairness of the reappraisal. For example, in nearly identical situations in Idaho and Kentucky, cabin owners in Idaho who have seen an increase of 100 percent above what they are currently paying will pay a new average fee of $1,783 annually, while cabin owners in Kentucky will pay $140 annually.

H.R. 3327 will establish a new appraisal process to set a fair fee for Forest Service cabins. Under the formula established by the bill, appraisals would be based on the raw value of the land, adjusted for structures and services provided by the Forest Service. The Cabin User Fee Fairness Act will address two major concerns with the current appraisal process. First, the appraisal methodology currently used by the Forest Service is not arriving at the appropriate value of the use of a lot by a cabin owner. Federal property differs from private land in that the owners do not maintain the same rights and privileges to their property as those held by private landowners. For example, permit holders cannot make modifications to the land or their cabin without the approval of the Forest Service; they cannot reside in their cabin on a year round basis and they cannot deny others access to the land on which the cabin is built. In contrast, a cabin owner on private land can live in the cabin year round, subdivide the land, install a swimming pool hot tub or sauna, cut down old trees and plant new ones. The cabin owner cannot make these types of improvements to the actual facility on Forest Service land. These factors should be taken into consideration in the appraisal process—but under the current process, they are not.

A second major concern is how the traditional objectives of the Forest Service are changing under the new appraisal process. Families have dominated recreational residences. Some of these families are older, some younger and some span generations, but the existence of families, many from relatively modest economic backgrounds, enhance the mission of the Forest Service to provide for the public at large. A dramatic and rapid fee increase diminishes the family atmosphere of the areas. Public lands exist for the enjoyment of a broad spectrum of Americans and dramatic fee increases hurt this objective.

In each of the last two years, Congress enacted stopgap measures through the Interior Appropriations Subcommittee, on which I serve, to increase the fee rates gradually while we could develop a long-term solution. I believe the legislation I introduce today will provide for such a permanent solution to the problem. For that reason, on November 10, 1999 I introduced H.R. 3327, the Cabin User Fee Fairness Act. This bill will establish a new appraisal process to determine a fair fee for the value of the use of the lot to the cabin owner. Under the formula established by my legislation, appraisals will based on the raw value of the land, adjusted for structures and services provided by the U.S. Forest Service. While my legislation

may not be perfect, I believe it is a step toward finding a fair way to address the discrepancies in user fees across the country.

Thank you again Madame Chairman for the opportunity to testify and I look forward to working with you on this legislation.

Ms. CHENOWETH-HAGE. Thank you, Mr. Nethercutt.

The Chair would recognize the second panel now for their testimony. By unanimous consent, I request that Representative Nethercutt be given the permission to sit on the Subcommittee, if you have time.

Mr. NETHERCUTT. I would be glad to.

Ms. CHENOWETH-HAGE. All right, thank you. And now I will introduce our second panel. I am just thrilled to be able to introduce an acquaintance of mine, Mr. David Mead, president of the Sawtooth Forest Cabin Owners' Association of Twin Falls, ID; Ms. Mary Clarke Ver Hoef, National Forest Homeowners of Sacramento, CA.

Ms. Ver Hoef, it is my understanding that your son is in the audience today and I would like to take a moment here to welcome Logan. Logan, would you stand, please? Welcome, Logan. I really want you to know how much I appreciate your Mom's work on this issue. Thank you for letting us have her. And now last, but not least, I would like to introduce Mr. Richard Betts of Betts & Associates in Berkeley, CA.

As explained in the hearings that we have had before on this Committee is the intention of the Chair to place all witnesses under the oath. This is a formality of the Committee and not at all intended to inhibit any testimony, but to assure open and honest discussion of the witnesses. I believe that all witnesses were informed of this before appearing here today and that you have each been provided a copy of the Committee rules. Now if you will please stand and raise your hand?

[Witnesses sworn.]

Thank you. The Chair recognizes Mr. David Mead.

STATEMENT OF DAVID R. MEAD, PRESIDENT, SAWTOOTH FOREST CABIN OWNERS' ASSOCIATION, TWIN FALLS, ID

Mr. MEAD. Madam Chairman, I am David Mead of Twin Falls, south central Idaho. As a country banker, now retired and an accredited rural appraiser, retired member now of the American Society of Farm Managers and Rural Appraisers, I am here today to testify in support of H.R. 3327, the Fairness Act of Cabins.

I am here today as president volunteer of Idaho's Sawtooth Forest Cabin Owners' Association. My special use permit allows me a cabin on a half acre lot of raw, native, undeveloped land on one of the tracts in the forest. National average lot size is about one quarter of an acre. That means all cabins take up only about 4,000 acres within the 192 million acres on the national forest lands. These cabin lots are not for sale. This is not a real estate transaction. These are not second homes. Our Sawtooth Forest cabin lots were reappraised in 1996, some of the first in the Nation. We were stunned by the results. Fees in our tract increased over 540 percent from $390 per year, too low, to $2,500 a year, too high. Each family then was forced to decide whether the limited seasonal use and Forest Service heavy restrictions were worth the fee increases or

not. Some cabin owners sold immediately. Most of us got second appraisals for it was evident that the Forest Service's first appraisal was based on the cabin lots being fully developed within legally subdivided neighborhoods as fee simple properties, not as raw, undeveloped, natural, native lots without improvements as stated in the Forest Service policy.

My small log cabin my family built has no electricity or plumbing or phone. We have an outhouse and carry our water in a bucket from a creek up the hill. This bill will provide relief to some 15,000 cabin owners in 25 States and Puerto Rico who mostly, suddenly face alarmingly and exceedingly high permit fees.

In our high profile cabin area, the Pettit Lake Cabin Tract, new fees are scheduled to go from around $1,100 a year, too low, to from between $22,500 a year up to $67,500 a year. These permits contain many Forest Service restrictions on our use of the lot and I have attached a list of these to my written testimony. The cabin permit is one, among other documents, that must be read to understand the values of positives and negatives to be considered during the appraisal process. However, the major problem is that the appraisal methodology utilized by the Forest Service in this round has proven to be inconsistent and unreliable and permittees quickly learn that there is no inclination within the Agency to solve the several problems that plague the fee determination process.

The unquestionable piece of evidence that validated the flaw in the current system is that the Forest Service accepted the results of our second appraisal setting aside their own first appraisal report. It appears that only further guidance from Congress will succeed in sorting out the conflicting objectives the Forest Service faces. On the one hand, Congress and the GAO has directed resource agencies to maximize revenues from the Federal lands and in so doing, the agency has contrived a system that now will capture more than the fair market value of the cabin owners.

On the other hand, both Congress and the Forest Service made commitments to the American people to provide ample opportunities for appropriate, affordable recreation on Federal lands, diverse recreational opportunities for average families and individuals with average or lower incomes or pensions. The new cabin fees make unaffordable for most one of the oldest recreational programs, the cabin program, authorized by Congress in 1915.

The policy objectives need not be in conflict. The program has been providing families with affordable recreation for decades. The legislation preserves that program objective and returns fair market value. Forest Service cabin lot permit fees are very different and far less than private cabin fees. You can see from the large easel we have over here, we Forest Service cabin owners have very few rights compared to the private owners. One of the biggest differences is that we cannot prevent public access on our lots, except within our cabins. It is only that and two other limitations on our chart that were originally to be covered by the 5 percent factor. As a banker type, I will leave with one fundamental professional observation. Assuming credit worthiness, I would approve a mortgage to an owner or prospective buyer of a fee simple parcel, but even assuming vast riches, no banker would grant mortgages for the assets that is a cabin authorized on forest land under this program.

Thank you for support of this Fairness Act to Cabins. Thank you Madam Chairman and Committee.

[The prepared statement of Mr. Mead follows:]

Testimony Before the U.S. House of Representatives
Subcommittee on Forests and Forest Health
House Committee on Resources
Washington, DC - March 23, 2000

H.R. 3327, the Cabin User Fee Fairness Act of 1999

by
David R. Mead
Twin Falls, Idaho
President, Sawtooth Forest Cabin Owners Association

Representing the Association, as well as the Mead
family--cabin owners at the Valley View tract
in the Sawtooth National Recreation Area,
Sawtooth National Forest, Idaho

Madam Chairman, I am David Mead, a long time citizen of Twin Falls, Idaho, which as you know is in south central Idaho on the Snake River Plains. The area's base economy is from value added natural resources—farming, ranching and food processing, some timber, and mining. As in most areas of Idaho, the policies and practices of federal land managers substantially determine the economic viability of each community. These same forest supervisors and BLM area managers also make day-to-day decisions that determine whether my family and my neighbors will continue to enjoy affordable opportunities for outdoor recreation on the public's lands.

In my case, I am a National Forest cabin owner lot permittee. A special use permit issued by the Sawtooth National Forest allows me to maintain our family cabin on a half acre lot of the forest's natural, undeveloped land at the southern end of the Sawtooth Valley. This permit also contains many restrictions on our use of the lot, and I have attached a copy to my written testimony. The cabin permit is one, among a few key documents, that must be read to understand the values, both positive and negative, to be taken into consideration in the appraisal process.

I am also the president (volunteer) of the Sawtooth Forest Cabin Owners Association, which represents the 181 families with cabin permits at various tracts located within the Sawtooth National Forest. I am representing both the Sawtooth Forest Cabin Owners Association and my own family today.

I am here to support Congressman Nethercutt's legislation, H.R. 3327, the Cabin User Fee Fairness Act of 1999. The bill will provide relief to nearly 15,000 of families in 25 states and Puerto Rico, who suddenly face alarmingly and excessively high cabin lot fees.

Cabin fees are being recalculated throughout the forest system, based on the results of a routine reappraisal of the lots underlying these cabins. This is a process that normally recurs under current policy every 20 years, but should occur more frequently. However, appraisal methodology utilized by the Forest Service in this round has proven to be inconsistent and unreliable, and cabin owners learned quickly that there is no inclination within the agency to resolve several problems that plague the fee determination process.

It appears that only further guidance from Congress will succeed in sorting out the conflicting objectives the Forest Service faces, as well as unnecessary problems the Forest Service has created. On the one hand, Congress and the General Accounting Office have directed resource agencies to maximize revenues from federal lands, and in doing so the agency contrived a system that now will capture more than fair market value from cabin owners.

On the other hand, both Congress and the Forest Service made commitments to the American people to provide ample opportunities for appropriate, affordable

recreation on federal lands—diverse recreational opportunities for average families and individuals with average or lower income or pensions. The new cabin fees make unaffordable for most families one of the oldest recreation programs—the cabin program—authorized (in 1915) by Congress.

These policy objectives need not be in conflict. Congressman Nethercutt's legislation sorts out the elements of revenue-driven policy objectives and the recreation program policy objectives, allowing the Forest Service to meet both sets of obligations.

I'd like to share with the subcommittee details of our experiences in Idaho that are already well known to Chairman Chenoweth-Hage.

I last paid an annual fee based on the earlier appraisal of my lot (20 years ago) in December 1996. The fee was $390, and that was actually too low, despite the original base fee having been annually adjusted for inflation over a 20 year period in which the national economy was overall very strong, however much of our regional economy in south central Idaho was actually in decline. This failure to keep pace with the national economy tells us something about an important feature of the Forest Service policy that guides cabin fee administration: the index that currently measures and adjusts for annual inflation (or deflation) is fundamentally flawed and must be replaced, as is required by Congressman Nethercutt's bill.

The lots in our cabin tracts in the Sawtooth were among the first (in 1996) to be appraised by the Forest Service in the current round of reappraisals. The 34 families at the Valley View tract, where my cabin is located, were stunned by the results—a 541% increase in each of our cabin lot fees, from $390 annually to $2,500. Each family had to consider carefully whether the limited seasonal use of the cabin justified this extraordinary hit on the family budget. For most families, it was readily apparent that such an increase was simply unaffordable, and the cabin would have to be sold to people with much greater discretionary income.

The Forest Service policy allows the cabin owner to obtain and pay for a second appraisal by an outside appraiser of the cabin owner's choosing. The cabin owners at Valley View chose to hire an appraiser for this purpose, because it was evident from reading the first appraisal report that the "typical lot" chosen at Valley View for appraisal was treated as if it were a fully developed lot within a legally subdivided neighborhood of fee simple second homes. I can offer that observation with a considerable degree of confidence. I am a retired country banker, and I've dealt with appraisal data from both urban and rural transactions throughout my career. I'm also an accredited rural appraiser of the American Society of Farm Managers and Rural Appraisers (retired).

The appraiser we hired at the Valley View tract was required by the Forest Service to use the same appraisal guidelines that had been provided to agency

appraisers for their initial appraisals. This set of appraisal guidelines is flawed and inappropriately changes the rules of the road with respect to determining proper value for land in an undeveloped "natural, native state" as expressed within and required by the agency's own policy. Nonetheless, our appraiser worked within those guidelines, but determined the value of the "typical lot" at our tract to be dramatically lower than the Forest Service's appraisal results.

For those of you who have not visited cabins in the program, it might help put what you're hearing from me in better perspective if I pause to describe the log cabin my family built in 1975. Our general location is reached by a dirt road built by the Forest Service. As is typical of all cabin tracts, my family then cleared the dirt lane that runs up a steepish hill to within about 150 feet of the cabin's door. The terrain becomes very steep at that point, and we haul goods and gear up this final slope on foot.

There is no electricity. We use kerosene lanterns. We have no phone. My wife and I, and the kids and the grandkids, carry water to the cabin in a bucket from a small stream over the hill. We rigorously maintain an outhouse, consistently meeting appropriate health and environmental standards. Food is refrigerated in an "Ice Box", meaning a primitive example of the very earliest technology. Had we elected to provide ourselves with more amenities, as a good number of cabin owners in some other forests have elected to do, my family and myself would be responsible for these additional costs and risks and, presumably, benefits--not the Forest Service.

The fee that resulted from our second appraisal was $1,750, an increase of approximately 350%. The increase resulting from this second appraisal came far closer to my own expectations, but also keep in mind that the independent Idaho-based appraiser hired by our tract was required to do his data gathering and analysis, using the same set of appraisal instructions the Forest Service had given its own initial in-house appraiser.

The new fee resulting from the second appraisal is much lower, but nonetheless unaffordable to a number of our families at Valley View, and only marginally affordable to many others. They are facing tough decisions. Some of our cabin owners have already bailed out, and the buyers of these cabins are wealthy. As we feared and predicted, the "cash cow" appraisal objectives that appear to drive the Forest Service are now driving retired people and average income families out of the forests.

Put aside for the moment your personal opinion about whether $1,750 is too little or too much for the government to be receiving annually as fair market value for use of a quarter or half-acre parcel of undeveloped raw land. The real issue here is the wide variance between two appraisals, each undertaken with the same set of instructions. In the first instance, a Forest Service appraiser examined the comparable sales, and in the second instance these sales were

examined by a local, Idaho-based appraiser experienced in rural land transactions within the market area that affects the value of the lots underlying our cabins. An unquestionable piece of evidence validates this variance as a fundamental flaw in the system: the Forest Service accepted the results of our second appraisal without taking exception to any element of the second appraisal report.

The subcommittee needs to also know about appraisal results elsewhere in the Sawtooth National Recreation Area, some two-plus miles away from our Valley View tract as the crow flies. And here, at the Pettit Lake tract, we can also compare new cabin fees at Pettit Lake to new Forest Service campground fees that will kick in this year.

Cabin owners at Pettit Lake enjoy a significant natural amenity not present at our tract—a small lake that is one of a string of moraine lakes running through the region. A few cabins have lake frontage; others have a lake view, although at many of the individual lots this view is obstructed by trees. Otherwise, many cabins at the Pettit Lake tract are very old, and some resemble my own cabin with respect to primitive conditions.

Also present at the Pettit Lake tract is the "poster child" cabin for purposes of quite an array of media coverage about the cabin fee issue. This is the structure and outbuildings built in recent years by a well-known public personality. Objections to various violations of the Forest Service's cabin policy were overcome by high level political intervention, and the lot now supports an outsized main dwelling and additional structures that have housed security and domestic staff from time to time. While this owner's cabin and outbuildings cannot be considered to be "typical," it is the lot that was to have been appraised in a "natural, native state." The result is a new annual fee that exceeds $30,000, and fees nearly as high are also be charged to people I consider to be "typical families."

Families at the Pettit Lake tract are the worst hit, to date, by flaws in the appraisal methodology utilized by the Forest Service. The forest lots appraised at Pettit Lake are within the influence of the Sawtooth NRA real estate market. Here, large acreages of fee simple land have been acquired by the federal government and a multitude of easements have been bought for conservation purposes. Federal acquisition has made the availability of truly comparable market evidence from sales of parcels of undeveloped, raw land as scarce as hen's teeth.

Further, this market is deeply influenced by the proximity of recreational real estate development at Sun Valley—an influence on real estate values at Pettit Lake, but for these forest cabin owners, Sun Valley is not an actual amenity related to, or adding value to, their day-to-day activities, interests or enjoyment of their cabin.

The results of the reappraisals at Pettit Lake were astonishing. The annual fee for the majority of cabin owners jumped from $1,114 to $22,500—an increase of 1,900%. At the high end of the range of values determined by the Forest Service appraiser, the annual fee for occupancy of a "natural, native state" lot is $67,500.

Cabin owners at the Pettit Lake tract elected without a minute's hesitation to seek a second appraisal. The results from the second appraisal have been in the hands of the Forest Service for over a year, and the agency is obviously treating the appraisal report with "kid gloves"--if I might use such a term to underscore that the 23 families involved have yet to receive a response from the agency.

There's an interesting comparison of Forest Service special use fees at Pettit Lake that the subcommittee needs to consider. It's a small lake, shared by a variety of visitors doing a variety of things. The Forest Service provides a campground for visitors, not too far away from the cabin tract. Some visitors elect instead to camp within the cabin tract on the "yards" of the cabins, which these forest visitors have every right to do. Only the "footprint" of the cabin structure itself is privately owned, and the public is free to wander at will on any forest land not within the walls of our cabins. Cabin owners generally make an extra effort to let the public know they are welcome to camp or picnic within the "boundaries" of a tract, because we would otherwise invite opposition to the existence of the cabin recreation program.

The Forest Service campground at Pettit Lake provides developed campsites at no charge to the public. In the coming season, however, the Forest Service announced last week that the agency will for the first time begin charging $6 or $7 per night for each campsite. The agency will spend "several hundred thousand dollars" (according to press coverage) to add 13 additional individual campsites to the existing inventory of campsites, for which I can't provide overall capacity statistics.

Let's do the math based on charging $6 per night per campsite, calculated over the four and one half months in which cabins at the Pettit Lake tract are accessible by their owners:

- A hypothetical long term camper would pay $810 in fees to the Forest Service during this period for the privilege of continuously occupying a small parcel developed by the Forest Service at considerable taxpayer expense, and in these months the Forest Service will provide an individual cooking pit at each campsite, restroom facilities, trash disposal, hazard abatement, and other maintenance and amenities.

- The majority of Pettit Lake cabin owners will pay $22,500 in fees to the Forest Service for this same period for the privilege of occupying bare land at their

own expense with full responsibility to comply with highly restrictive terms and conditions contained in the policy and the special use permit. The cabin owner has the obligation to fully indemnify the federal government in any liability exposure the Forest Service might experience from our occupancy. The Forest Service has the ability to block the cabin owner from renewing the permit, from selling the cabin, or from replacing the cabin in the event of a natural disaster. Along with that thin "bundle of rights," the cabin owner is solely responsible for the family's "cooking pit," sanitary facilities, water supply, fuel, access, maintenance and liability.

Cabin owners made the investment in infrastructure and amenities—certainly more cost effectively than the "several hundred thousand dollars" being spent by the Forest Service at Pettit Lake to make space for 13 more families each night. We'll continue to pay our own way. We always have.

The announcement last week by the Forest Service about the new fee for camping at Pettit Lake perfectly illustrates the inconsistency in policy that affects forest users. This complex system of inequities between forest users, their diverse activities, and whether they pay big fees, or small fees, or no fees could not be more apparent than as managed within the Sawtooth National Forest.

The cabin fee coalition, in which I've been participating regularly, developed a chart outlining the real differences between owning a cabin on private land and having one on a National Forest. Time is too short to read these differences to you now, but they are contained in my written testimony and are on the easel in the hearing room.

These are the significant differences that the coalition calls the "bundle of sticks":

Rights on Private Land:

1. Can prevent trespass
2. Live in cabin year round
3. Sell cabin with no restrictions
4. Lease the cabin
5. Give the cabin away
6. Put cabin in a family trust
7. Subdivide the land
8. Will/bequeath cabin and land
9. Have multiple owners on the title
10. Borrow against it
11. Run a business from it
12. Use it whenever you choose
13. Control who walks on or near it

Rights on a National Forest:

1. Control only cabin footprint (cabin interior only; public can use lot)
2. Vacation cabin only
3. Sell only to a USFS approved buyer
4. Rent up to 15 days annually, but only with USFS approval
5. Put cabin in a family trust

Rights on Private Land: **Rights on a National Forest:**
(continued)

14. Add buildings
15. Install a swimming pool/hot tub/sauna
16. Landscape any way you choose
17. Cut down old/plant new trees
18. Paint whatever color you choose
19. Remodel/enlarge the cabin
20. Put up signs, fences & clothes lines
21. Maintain it as you see fit
22. Remove hazards as you see fit
23. Have horses or cattle around your cabin
24. Allow your pets to run loose
25. Have any number of cars in your driveway
26. Services of local fire department
27. Services of local police department
28. Services of local sanitation department
29. Services of local water & power utilities
30. Have mail/newspaper boxes
31. Have children's play equipment
32. Plow snow from road, driveway and lot
33. Have Rvs, trailers or boats on your lot

As a retired country banker, I will leave you with one fundamental, professional observation. Assuming credit worthiness, I would approve a mortgage to the owner or prospective buyer of a fee simple "native, natural" parcel. Assuming vast riches, no banker would ever grant a mortgage for the "asset" that is a cabin authorized for occupancy and use on a National Forest under the cabin program.

Nor have cabin owners ever sought this level of "property right." It is a privilege for my wife and me to enjoy our retirement in the forest each summer, for however long we are able to drag food, water and goods up that last 150 feet between the lane and our front door. It has been far more than a mere privilege to raise our children in harmony with the Sawtooth Valley—it was a remarkable opportunity to expand their lives beyond day-to-day urban life in Twin Falls. Today, all but one of our six children have settled in major western cities. They return with the grandchildren like homing pigeons to the family cabin in the Sawtooths. Their values, and the experiences of so many of their friends that they bring along to stay at the cabin, are permanently measured against the "native, natural state" experience in the Sawtooth National Forest that creates personal integrity and lasting memories.

Can a Forest Service appraiser factor in human values of this magnitude? No, nor should they. But the Congress certainly needs to take into account the social and physiological value of the cabin program. The objective is the forest

experience, creating in each generation a constituency for good stewardship on the National Forest System. A return of fair market value for the privilege and opportunity to be a forest citizen is embodied in the law, and H.R. 3327 also fulfills that objective.

Madam Chairman, you were the first to hold a hearing on this issue in the fall of 1997, when the first results in this current reappraisal of the cabin system demonstrated, at the Sawtooth National Forest, that something was wrong. I am grateful for how promptly you moved. Cabin owners in both northern and southern Idaho know that you, Senator Craig and Congressman Nethercutt created the space and the opportunity for cabin owners to sort through appraisal and fee methodology issues that the Forest Service is not inclined to "cure."

I've regretted that it has taken all of us so long to identify, and reach consensus, on a reliable solution in H.R. 3327, but I'm comfortable today in realizing that good, long term policy evolves slowly. The problems we confront as cabin owners are absolutely unique, and these conflicting values and bundle of rights are virtually unprecedented in normal appraisal activities. The solution drawn by Congressman Nethercutt from this effort is good policy and is sufficiently specific in its direction to the Forest Service that it will hold up over time.

I'd like to close by expressing the gratitude of cabin owners in Idaho to Congressman Nethercutt. The enactment of his legislation, H.R. 3327, will become one of those landmark "household words" that passes from one generation of cabin owners to their children and grandchildren. But Mr. Nethercutt has also been our stalwart from one year to the next at the Interior appropriations subcommittee, a loyalty and caring for the cabin program that goes largely unnoticed by cabin owners who are not directly involved as watchdogs over political or regulatory concerns.

I simply want to say to Mr. Nethercutt that his efforts on our behalf are known by many cabin owners, certainly from the State of Washington and increasingly throughout the country. The reappraisal situation has been a wake-up call for cabin owners who trusted that their good relationship with the local ranger was all that was needed to keep this Forest Service recreation program working effectively. Not necessarily so. The world has changed. The pressures are different now, for both the cabin owners and the hard-pressed field staff of the Forest Service. ALL cabin owners will learn in time that Congressman Nethercutt is one who continues to step forward to maintain fairness and good balance in the determination of cabin fees and in the administration of the program overall.

Madam Chairman, let me say once again how much I appreciate the opportunity to testify and continue to appreciate your leadership in our behalf.

United States Department of Agriculture | Forest Service | Sawtooth National Forest
2647 Kimberly Road East
Twin Falls, ID 83301-7976
Telephone: (208) 737-3200

9-15-1994 = 12 M.

Reply to: 2720

Date: September 15, 1994

David R. Mead
2045 Hillcrest Drive
Twin Falls, ID 83301

CERTIFIED MAIL-RETURN RECEIPT REQUESTED P 391 370 086

Ref: "Terra Bright Cabin - Valley View Permit -

Dear Mr. Mead:

In early June, 1994 our Washington Office sent you a copy of the June 2 Federal Register Notice of the Forest Service's revised policy for administering recreation residence permits on the National Forests. The policy revision was necessary as a result of an administrative appeal of the policy we adopted in August 1988. That appeal decision determined that certain parts of the 1988 policy exceeded the authority given to the Forest Service by law and regulation and were, therefore, void. This also voided certain terms in your special use permit since they were based on the policy. You were advised of the voided clauses in the spring of 1989; or, if you acquired your cabin after February 1989, the permit you received lacked the flawed clauses.

Now that the revised policy is final, we must make appropriate revisions to your permit. Please attach the enclosed revised standard terms and conditions to your current permit. We have prepared these revisions in the form of a complete permit with the replacement clauses underlined for your convenience. We assure you that the revisions are confined to those necessary to comply with the revised policy. The revised clauses are found in Sections VI.C.2, VII.C, IX.A, B, and C, and X.A and B. There are also minor single-word, editing changes to bring your permit up-to-date with current law and regulation. For example, the word "lot" is substituted for the word "site" when referring to the permitted area.

Please note that the replacement clauses concern the renewal, revocation, and termination of the permit. They describe the procedures the Forest Service must follow if recreation residence use were to be discontinued. The clauses state our obligations to you. Since there are no clauses governing these areas in your current permit, we are certain you will welcome the assurances that the revised terms and conditions provide.

Replacement of terms and conditions is a decision subject to administrative appeal pursuant to Secretary of Agriculture Appeal Regulations 36 Code of Federal Regulations 251, Subpart C. Any appeal must be in writing, be fully consistent with 36 CFR 251.90, "Content of Notice of Appeal" including the reasons for appeal, and must be filed within 45 days from the date of this letter. The Chief of the Forest Service is the Authorized Officer for this action. Thus, an appeal must be addressed to the U.S. Department of Agriculture, James R. Lyons, Assistant Secretary for Natural Resources and Environment, Room 217-E, Administration Building, Washington, D.C. 20250. Simultaneously send a copy of the Notice of Appeal to: Chief, USDA Forest Service, P.O. Box 20090-6090. The phrase "Forest Service Recreation Residence Appeal" should be placed on the front of the envelope.

P. 1 of 2

(1)

If you have questions or concerns about these revisions to your permit, please discuss them with us. We are available to help you understand the revisions to the policy and to your permit. Please contact Lee Smith at our Twin Falls office for assistance.

Sincerely,

JACK E. BILLS
Forest Supervisor Sawtooth National Forest, Idaho

Enclosure

P.2 of 2

(2)

Rec'd 9-15-94

REPLACEMENT TERMS AND CONDITIONS FOR PARTS I - XI. FS-2700-5a (01/94)
FOR EXISTING TERM PERMIT ISSUED ON 01/23/89 . OMB No. 0596-0082
Expires 06/30/96

USDA - Forest Service	Holder No.	Type Site	Authority
TERM SPECIAL USE PERMIT For Recreation Residences			712
	Auth. Type	Issue Date	Expir. Date
		/ /	12/31/08
Act of March 4, 1915, As Amended ~~(Ref. FSM 2710)~~	Location Sequence No. 041904166702		Stat. Ref.
	Latitude 43 -52- 77	Longitude 114 -57-53	LOS Case

David R. Mead (Holder Name) of 2045 Hillcrest Drive (Billing Address - 1)

Twin Falls ID 83301

(hereafter called the holder) is hereby authorized to use National Forest lands, for a recreation residence for personal recreational use on the Sawtooth National Forest, subject to the provisions of this permit including items 1 through 11, on page(s) 2 through 7. This permit covers 1/2 acres.

Described as: (1) Lot 27 of the Valley View Summer Home tract.
(A plat of which is on file in the office of the Forest Supervisor.)

OR (2) T7N R14E, Sec. 7, B.M. as shown on the attached map.
(Legal Description)

The following improvements, whether on or off the lot, are authorized in addition to the residence structure:

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere.

THIS PERMIT IS NOT TRANSFERABLE
PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED: _____ _____
HOLDER'S NAME AND SIGNATURE DATE

APPROVED: _____ _____ _____
AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE DATE

(3)

TERMS AND CONDITIONS

I. AUTHORITY AND USE AND TERM AUTHORIZED.

A. This permit is issued under the authority of the Act of March 4, 1915, as amended (16 U.S.C. 497), and Title 36, Code of Federal Regulations, Sections 251.50-251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 1920, 1950, 2340, 2720; FSH 2709.11, Chap. 10-50). Copies of the applicable regulations and policies will be made available to the holder at no charge upon request made to the office of the Forest Supervisor.

B. The authorized officer under this permit is the Forest Supervisor, or a delegated subordinate officer.

C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family, and guests. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for revocation of this permit.

D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by a Government agency, utility association, or individual.

E. Termination at End of Term. This authorization will terminate on December 31, 2008

II. OPERATION AND MAINTENANCE.

A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following subjects:

1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions.
2. Maintenance of the facilities.
3. Size, placement and descriptions of signs.
4. Removal of garbage or trash.
5. Fire protection.
6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

NOTE: Forest Supervisors may include other provisions relating to fencing, road maintenance, boat docks, piers, boat launching ramp, water system, sewage system, incidental rental, and the Tract Association. Regional Foresters may add specific provisions that Forest Supervisors should include in the plan.

III. IMPROVEMENTS.

A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: signs, fences, name plates, mailboxes, newspaper boxes, boathouses, docks, pipelines, antennas, and storage sheds.

B. All plans for development, layout, construction, reconstruction or alteration of improvements on the lot, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual

(4)

acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

IV. RESPONSIBILITIES OF HOLDER.

A. The holder, in exercising the privileges granted by this permit, shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. However, the Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the authorized officer.

C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized use, during construction, operation, and maintenance of the improvements.

D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations and maintenance plan for the permit.

E. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to National Forest lands, roads and trails caused by the holder's activities.

F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the event.

G. The holder has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.

H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized officer.

V. LIABILITIES.

A. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to National Forest resources and costs of fire suppression. Without limiting available

civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the unauthorized cutting of timber in the State wherein the timber is located.

VI. FEES.

A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.

B. Appraisals:

1. Appraisals to ascertain the fair market value of the lot will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in 1998 (insert year).

2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed, giving accurate and careful consideration to all market forces and factors which tend to influence the value of the lot.

3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

C. Fee Determination:

1. The annual rental fee shall be determined by appraisal and other sound business management principles. (36 CFR 251.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the lot for recreation residence use. *

Fees will be predicated on an appraisal of the lot as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator - Gross National Product (IPD-GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD-GNP, except that the maximum annual fee adjustment shall be 10 percent when the IPD-GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD-GNP index is less than 10 percent. The base rate from which the fee is adjusted will be changed with each new appraisal of the lot, at least every 20 years.

2. If the holder has received notification that a new permit will not be issued following expiration of this permit, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new term permit should later be issued, the holder shall pay the United States the total amount of fees foregone, for the most recent 10-year period in which the holder has been advised that a new permit will not be issued. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits. Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.

(6)

D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD-GNP index to the intervening years.

E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at $ 309.93 per year and the fee is due and payable annually on January 1 (insert date). Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a nonworkday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.

F. Interest and Penalties:

1. A fee owed the United States which is delinquent will be assessed interest based on the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM-6-8020). Interest shall accrue on the delinquent fee from the date the fee payment was due and shall remain fixed during the duration of the indebtedness.

2. In addition to interest, certain processing, handling, and administrative costs will be assessed on delinquent accounts and added to the amounts due.

3. A penalty of 6 percent per year shall be assessed on any indebtedness owing for more than 90 days. This penalty charge will not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

4. When a delinquent account is partially paid or made in installments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, penalty, interest, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.

H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 et seq.).

VII. TRANSFER, SALE, AND RENTAL.

A. Nontransferability: Except as provided in this section, this permit is not transferable.

B. Transferability Upon Death of the Holder:

1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.

2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the properly designated heir(s) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.

C. Divestiture of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person

(7)

to whom title has been transferred will be granted a new permit. Such new permit will be for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

VIII. REVOCATION.

A. Revocation for Cause: This permit may be revoked for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such revocation for cause, the holder shall be given notice and provided a reasonable time--not to exceed ninety (90) days--within which to correct the breach.

B. Revocation in the Public Interest During the Permit Term:

1. This permit may be revoked during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b)). In the event of such revocation in the public interest, the holder shall be given one hundred and eighty (180) days prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the lot in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a revocation in the public interest, the holder shall be paid damages. Revocation in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest revocation shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another lot which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of revocation. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of revocation. If revocation in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of revocation by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to revocation (measured from the date of the notice of revocation) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: Provided, That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 251.80) and the amount as determined on appeal shall be final and conclusive on the parties

(8)

hereto: Provided further, That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

IX. ISSUANCE OF A NEW PERMIT.

A. Decisions to issue a new permit or convert the permitted area to an alternative public use upon termination of this permit require a determination of consistency with the Forest Land and Resource Management Plan (Forest plan)

1. Where continued use is consistent with the Forest plan, the authorized officer shall issue a new permit, in accordance with applicable requirements for environmental documentation.

2. If, as a result of an amendment or revision of the Forest plan, the permitted area is within an area allocated to an alternative public use, the authorized officer shall conduct a site specific project analysis to determine the range and intensity of the alternative public use.

a. If the project analysis results in a finding that the use of the lot for a recreation residence may continue, the holder shall be notified in writing, this permit shall be modified as necessary, and a new term permit shall be issued following expiration of the current permit.

b. If the project analysis results in a decision that the lot shall be converted to an alternative public use, the holder shall be notified in writing and given at least 10 years continued occupancy. The holder shall be given a copy of the project analysis, environmental documentation, and decision document.

c. A decision resulting from a project analysis shall be reviewed two years prior to permit expiration, when that decision and supporting environmental documentation is more than 5 years old. If this review indicates that the conditions resulting in the decision are unchanged, then the decision may be implemented. If this review indicates that conditions have changed, a new project analysis shall be made to determine the proper action.

B. In issuing a new permit, the authorized officer shall include terms, conditions, and special stipulations that reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. (36 CFR 251.64)

C. If the 10-year continued occupancy given a holder who receives notification that a new permit will not be issued would extend beyond the expiration date of the current permit, a new term permit shall be issued for the remaining portion of the 10-year period.

X. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR NOTIFICATION THAT A NEW PERMIT WILL NOT BE ISSUED FOLLOWING TERMINATION OF THIS PERMIT.

A. Removal of Improvements Upon Revocation or Notification That A New Permit Will Not Be Issued Following Termination Of This Permit: At the end of the term of occupancy authorized by this permit, or upon abandonment, or revocation for cause, Act of God, catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the lot to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period--not to exceed one hundred and eighty (180) days from the date the authorization of

occupancy is ended--the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the lot.

B. In case of revocation or notification that a new permit will not be issued following termination of this permit, except if revocation is for cause, the authorized officer may offer an in-lieu lot to the permit holder for building or relocation of improvements. Such lots will be nonconflicting locations within the National Forest containing the residence being terminated or under notification that a new permit will not be issued or at nonconflicting locations in adjacent National Forests. Any in-lieu lot offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the revocation or notification that a new permit will not be issued under the Secretary of Agriculture's administrative appeal regulations, whichever is later, or this opportunity will terminate.

XI. MISCELLANEOUS PROVISIONS.

A. This permit replaces a special use permit issued to: David R. Mead on March 12, 19 79.

B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for compliance will be furnished to the holder.

C. Issuance of this permit shall not be construed as an admission by the Government as to the title to any improvements. The Government disclaims any liability for the issuance of any permit in the event of disputed title.

D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed clauses shall control.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

(10)

to whom title has been transferred will be granted a new permit. Such new permit will be for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

VIII. REVOCATION:

A. Revocation for Cause: This permit may be revoked for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such revocation for cause, the holder shall be given notice and provided a reasonable time--not to exceed ninety (90) days--within which to correct the breach.

B. Revocation in the Public Interest During the Permit Term:

1. This permit may be revoked during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b)). In the event of such revocation in the public interest, the holder shall be given one hundred and eighty (180) days prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the lot in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a revocation in the public interest, the holder shall be paid damages. Revocation in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest revocation shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another lot which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of revocation. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of revocation. If revocation in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of revocation by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to revocation (measured from the date of the notice of revocation) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: Provided, That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 251.80) and the amount as determined on appeal shall be final and conclusive on the parties

(11)

SAWTOOTH NATIONAL RECREATION AREA
RECREATION RESIDENCE
OPERATION AND MAINTENANCE PLAN

The following Operation and Maintenance Plan is made a part of the Holder's permit as provided in Clause II of the special use permit.

I. STRUCTURES

A. The maximum size of any cabin is 1200 sq. ft. This includes second floor footage. Simple and rustic designs for all cabins and outbuildings are preferred. Bathroom additions will normally be approved. Sewage disposal proposals must be accompanied by a State of Idaho permit.

B. Colors will be natural, blending into surroundings. Approved paint samples are available at the NRA Headquarters.

C. Colored metal roofs are okay. Dark brown is preferred. We have not yet found a satisfactory dark green metal color.

D. Asphalt shingles can be dark brown, dark green or slate gray.

E. Cedar shakes and wood shingles can be left natural colored or colored dark brown, dark green, or slate gray.

F. We will authorize one pit toilet and one storage outbuilding per site. Storage building = 120 sq. ft. maximum. Pit toilet must be at least 300' from live or intermittent stream. Additional structures will not normally be approved.

G. All new electrical installations WILL BE UNDERGROUND!

H. Outdoor high intensity lights operated on an automatic timer are not permitted.

I. Attached decks will normally be authorized if reasonable in size. Ten to twelve feet maximum width should suffice.

J. Hot tubs are not encouraged because of draining concerns. What happens to the water?

K. Satellite dishes will not normally be authorized.

L. Sleeping cabins will not be authorized unless constructed prior to 1988. There will be an additional fee for each sleeping cabin authorized.

M. Garages will not normally be authorized.

N. Fences are not authorized.

(12)

O. Pole gates may be authorized to restrict traffic into your lot. These should be constructed of two posts and a pole cross bar with reflectors. NO CABLE GATES ARE AUTHORIZED BECAUSE OF THE LIABILITY PROBLEMS WE HAVE ENCOUNTERED. IF YOU HAVE A CABLE GATE, PLAN TO REMOVE IT AS SOON AS POSSIBLE AND REPLACE WITH A WOODEN POLE GATE!

P. Signs may be placed at entrance roads to direct visitors to your cabin. All signs should be no more than 12" by 24" (roughly), rustic in appearance, naturally colored, preferably routed, AND NOT NAILED TO TREES! They may be erected to a post.

Q. Play houses, teepees, tree houses, etc. are not authorized. There are plenty of neat things for kids to do without needing these additional structures.

R. For the present, boat docks are permitted at Pettit Lake. They will be authorized by a separate special use permit with a separate annual fee.

Existing Dock Standards	
Max Length	35'
Max Width	8'
Max Ht. from water surface	37"

New Dock Standards	
Max Length	30'
Max Width	6'
Max Ht. from water surface	18"

All docks will be straight-line ("|" shaped). Docks not meeting standards will not be authorized by special use permit and will have to be removed. NO MORE THAN ONE DOCK PER RECREATION RESIDENCE LOT WILL BE AUTHORIZED.

Bright colored indoor-outdoor rugs on docks are not acceptable.

All modifications to existing docks and all new construction of docks must be approved by the Forest Service in advance. All proposed construction, remodeling, color changes, installations, etc. must be approved by the Forest Service prior to beginning work.

II. DRINKING WATER

A. We encourage the installation of wells. State of Idaho permits must be obtained prior to drilling.

B. We must approve all proposed well locations.

C. The Forest Service will file on all well and spring developments on National Forest lands.

(13)

D. Spring developments will normally be authorized by a separate special use permit. Contact Forest Service for additional details

III. LAWNS

Lawns are discouraged at recreation residence. Cabins should be maintained in as near to a natural setting as possible. Effective firebreaks can usually be maintained utilizing native vegetation.

IV. TREE TRANSPLANTING

In no lot is there a tree that will last forever. Human impacts are often preventing the success of natural regeneration around your cabins. In order to assure a forested setting for your "later years," for your children, grandchildren, and generally for all others who may pass this way, we encourage you to annually transplant (water and fertilize) a few native trees from the forest to your lot. There is no charge for these transplants and no permit is required provided you do not leave the forest with the trees. Best survival rates seem to occur in the early spring (April to mid-May). Several cabins that have begun transplanting small (1'-3') trees. We salute your efforts!

V. TREE AND VEGETATION REMOVAL TO IMPROVE VIEWS

A. We normally frown on these efforts, although there may be instances where some tree cutting may actually improve the overall condition of the forest. Contact us before attempting, please!

B. Lakeshore and streamside hacking or cutting of vegetation is not acceptable. These water's-edge communities are important elements of the forest and should be maintained in as near-to-natural a condition as possible.

VI. HORSES

Horses are not permitted inside summer home areas. If you have horses, please keep them in corrals at Alturas Lake Creek, Cabin Creek, or Russian John. Contact the Forest Service before using the Russian John corral. Feed must be supplied by you at each site.

VII. LOT MAINTENANCE

A. The permitted area will be maintained to present a clean, neat and orderly appearance. Trash, debris, unusable machinery, improvements, etc., will be disposed of currently.

B. The lot will not be used to store building materials in excess of those needed for approved remodel or repair.

C. No motorhomes, trailers, boats or other items will be stored on the lot.

D. Loop driveways are discouraged because of additional impacts to the Forest.

VIII. SERVICES

A. Garbage

1. What are you going to do with all you normal household garbage? How about those remodel projects and the construction debris? DO NOT DUMP ANYTHING IN OUR CAMPGROUND OR PICNIC SITE DUMPSTERS. YOU HAVE NOT PAID FOR THAT PRIVILEGE. These are maintained for campground and day use visitors ONLY!

2. As a summer home group, you may want to rent a dumpster from Wood River Rubbish (in Ketchum) and place it within the summer home area for your needs. Our campground trash hauling contract has been with Wood River Rubbish for several years so your cost should be reduced since they will be in the area dumping our dumpsters twice a week during the summer.

3. There may be an opportunity to cost/share maintenance of dumpsters near your summer home area with the Forest Service. Opportunities may exist at Pettit Lake, Alturas, and Easley areas. Contact us for more details.

4. Pettit and Valleyview permittees can use the Blaine County-maintained dumpsters located across Highway 75 from Smiley Creek Lodge. The Forest Service will not provide dumpsters at any summer home are for permittee use.

5. The Blaine County Landfill is located east of Highway 75 about seven miles south of Ketchum.

B. Road Maintenance

1. Your special use permit fee pays for the use of your lot only. It does not pay for any other services (no garbage hauling, no road maintenance, no free wood cutting rights, etc.)

2. If your summer home tract or organization desires more frequent road maintenance than what is presently being provided by us (which in some cases is quite infrequent), then you can deposit funds in a Forest Service coop account specifically for increased road maintenance. We encourage you to do so. Some of you have elected to do this where our maintenance has been rare or non-existent. Please contact the Forest Service if you are interested.

C. Firewood Cutting

3. You may cut dead trees on you lot without a firewood permit as long as the wood remains on your lot to be used in your cabin.

4. If you cut wood on National Forest lands away from your cabin lot, then you must have a firewood permit, regardless of where you are hauling the wood.

5. If you haul wood on any state, county, or forest roads, you must display firewood tags on the back of your load.

IX. FIRE PROTECTION

A. No fireworks shall be stored or used on the land covered by this permit or in the structures thereon.

B. Fireplaces and all wood burning appliances will be equipped with spark screens.

C. The roof shall be kept reasonably clear of leaves, twigs, and other debris.

D. The Holder shall clear and keep cleared from any structures all readily burnable vegetation such as dry grass, forest needles, and dead vegetation.

E. The use of firearms within a summer home area is prohibited.

F. The Forest Service will respond to structure fires on National Forest lands during summer months, but only to keep the fire from spreading.

X. USE OF FACILITIES

A. The Holder may rent his improvements with prior Forest Service approval. Such rental must be incidental to the Holder's use, be for recreational purposes and will not exceed a time limit specified by the Forest Service. The Holder understands that responsibility for compliance with the terms of the permit will remain with the Holder.

B. Upon placing the cabin on the market for sale the Holder will notify the Forest Service.

C. Upon listing the cabin for sale, a sign may be placed next to the cabin or at the driveway entrance to the cabin.

D. The Forest Service will not normally approve snow plowing Forest Service roads. If plowing is desired the Holder will contact the Forest Service for review and possible approval of a snow plowing permit.

XI. RESPONSIBLE PERSON(S), OTHER CONTRAC(S), AND OTHER OWNER(S)

A. The name, address, and phone number of the person responsible for implementing the provisions of the plan, if other than the Holder, will be provided to the Forest Service by the Holder.

B. The Holder should provide the Forest Service with a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

C. Names, addresses, and phone numbers of any coowners should also be provided to the Forest Service by the Holder.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Mead.

The Chair was negligent in not reminding the witnesses that their testimony is limited to 5 minutes. We do have a light system here. The green light means go and just like in traffic lights, the yellow light means step on it and speed up and the red light means stop.

So with that, Ms. Ver Hoef is recognized for her testimony.

STATEMENT OF MARY CLARKE VER HOEF, CHAIR, GOVERNMENTAL LIAISON COMMITTEE, NATIONAL FOREST HOMEOWNERS, SACRAMENTO, CA

Ms. VER HOEF. Thank you, Madam Chairman. My name is Mary Clarke Ver Hoef. On behalf of the National Forest Homeowners, thank you very much for the opportunity to address you today.

The cabin program provides more recreation visitor days per acre than any other use of the National Forest System. Because of the nature of the recreation provided, it also overwhelmingly provides the greatest recreation opportunity to the retired, the elderly and the disabled. Because of the nature of the cabin experience, these cabins are overwhelmingly also a family experience.

Cabin owners already pay their fair share and more. We pay the highest use fees per acre of any of the many users of the national forest lands. Remember, we also already pay taxes, separate and distinct from these fees. Cabin permittees, even under the old fee structure were paying over $2,400 per acre per year with many paying much more. Under the Forest Service's currently proposed fees, cabin owners would be paying an average of over $8,000 per acre. Because we cannot restrict or prohibit public use of our lots as Mr. Mead pointed out, the actual permitted area over which we have control consists only of the footprint of our cabin. By any real world real estate standard, this footprint already pays more per square foot than most commercial leases in comparable fee simple areas. This is the single most revenue positive recreation program on the national forests.

Now the Forest Service recently began updating the special use fee that we cabin owners pay every year. The first area to be completed was the Sawtooth National Forest in Idaho. The new fees were astronomical. The procedure, as it continued around the country, resulted in other unreasonable fees.

Although none were quite as egregious, they were high enough to wonder just who could or would want to pay such a fee for this use. This program has not been the sole province of the rich before. With such fees, we fear it will be.

We all agree that we should pay a fair fee for our use, but many of the resulting fees are not.

In an effort to solve this problem, we joined together with other representatives of recreation residence users to form a coalition. The coalition hired a consulting appraiser to help us analyze the problem. We reviewed the process in many areas of the country. We found consistent errors in procedures and inconsistency in application. The current appraisal method is not the same method as was crafted by the 1980's regulatory revisions. The appraisal is used to reach a base amount from which to derive a fair fee, a fair

market fee. The current system, the way it is now, is aimed at appraising the permitted lot as if it were being offered for sale.

To do the appraisal step properly, to reach that use fee, for each typical lot or lots in a tract of cabins, an appraiser must identify sales of comparable, privately-held parcels in the same geographic area.

In order to implement the policy this time around, the Forest Service prepared a new set of guidelines for appraisers. These guidelines, as currently written, mislead the appraiser to use market transactions which are fundamentally not comparable. Where there are no comparable sales, market transactions are being used without the proper adjustments to make them reflective of the lot's value. Further, there are places in which various governmental acts, such as the creation of the Sawtooth National Recreation Area in Idaho and the Government's act of buying up or limiting the use of most of the surrounding land, have had an unusual inflationary pressure on the local land which requires an adjustment to this method of finding a fair fee so as to result in a fair fee. In order for us to do this, we do have to do something different.

The bill before us today is intended to remedy the errors we see. It recognizes the cabin program for what it is, not as equivalent to a simple vacation home on a subdivided lot in a resort location. It is aimed at producing a reasonable and fair fee for the cabin use. The bill includes specific detailed requirements for the appraiser and is written in language an appraiser can understand. It calls for appraisal every 10 years instead of 20 years to make sure the Forest Service is getting the fair market value of our use in the event the annual index does not work as expected. It chooses a new index, one more closely tied to local land values, but not one tied to urban use.

In those circumstances where certain governmental acts produce an unfair fee using this procedure, the bill requires the comparable land analysis to go outside the area influenced by those acts. In those circumstances, the annual index used is a state-wide index instead of a local one.

In conclusion, the high fees resulting from improper application of the underlying policy, if allowed to stand, will change the face of this program, limiting its use to the rich. This program should stay affordable by the ordinary American. This bill is essential to that end.

Thank you.

[The prepared statement of Ms. Ver Hoef follows:]

Written Testimony of

NATIONAL FOREST HOMEOWNERS

by Mary Clarke Ver Hoef
Chair
National Forest Homeowners
Government Liaison Committee

TABLE OF CONTENTS

1.	Introduction	1.
2.	What is a Recreation Residence?	1.
3.	Limitation on the Use	2.
4.	Historical Method of Setting the Use Fee	3.
5.	Current Method and Problems with Methodology	4.
6.	The Cabin User Fee Fairness Act of 1999	7.
7.	Conclusion	8.
8.	Table of Exhibits	9.

Written Testimony of

NATIONAL FOREST HOMEOWNERS

by Mary Clarke Ver Hoef
Chair
National Forest Homeowners
Government Liaison Committee

Introduction

Madame Chairman, thank you very much for the opportunity to address you on an issue of great concern to recreation residence permittees. I am a member of the National Forest Homeowners ("NFH") which represents holders of special use permits issued by the USDA Forest Service pursuant to the Term Permit Act of 1915, 16 U.S.C. Section 4971.

The Forest Service recently undertook its procedures for updating the special use fee that we pay every year. The first area to complete the procedure was in the Sawtooth National Forest in Idaho which includes the Sawtooth National Recreation Area.. The fees were astronomical, some as high as $30,000 per year. The procedure, as it continued around the country, resulted in other unreasonable fees. Although none were quite as egregious, they were high enough to wonder just who could or would want to pay such a fee for this use. We all agree that we should pay a fair fee, but many of the resulting fees are not fair.

In an effort to solve this problem, NFH joined together with other representatives of recreation residence users to form a Coalition. This included representatives of National Forest Homeowners, American Land Rights Association, California Forest Homeowners Association, Oregon Forest Homeowners Association, and Sawtooth Forest Cabin Owners Association (Idaho) and included other organizations and individuals whose input was invaluable. We hired Betts & Associates, a consulting appraiser, to help us analyze the problem. We reviewed the process in many areas of the country. The Coalition believes the bill before you today, the Cabin User Fee Fairness Act of 1999, goes a long way to resolving our problem.

What is a Recreation Residence?

In order to understand why the current new fees are unreasonable for this use, it is important to understand just what is this asset called a "recreation residence."

The Organic Act of June 4, 1897, (6 U.S.C. Section 475), and the Multiple Use

Congress has given the Department of Agriculture and, thus, the Forest Service: to balance the uses of the National Forests "so that they are utilized in the combination that will best meet the needs of the American people." Subsequent legislation has in no way changed these fundamental directives.

When the Term Permit Act, (16 U.S.C. 9701), became effective in 1915, the Forest Service advertised in newspapers throughout the United States, offering sites for "summer homes." Advertising solicited the general public, and the general public responded. The Forest Service issued permits for recreation residence sites to ordinary people, not the rich of our country. This was to be a program to help the Forest Service manage its forests for recreational opportunities and was just another in a broad spectrum of uses of our forests by the public.

The early recreation residences were often hand built from materials found nearby. Access to the sites often took several days and sometimes could only be had by horseback. Today, many of these original cabins still have hand-hewn shakes and logs, and display construction methods that are no longer used. They bring to mind the era of Teddy Roosevelt, early "conservationists," and the formation of the National Forest system. We continue to subscribe to these ideals. Many of these are truly cabins in the woods, not equivalent to a second home at a destination resort area. Many have no electricity, and many provide and maintain their own road access, as well as their own water supply.

There is still a valid and valuable place for the recreation residence in the national forests. This is only a different type of public use of the forest, one that provides the forest experience to many Americans. Cabins provide access to forest recreation not only by the immediate family of the cabin owner, but also by extended family members and friends. In many cases, cabins also provide the very young, the elderly, and people with disabilities an opportunity for forest recreation that may not be readily available to them in a campground.

Limitations on the Use

Use of cabins on Forest Service permits differs greatly from that of cabins on private lots. Our permits are for no longer than 20 years. Permittees must adhere to strict limits on the use of their cabin. Commercial use is prohibited. We are restricted in the size, shape, color and period of occupancy of our cabins. Region 5 has recently proposed a set of uniform guidelines which include all this. They add such provisions as removal of all but 1400 square feet of cabin size on issuance of a new permit, notwithstanding prior approval of a larger size.

Other members of the public may not be precluded from using the "lot" on which our cabins are placed. The general public is welcome to use every inch of the land on which our cabins sit except for the cabin's "footprint". In order to implement this requirement, our tract of cabins has worked with the Forest Service to create a system of paths that makes it clear to the general public that the cabin's presence does not prevent their use.

We are not guaranteed that we will be allowed to stay on that lot. We must be vigilant to ensure that the local Forest Plan still perceives our use as consistent with the overall use of the forest. When the Forest Service proposes new regulations with respect

to forest plans, we comment on proposals such as the new proposed regulation's mandate to bring the forests back to pre-European conditions. While we must be given 10 years notice of the non-renewal of our permit, upon its expiration we must remove all structures and restore the lot to its original condition. The Recreation Residence Policy promulgated in 1988 and finally revised and published, after an appeal, in the Federal Register at Vol. 59. No.105, pages 28714-28741, June 2, 1994 (1988 Policy), contains those requirements. A property subject to these restrictions is a very different asset than a vacation home with "fee simple" ownership of the underlying land.

The last new tract offered for recreation residences was offered in the 60's. The number of these cabins has slowly diminished over time. There are currently just less than 15,000 recreation residences left in the system. While the Forest Service has recently estimated, in testimony, that the cost to administer recreation residence program is $3.2 million, the income currently received from fees *before* the current re-assessment is $9.4 million. This compares very favorably with other uses of the forest, and is the most cost effective program the Forest Service has on federal land.

Historical Method of Setting the Use Fee

We have no objection to paying fees that we believe are fair, as long as they are related to the type of use we have. The original practice of appraising the land underlying our cabins, as though that land was bare undeveloped land, with a percentage of that value as our yearly fee, should result in reasonable fees, if that process is fairly performed.

As a way to justify the current process, the Forest Service is fond of saying the permittees agreed to this method when the Policy was rewritten in the early 1980's. What the Forest Service is doing now is not what was envisioned then.

Attached as Exhibit A is a copy of a document prepared by three individuals involved in the process in the early 1980's. It shows the current problem is not a new one. The attempt was to make the current method of fee determination market-based. The adjustments were to be made to "fee simple" raw land to result in the fee determination. When comparable raw land is not available, certain other adjustments were to be made. The 1988 Policy is contained in Section 33.3 of the Forest Service Handbook. It calls for the fair market value of the recreation residence lot to be established using professional appraisers. The appraisers are to determine the market value of the lot as if it were owned by the cabin owner (fee simple) "without consideration as to how the authorization (of the use) would or could affect the fee title of the lot." Typical lots are to be chosen in each tract (to avoid the cost of doing separate appraisals for similar lots) and each of these are to be the subject of an appraisal. Comparable market sales are to be used "of sufficient quality and quantity that will result in the least amount of dollar adjustment to make them reflective of the subjects lots' characteristics."

The Policy language then gives specific adjustments that should be made. These include:

a. Physical differences between the lot and comparable sales;
b. Legal constraints imposed upon the market by governmental agencies;
c. Economic considerations evident in the local market;
d. "Locational" considerations of the lot in relation to the sale comparables;

e. Functional usability and utility of the lot;

f. Amenities occurring on the lot as compared with the sales comparables;

g. Availability of improvements (roads, water systems, power, etc.) provided by entities other than the cabin owner;

h. "Other market forces and factors identified as having a quantifiable effect upon value."

After a value is set, the annual fee is determined by multiplying this value by five percent.

The "comparables," and the validity of using any chosen market transaction as a "comparable," as in any appraisal, are crucial. The adjustments were expected to result in a fair adjustment to a dissimilar transaction.

Current Method and Problems with Methodology

The current method for determining a yearly fee, then, is based on the concept that there can be an appraisal of comparable bare, privately-held land. For each "typical" lot or lots in a tract of cabins, the appraiser must identify sales of somewhat comparable privately-held parcels in the same geographic area. Thus, the comparable parcel must be truly comparable. The annual permit fee is then set at 5% of the appraised value for the "comparable" parcel of private land. This annual fee is then multiplied by an index to account for inflation (or deflation), currently the Implicit Price Deflator (IPD), chosen for its tendency to be more stable than other indexes.. This re-appraisal process is to occur every 20 years.

In order to implement this policy this time around, the Forest Service prepared a new set of guidelines for appraisers. Our review of those guidelines, and our review of the resulting appraisals, leads us all to believe that these guidelines, as currently written, mislead the appraiser to use market transactions which are fundamentally not comparable. Where there are no comparable sales, market transactions are being used without the proper adjustments to make them reflective of the cabin lot's value. This results in flawed appraisals and, in some places, excessive values.

Further, the fact that this is an unusual asset, and the unusual method by which the appraisers are to produce a "comparable sale" when there are few really comparable assets, has complicated the issue. Finally, various governmental acts, such as the creation of the Sawtooth National Recreation Area in Idaho and the act of buying up the surrounding land, have added an inflationary pressure on neighboring land which makes the use of "comparable sales" less than useful when using this method to set a fair fee for this use.

Several things in the language of the guidelines caused us concern. First, the current guidelines refers to "sites," not "lots." An earlier version of the Policy contained the "site" language, which was changed to "lot" in the final version due to a legal opinion that the term "lot" was preferable. It is clear that the individual who wrote the guidelines was not aware of that change.

In addition, a most troublesome sentence occurred in the guidelines in C-2.1(f) (2). "As a private privilege [sic] use of National Forest System lands, the occupancy cannot interfere with public or semi-public uses having a documented higher priority." Language such as "private privileged use" flows directly out of the language of the Appellants to the

Policy as it was originally drafted. That philosophy was soundly rejected by the amended Policy, with its language at 2347.1 that recreation residences are a valid use of National Forest land. The language "higher" priority does not occur in the final version of the Policy, either, having been replaced with the correct "alternative" public use. The Coalition can only conclude that the draftsperson of the guidelines had a personal opinion about the cabin program which differed from what the Policy intended.

Our review of selected actual appraisals, and the analysis of our appraisal expert, confirmed what we suspected. The manner in which the guidelines were drafted is resulting in the use of market transactions which are not comparable. Further, appraisers working under the guidelines provided by the Forest Service consistently fail to make appropriate market adjustments where warranted.

In forests near destination resort areas, and even in tracts whose location is outside the actual "neighborhood" influence of the resort but whose "comparable sales" evidence does not reflect the difference, developed vacation subdivision lots are being used, and the Forest Service's appraisal staff has expressed the opinion that this is entirely appropriate since the cabins are equivalent to any other "vacation home" that someone who has sufficient funds can afford to purchase. Even the poorly drafted guidelines refer to the "natural, native state" in the definition section of C-2.1(f). Raw land is not the same as a developed lot in the marketplace.

In circumstances where an appraiser is unable to find local market transactions of the sale of undeveloped land, land in various stages of recreation development are being used, but the appropriate adjustments required by the Policy are not being made. For example, an adjustment for "remoteness" of the typical cabin lot is rarely included. The required deductions for physical improvements to the site are sometimes made, but they are not always adjusted for the extra cost that the remote nature of the location brings, or for the difficulties that the lot itself imposes for the costs of improvements. Further, appraisers are being directed to make adjustments to give the benefit of the doubt to the Forest Service when considering improvements.

The Forest Service provides the raw land and over the years the cabin owners have capitalized and taken the risk in providing water, sewer, utilities and the cabin structure. These improvements, unless recently added, are rarely documented. We know the Forest Service did not build the cabin, but often only the cabin owner's memory is left to show the access road was originally built by the cabin owners, even though the road is now also used as access to the campgrounds. These are expenditures that should accrue to the cabin owner, not the Forest Service. The remoteness of the site, and its physical limitations (its steepness, the quantity of rocks or quality of the soil) set the amount of money the cabin owner spent on the construction of the roads, sewer and water systems. If the Forest Service cannot prove it provided the improvement, then no adjustment should be made to increase the value of the raw, undeveloped lot.

Also of great concern is that an adjustment is not being made between the market price of raw undeveloped land and the market price of a developed subdivided lot. This is referred to by professional appraisers as the "entrepreneurial incentive" factor, and it is this factor that captures the entrepreneurial nature of the market. A lot in a subdivision sells for more money than does an undeveloped parcel. It is the developer who provides capital for the improvements upon raw land and assumes all risk -- such risks as an

undependable water table, boulders that increase the cost of road-building, septic fields that require more sophisticated technology than had been anticipated, or short-term real estate market fluctuations as a project is brought to completion. Developers capture this entrepreneurial incentive by adding a percentage or percentages of "value" to their land as the project progresses. Appraisers see the value of a subdivision as an equation:

raw land value+ development costs + entrepreneurial incentive = developed lot market value.

We know that appraisers have inquired about using this adjustment factor. We know the Forest Service at the Washington, D.C. level has instructed its regional appraisers not to adjust for the cost to develop a subdivision, profit to the developer, risk or infrastructure in the appraisal. This instruction conflicts with the Uniform Standards for Federal Land Acquisition as well as the Policy. It is consistent, however, with the staff's view that these cabins are equivalent to residences in a vacation resort subdivision.

These adjustments are not speculative. They can be readily determined by consulting the developer whose subdivision lot is being used as evidence of a market transaction, and a common range of percentages of the total lot price can be anticipated as an adjustment factor. It is this factor that is not being deducted in the adjustments to market transactions to result in a bare land value. This should be required in the specifications to appraisers. Instead, the language of those specifications leads the appraiser to use subdivided lots as comparables with no adjustment. By failing to allow the required entrepreneurial adjustment, the Forest Service is attempting to capture this factor for itself. This practice results in a fee that is greater --often far greater– than the fair market value of the use. This is clearly not what the Policy says, nor what was intended by the drafters of that Policy, nor does it result in fair fees.

We believe that the current problem can be mitigated by the revision of the guidelines to appraisers, but, based upon our discussions with Forest Service employees, it is clear the Forest Service will not make those changes. They rely on the belief that they must get "fair market value". They do not recognize the difference between the fair market value of the use and the fair market value of the underlying real property. The Independent Offices Appropriations Act of 1952 (I.O.A.A.) as amended 31 U.S.C. 9701 requires that our fees be

(1) fair, and
(2) based on--
    (A) the costs to the Government
    (B) the value of the service or thing to the recipient;
    (C) public policy or interest served; and
    (D) other relevant facts.

A number of our members worked with the Chief of the Forest Service when the current Policy was developed. We know what was intended. An appraisal method is to be used to "back in" to a fair use fee. We know what the 5% was intended to cover. The current implementation of the policy is not what was intended.

Further, such a method is fraught with the potential for confusion by appraisers. This is an extremely unusual asset, with an unusual appraisal methodology. It took the

Coalition and its expert much time to unravel the reasons fees were being set so high, and we know the nature of the asset and the underlying policy.

It became clear that legislation was the only manner in which to solve this problem, given the Forest Service's approach to this recreation use. The bill before us is an attempt to support the underlying policy of setting fair fees, while providing a valid appraisal methodology to do so. Further, an adjustment is required when that methodology will not result in fair fees for the use, in cases where a government act inflates local land prices though the creation of a scarcity, such as has occurred in the Sawtooth National Recreation Area in Idaho. A different inflation factor is proposed, as well as a slightly different method for resolution of disputes over the appraisal results where they arise.

The Cabin User Fee Fairness Act of 1999

The Bill before us today, which we support, is intended to remedy the errors we see. It recognizes the program of recreation residences for what they are, not as equivalent to vacation homes on subdivided lots in resort locations. It calls for reasonable and fair fees for cabin use.

The Bill also includes specific, detailed requirements for the appraisal, since this is such an unusual appraisal assignment and its current implementation has revealed so many problems. It calls for appraisal every 10 years, instead of 20, to make sure the Forest Service is getting the fair market value of our use, in the event the annual index does not work as expected. It chooses a new index, one more closely tied to local land values, but not one tied to residential use.

In those circumstances where certain governmental acts produce an unfair fee, we require the comparable land analysis to go outside the area influenced by those acts. In those circumstances, the annual index used is a state-wide index instead of a local one.

As is currently provided, the first appraisal is performed by an appraiser of the Forest Service's choosing, and in the event that there is an objection, the second appraisal is at the cabin owner's expense. Here, it is specifically provided that the presiding officer then can choose the results of the first appraisal, the second appraisal, or any value in between the two appraisals. If the resulting fee appears unfair to the cabin owner's tract, in which the typical lot is designated, then the tract can ask for arbitration.

With the use of the proper appraisal instructions, the need for a second appraisal should be reduced. For those cabin owners with completed appraisals, they would have a choice to accept their appraisal under the old method, or request a new appraisal. As not all appraisals report huge increases in value, many completed appraisals will not need to be redone.

Attempts were made to ensure that the language of the bill is understandable to an appraiser in the field, who, after all, is the individual charged with the first attempt to make it work. We did discover errors in appraisals resulting from simple ignorance of appraisal theory. The old method only called for appraisers to be members of a nationally recognized professional organization. Forest Service appraisers only needed adequate training, completion of basic courses, and "competence". The Bill seeks to bridge the gap

between the normal knowledge of a suitable appraiser, and the unusual request that this appraisal involves. The Bill's provisions seek to make clear what is being appraised, and why.

Conclusion

The bill before you today, the Cabin User Fee Fairness Act of 1999, is a much needed revision to what is now a problematic process of setting special use fees for the recreation residence. Our research shows the methodology currently employed results in appraisal errors in theory, with resulting erroneous values. Some of those errors have created unreasonable fees which cannot possibly reflect the fair market value of the use. This bill should correct those errors, giving the appraiser careful instruction for a difficult assignment.

The method of setting use fees based on an appraisal of the underlying lot, if not adjusted where certain governmental acts have cause local land to precipitously rise in value, results in even more unreasonable fees. Directing appraisers to use land outside the area of influence of the governmental acts will result in the selection of truly comparable land, with a resulting fair fee.

Performing the appraisals every 10 years instead of every 20 years will keep the use fees closer to fair market value, as will the use of an index closely tied to local land fluctuations. All this should create a more intellectually honest appraisal method, which is consistent with uniform appraisal theory, and which should bring us all the assurance that the fair market value of the use is being captured.

The high fees resulting from improper application of the underlying policy, if allowed to stand, will change the face of this program, limiting its use to the very rich. This program should stay affordable by the ordinary American. This Bill is essential to that end.

TABLE OF EXHIBITS

Exhibit A: Joint Statement by former members of the Chief's Committee. less Appendix (copy of applicable Federal Policy, already cited above).

Ms. CHENOWETH-HAGE. Thank you very much.
The Chair now recognizes Mr. Betts for testimony.

STATEMENT OF RICHARD M. BETTS, MAI, ASA, SRA, BETTS & ASSOCIATES, BERKLEY, CA

Mr. BETTS. My name is Richard Betts and I am a California State Certified General Appraiser and the partner in Betts & Associates in Berkeley, CA. I appreciate the opportunity to present to the Subcommittee my analysis of the problems that have arisen, with respect to the calculation of fees for occupancy of cabin lots in the national forest system.

I was retained in 1998 by a coalition of cabin owners, to analyze the market-value appraisal methodology and instructions employed by the Forest Service. I am being compensated by the Coalition for my appearance today, but the Coalition has exercised no control over my statement, nor whatever replies I might offer in response to questions from the Subcommittee.

I would describe myself as a very active appraiser, specializing in complex properties and complex situations. I have had more than 35 years of experience in appraisal and real estate economics consulting. I will skip talking about my background to get to the meat of this.

In conducting my analysis, I reviewed some 16 key documents, including the Forest Service Recreation Residence Authorization Policy, sections of the Forest Service Handbook, a number of memoranda and correspondence and I have also examined in detail the initial appraisal reports and several second appraisal reports from cabin tracts in Idaho, Oregon and California.

The primary focus of my analysis, as I indicated, was upon the market-value appraisal process itself, including the instructions and their implementation. Unquestionably, major work is needed to clarify the instructions, to remove material that is contrary to the adopted policy and to guide appraisers to proper practice in this very complex and unusual setting.

I have identified four major problem areas. The first and the major problem area is in the definition of the property being appraised. The policy clearly states that the Forest Service is providing raw acreage, but most appraisals are of subdivided lots and much of the guidance from the Forest Service implies that the appraisal should be of a subdivided lot. Because the Forest Service material is relatively general in wording, regional instructions also vary.

A second major problem is with adjustments for access and utilities, which usually were provided by the permittee, but are incorrectly handled in Forest Service instructions and in appraisals. In most cases, the cabin owners put in all of the effort and management and took all of the risks associated with developing access and utilities and the cabin itself. Forest Service language leads the Forest Service to capture the cabin owners' investment in these utilities and access and the portion of value that results from the cabin owners' effort and risk taking.

In addition, the current instructions put the burden of proof on the cabin owners to document who paid for what many decades ago, which the Service never required them to document.

The third problem was with the selection of market data upon which to base the valuation. This usually was because of the first problem I have noted, the incorrect definition of the property being appraised, which is, basically, the first step in the appraisal process, as we define it.

The fourth problem was the adjustment of the market data for relevant differences, something that is a necessary step in every appraisal. In general, examples include appraisers adjusting for the existence of lot access or utility systems or building improvements and they would correctly use the depreciated current replacement cost of the improvements, but apparently without adjustment for the extra costs involved in construction in more remote locations, without allowance for the noncontractor—cost elements that impact value, which we are bound by our code of ethics to consider, and using depreciation procedures that do not reflect the real economic lives of such improvements.

In conclusion, I am quite convinced by my study of the completed appraisal reports that there is a major problem. The bill, I believe, will lead to fairer and better appraisals of market value. We have had the opportunity to consult with representatives of the Appraisal Institute and others, to see if there are any wording changes that will try to tweak the bill still better, and we are interested in doing that.

Thank you, Madam Chairman.

[The prepared statement of Mr. Betts follows:]

Written Testimony of
Richard M. Betts, MAI, ASA, SRA
California State-Certified General Appraiser
Betts & Associates

Madam Chairman, my name is Richard M. Betts, and I am a California State-Certified General Appraiser and the principle partner in Betts & Associates, Berkeley, California. I appreciate the opportunity this afternoon to present to the subcommittee my analysis of the difficulties that have arisen with respect to the determination of appropriate fees for occupancy of cabin lots in the National Forest System.

I was retained in 1998 to assist a coalition of cabin owners with the analysis of the appraisal methodology and instructions employed by the USDA Forest Service in determining special use fees for the use and occupancy of these cabin lots, and to make recommendation to the coalition about possible solutions that meet any statutory or political requirements for capturing fair market value for the federal government. Their coalition consisted of representatives of the National Forest Homeowners, American Land Rights Association, California Forest Homeowners Association, Oregon Forest Homeowners Association, and Sawtooth Forest Cabin Owners Association in Idaho. I am being compensated by the coalition for my appearance today, but the coalition has exercised no control over my statement nor whatever replies I might offer in response to questions from the subcommittee.

Qualifications

I would describe myself as a very active appraiser, specializing in complex properties and complex situations. I'm the holder of the MAI, ASA (Real Estate), and SRA professional designations, with more than 35 years of experience in appraisal and real estate economics consulting.

I hold Bachelor of Science and Master of Business Administration degrees from the University of California, Berkeley, with a major in Real Estate and Urban Economics, and a minor in Economics. I've since received substantial postgraduate education from colleges and professional groups. I have also taught extensively, including courses for the University of California, Berkeley, School of Business, University of California, Berkeley, Extension Division, University of Southern California, Merritt Community College, American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, Appraisal Institute, American Society of Appraisers, International Association of Assessing Officers, and others. And I have also lectured extensively, giving speeches, workshops and seminars for professional groups, community colleges, and community organizations.

I am the author of a number of books and articles, receiving the Robert H. Armstrong Award from the American Institute of Real Estate Appraiser in 1986 for my article, "The Impact of Securitization on Real Estate Appraisal." I was the author, in 1979, of The Instructor's Guide for Real Estate Appraisal, published by the State of California Department of Real Estate. I am the coauthor, with Silas Ely, of Basic Real Estate Appraisal, now in Fourth Edition, published by Prentice Hall, 1998. I am also the

coauthor, with Dennis McKenzie, of The Essentials of Real Estate Economics, also published by Prentice Hall and now in Fourth Edition, 1994.

I have been accepted as an Expert in more than ten Superior Courts, in the District Courts, in Federal Bankruptcy Courts, and in Assessment Appeal Boards of six counties in California. I also have extensive arbitration experience, both as a "party" arbitrator, and as a neutral third, in numerous private arbitrations. I am on the Panel of Arbitrators for the American Arbitration Association and have served as an arbitrator on AAA cases, as well as a lecturer at AAA training sessions in California and Hawaii. I have also performed assignments for the U.S. General Accounting Office, the U.S. Department of Justice, the National Park Service, the U.S. Fish and Wildlife Service, the California Auditor General, and numerous other agencies, large and small corporations, organizations, and private individuals.

Certification

I don't mean to belabor my credentials, Madam Chairman, but I think it is important that my recommendations to the coalition of cabin owners be evaluated by this subcommittee within the context of the extensive training and experience I brought to the task. I also want to certify to this subcommittee the same statement I signed in conveying to the coalition my report dated June 4, 1999, containing my analysis and recommendations; that—

- The statements of fact contained in the report (and my testimony today) are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property (if any) that is the subject of this report, and I have no personal interest with respect to the parties involved.
- I have no bias with respect to any property that is the subject of the report or to the parties involved with this assignment.
- My compensation from the cabin coalition was not contingent upon an action or event resulting from the analyses, opinions, or conclusions in, or the use of, the report.
- My analyses, opinions, and conclusions were developed, and the report was prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have not made a personal inspection of the property that is the subject of the report.
- No one provided significant professional assistance in my preparation of the report.

Documentation

In conducting my analysis for the cabin coalition, I reviewed 16 key documents. These included the Forest Service Recreation Residence Authorization Policy (59 FR 28714), relevant sections of the Forest Service Handbook, various government memorandums and correspondence, and testimony offered in earlier congressional hearings. I also examined in detail the initial appraisal reports and several second appraisal reports from cabin tracts on National Forests in Idaho, Oregon and California. Congressional staff and members would find at least some of these materials essential to the understanding of the problem and potential solutions. If so, I have made the full bibliography available to the subcommittee staff.

The Problem

The United States Forest Service has, for many years, maintained a program of providing sites for cabins in the national Forests. Nearly all of the cabin sites are grouped into clusters, called a Tract. Each cabin site consists of a dimensioned parcel, drawn on a map. No subdivision process is followed, and no local approvals are involved. Holders of a Permit to use a lot are allowed to build a small cabin, for occasional use only, subject to many restrictions. Usually, the Forest Service provides only raw native land, and the permittee must pay the expense, and bear the risk, to provide and maintain any access road or trail, as well as any desired water, sewer, electrical, or other utility system. The permit is only valid for 20 years, and the permittee may have to remove all improvements at the end of the term. However, the permit can be renewed, and they usually are. The permit can also be canceled, with 10 year's notice, and they sometimes are.

The permittee pays a fee for the permitted limited rights of use to the lot. Currently, this fee is set at 5% of the market value of the raw land at the start of the permit term, updated annually by the Implicit Price Deflator – Gross Domestic Product, (IPD). The market value is set by an appraisal of a sample lot, or lots, in the Tract. Currently, the Forest Service has started the first reappraisal sequence in some years, as the policy had been under administrative review for some time. I examined the early results of that process, to determine if corrective action is needed.

The Conclusions

It is clear that corrective action is needed, that the early results of the process indicate a number of problems, of a systematic nature. As somewhat of an aside, there appear to be several significant public policy questions with the policy as conceptualized. For instance, the IPD index does not match the changes in local land values around the country, leading to substantial under- and over-indexing, and abrupt changes in permit fee upon reappraisal. I am also concerned about the lack of support for the 5% return, given the unusually large number of negative influences that are hidden within it, rather than being enumerated in the appraisal process.

The primary focus of my analysis was upon the appraisal process itself, including the instructions and their implementation. Unquestionably, major work is needed, to clarify the instructions, remove material that is contrary to the adopted Policy, and guide appraisers to proper practice in this very complex and unusual setting. A set of those instructions is attached to my testimony.

The major problem area I noted is especially in the definition of the property being appraised. Policy clearly states that the Forest Service is providing raw acreage, but most appraisals are of subdivided lots. A second major problem is with adjustments for access and utilities, usually provided by the permittees, but often incorrectly handled in instructions and appraisals. Added problems are noted with the selection of market data upon which to base the valuation, and the adjustment of the market data for relevant differences.

Based on my analysis, I have made recommendations to the cabin owners' coalition for appraisal guideline language, intended to provide clearer direction to appraisers, based upon the problems noted as of June 4, 1999.

Summary of Findings

The four elements of the current Forest Service Recreation Residence Permit Fee program are 1) the selection of representative sample lots to appraise, 2) the appraisal of the market value of the Forest Service land, 3) the percentage of value charged as the fee, and 4) the annual fee indexing procedure. In my opinion, there is strong reason to be concerned about the probable consequences of the policy as presently envisioned. With respect to the policy as implemented, it appears that the process for selecting sample lots is working satisfactorily. However, the evidence clearly shows that the current appraisal process and the annual indexing procedure are not working satisfactorily. And it is highly unlikely that the current fee percentage, 5%, correctly reflects the positive and negative elements that it is supposed to capture.

Issues Regarding Policy Consequences

To examine the underlying philosophical goals of the policy is not at all a primary goal of my work in this matter. Nevertheless, the context of my work would be remiss if it did not, at the least, point out some of the more obvious anomalies I've observed.

One public policy question involves giving the public a reasonable planning horizon, for investing in constructing and recovering benefits from a cabin. The policy appears to call for an annual fee that represents a 5% return on the then-market value of the native undeveloped land, but with permission to build a cabin, for recreational residential use only. In areas of the country where there are larger increases in population, income, or other factors that increase demand, the result will be that cabin fees will certainly escalate faster than the normal increases in income of many cabin owners. This forces out those who are less well off, in favor of those better able to pay the new higher rent. It might be better public policy to give a cabin-building family some better assurance of being able to stay there through a generation cycle, perhaps 30 years, or until the title transfers. Such an improved policy might, for example, cap the permit fee increases arising from market value increases to no more than the CPI, with recovery of the excess upon transfer.

A second public policy question arises when the government creates a monopoly by artificially restricting the supply of cabin sites, and then seeks to be paid rent based on the high prices arising from its artificially contrived shortage. In some parts of the country, it seems very likely that the Forest Service has so completely eliminated private land holdings and cabin sites that there is no private competition for the Forest Service

cabin lots. In turn, the current Forest Service policy of allowing no new lots, and of selectively eliminating existing ones, further eliminates supply. Here, then, the Forest Service almost certainly has so constrained supply as to artificially drive up values, and the rents to be paid. To profit from such a system does not appear either fair or good public policy.

Annual Fee Indexing Procedure

It was not part of the scope of my work to analyze this issue in detail. However, it is clear that the current fee indexing methods are not working at all well. Some lots appear to have been indexed well over what is probably about their correct amount, while others may be well under. Forest Service staff has explored ideas for alternate indexes, and I believe that these ideas, and others, should be investigated. It is possible, too, that a review of this topic should also address the public policy question of a reasonable planning horizon, which I have raised above.

Fee Percent of Value

It also was not part of the scope of work to analyze this issue in detail, but what the percentage represents is nonetheless closely tied to adjustments in values addressed in Section 6 of H.R. 3327. The percentage of market value that is charged as a fee is set at 5%. This number has been in use for many years, and there does not appear to be any evidence to establish its basis or appropriateness. I have assumed that this rate is to be left in place, but I have grave doubts that it fully reflects all of the permit limitations that it is supposed to reflect.

It is alleged by the Forest Service that this rate is discounted from the land return rates found in the market, in order to reflect a number of restrictions imposed upon permit holders that are not found in private market land transactions. Thus, there is supposed to be a good relationship between the amount of the reduction in the rate and the reduction in desirability resulting from the restrictions.

Land rates of return, (as a percent of the first year's value, as is the case here), are influenced by numerous factors, including the length of the contract, (longer increases the rate), if the rent is periodically indexed for inflation, (which lowers the rate), if the land is subordinated to a construction loan, (increased rate), and if performance on the contract is guaranteed by tenant expenditures on buildings (which lowers the rate). Location also influences land return rates, as urban rates are considered higher than rural rates.

Forest Service staff has written of market rates that range from 10 to 17%, in justifying the amount of discount produced by the 5% rate. However, it is likely that rural rates for 20 year leases with annual indexing, secured by development of cabins, often also secured by the expense of developing water, septic, electricity and roads, are more in the 7 to 10% range, leaving a relatively slim discount for the substantial ownership and use restrictions, so well documented in prior hearings on this topic.

The Appraisal Process

The problems with the appraisal process are numerous, but appear to be interrelated, and may be summarized as follows.

One: The implementation of the appraisal process is producing a wide variation in results across the country, and a general bias toward excessively high values. Anecdotal evidence indicated that relatively few lots are being undervalued, but many are being substantially overvalued.

Two: Review of actual appraisal reports indicates widespread misunderstanding of the assignment by appraisers.

> Example: Appraisals are typically being performed by relying solely on sales of privately subdivided lots, usually with some lot improvements, utilities, and road access, often accessible and useable year-round. However, the Specifications make clear that the Forest Service is only providing unsubdivided raw acreage, ["in a natural, native state," C-2.1(f)(3)], usually without lot improvements, utilities or road access.

> Example: Some appraisals are performed apparently assuming that permit holders should be charged for the value contribution of access roads and utility systems, without any investigation or documentation as to whether the access roads and utility systems were provided by the permittees or the Forest Service, despite the direction set forth in the Specifications.

Three: Appraisal Guidelines provided by the Forest Service are giving incorrect, biased or inadequate definition of the assignment, providing incorrect, biased or inadequate direction to both regional staff and contract appraisers.

> Example: Appraisers are given explicit factors that they must consider, in some cases without adequate instruction that other relevant value factors must also be considered, leading to appraisals that ignore, for example, significant locational differences. See also the examples, above, of apparent appraiser misunderstanding.

> Example: Forest Service materials indicate that appraisers should reflect the value increment resulting from power, water, or telephone systems or public roads owned by other public agencies. However, under the clear language of the Specifications, this is not correct whenever these systems 1) were not present at the time of the first cabin permit at that location, or 2) were installed at the expense of the cabin holders. In addition, there are undoubtedly cases where the system was indirectly paid for by the permittees, through monthly bills or annual property tax assessments, for example, and it is unquestionably the intent of the policy not to reward the Forest Service for those features.

Four: Review of actual appraisal reports indicates widespread problems with application of the particular appraisal skills needed to accurately perform these assignments.

> Example: Appraisers are adjusting for the existence of lot access, utility systems, or building improvements, correctly using the depreciated current replacement cost of the improvements, but apparently without adjustment for the extra costs involved in construction in the more remote locations, without allowance for the non-contractor cost elements that impact value, and using depreciation procedures that do not reflect the real economic lives of such improvements. See also the earlier examples.

Five: Statements by Forest Service staff indicate a lack of understanding of appraisal theory, as applied to these assignments.

> Example: Staff has indicated that the historical cost of cabin permittee-provided roads, utility system, and lot improvements is to be deducted from the value conclusion, when using comparable sales that have such amenities and lot improvements. In fact, to estimate the market value of the lot, the market value of those improvements must be deducted. There is no debate about this issue among appraisal theoreticians.

> Example: Staff has indicated that only the depreciated cost of access, utilities, and/or improvements should be deducted, and has indicated that any deduction for the risks faced in installing these items must be ignored, along with any allowance for overhead and profit. There is no debate among appraisal theoreticians about including these items in cost-based value analyses of the type indicated here.

RECOMMENDATIONS

General Policy Statements

One: The policy probably should seek to base the fee on the Market Value of the "fee simple estate of the National Forest land underlying the lot," (#33.3), for use as a seasonal recreation residence site only.

> Comment: However, it is very likely that an alternative system could be developed that would be equitable, much less expensive, less controversial, and less error-prone.

Two: The fee should be based on a percentage return on the estimated market value. The percentage return will be 5%, said number being understood as reflecting a Market rate of return, adjusted downward for the 1) short term of the permit, 2) the substantial limitations placed by the permit upon the use of the lot and the term of the permit, and 3) the public rights of use to the lot. The limitation of the use to seasonal, non-permanent use is understood not to be reflected in the rate, but rather in the value process.

> Comment: I am simply assuming that this part of the process will be continued. It bears repeating that there does not appear to be any documentation to support this figure, nor does it appear likely that it correctly represents the correct discount from market rates of return for the many restrictions imposed on the permittees.

Three: The market value should be determined by appraisals of representative lots, selected in the same manner as now established.

Four: The appraisals should be performed by a "state-certified general real estate appraiser," licensed to practice in the state where the lot(s) are located.

Five: Each appraiser should be required to perform the appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), then-current edition, and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA), then-current edition, and with the Specifications, as amended to reflect policies and guidelines established by the Congress.

Six: The appraisal report should be a "self-contained report," as that term is defined by USPAP, and the report should be compliant with the reporting guidelines established in UASFLA.

Specific Appraisal Guidelines

One: The appraisal should estimate the market value of the raw land provided by the Forest Service, available for use as a seasonal cabin site. The appraisal should not appraise the lot as if a legally subdivided lot.

> Comment: The Forest Service is indeed only providing raw land, without the burden of the expensive mapping and approval process faced by private parties. The costs and risks of this process are reflected in the sale prices of all private subdivided lots, (whether the specific lot predated the current expensive process or not). It is unfair to ask cabin permittees to pay rent on something that the Forest Service did not provide.

Two: Where the sold parcels that are identified in the marketplace are small parcels, whether within a subdivision or not, the adjustments must reflect the market difference between such small legally divided parcels and lots such as the subject, which are legally undivided portions of a large acreage. Where the sold parcels are relatively large parcels, the adjustments must reflect the market difference between the sales and the subject lots, due to the greater land area that the buyer will control in the sale, on the one hand, and the possibility of more than one cabin lot, if allowable, on the sale parcel. It may be desirable to obtain both types of comparable sales, if possible, in order to better bracket this adjustment.

> Comment: The Forest Service cabin lots do not have an exact equivalent in the private marketplace. The lots have the same "cabin site benefit" that gives value to a privately held parcel, but they lack the feature of being a separate legal parcel. On the other hand, they are more valuable than a "pro-rata" allocation of bulk acreage, as each has its own cabin approval, while the bulk acreage often only has permission for one cabin. The cabin sites are, on a price per acre basis, inferior to a privately divided lot of similar size, but superior to a larger parcel with zoning capability for only one cabin. However, on a parcel price basis, the Forest Service cabin lots are inferior to both privately divided parcels of similar size and larger parcels limited by zoning to only one cabin site. It is necessary to spell out this unique aspect of the appraisal assignment.

Three: The appraisal should reflect the market value contribution of any utilities, (such as water, sewer, electricity, or telephone), or access roads or trails, etc., that can be clearly established as having been provided and maintained by the Forest Service. Utilities and access provided from the general funds of any other government agency, as opposed to a special district or other user funding source, shall also be reflected. All other utilities and access should be presumed to have been provided by or funded by the permittee.

> Comment: Some Forest Service lots were developed many years ago. Policies at that time did not require that the permittee maintain permanent records of work performed or expenditures. The burden of proof as to the original funding for utilities

and access within the Forest should now be on the Forest Service. Further, where the original facilities were funded by the Forest Service, but have been maintained for many years at permittee expense, these should be treated as if provided by the permittees. However, some facilities will have been paid for by local government funds not generated for that purpose by the permittees. It is not practical to separate those predating the Forest Service Tract from those installed since, and it is more equitable that the permittee's rent reflect both than neither.

Four: The appraisal should be based upon analysis of one or more of the following categories of market data:

- Sales of larger privately-owned acreage parcels of land, generally somewhat similar in size to the Forest Tract being examined,
- Sales of privately-owned individual smaller parcels of land, not part of an established subdivision,
- Sales of privately-owned lots in a mapped and recorded subdivision,
- Sales of cabins in the Forest Service tract in question, or other nearby similar Forest Service tracts.

Comment: It is desirable to give the appraiser the ability to rely on all possible sources of market information. Available data in some locations may be much more limited than in other locations. However, it is clear that appraisers need some guidance ranking the relevance of the data that might be available.

Five: The relative weight to be given by the appraiser to the market data that has been collected should be in the same order as set forth in guideline **Four**, above, (sales of larger privately-owned acreage parcels of land, generally somewhat similar in size to the Forest Tract being examined being given the most weight). This weighting reflects the relative similarity with the land provided by the Forest Service, and the inherent problems with adjusting evidence of a less similar nature to accurately reflect the differences. Sales of cabins in the Forest Service tract in question (or nearby) should not be used, unless there is no other relevant data, lest the appraisal reflect local artificial scarcity factors caused by Forest Service policies.

Comment: It is important to stress to appraisers that the potential evidence varies in its usability, lest they select data on the basis of its ease of access, for example, or other, less relevant factors. It is also important to limit appraisers use of less reliable information to those times when it is the only data available. Please note that the results of such an appraisal may be artificially inflated.

Six: The appraiser should consider, and adjust prices of the sold parcels for, all factors likely to materially influence market value, in estimating the market value of the specific parcel. These factors would include, but are not limited to, all typical value influences set forth in standard appraisal literature. Particular attention should be paid to differences in the locations of the parcels, in seasonal accessibility, and in the physical ease or relative cost of cabin construction.

Comment: I have not tried to provide a "shopping list" of possible factors. Instead, I have tried to use standard appraisal language, pointing to the sources that appraisers know from their training. However, I have added a sentence here to

stress those issues that I believe are most likely to cause problems in this circumstance.

Seven: Where the sold parcels, (market data), have cabin improvements, or lot improvements, (such as utilities, access road, or lot grading), and the Forest Service lots being appraised did not have these amenities provided by the Forest Service, the appraiser should adjust the sales prices of the sold parcels by the market value contribution of any such amenity. The adjustment process also needs to reflect the construction difficulties for such amenities at the subject lot, and must include an appropriate allowance for entrepreneurial profit and overhead.

Comment: It clearly is important to remind appraisers that it is the market value impact of these amenities that must be adjusted for, including all typical cost elements, and using costs applicable to the subject lot, not those at the location of the sale. Please note that these lots have the normal risks associated with development, reflected in the profit and risk allowance noted above. There also are abnormal risks associated with these sites, which are discussed in guideline **Eight**, below.

Eight: Where the sold parcels have wells, (or water systems), and/or septic systems, and the lots being appraised do not have these facilities provided by the Forest Service, the adjustment must reflect not only the depreciated current replacement costs of installing such facilities at the lots being appraised, as set forth in guideline **Seven**, above, but also must reflect the risk deduction that is taken in the market when such facilities are absent and the buyer cannot know at sale whether it will be routine or highly difficult to install them. This risk allowance might be the cost of drilling for water at several locations, or drilling deeper, or the cost of an alternate, more expensive method of proceeding.

Comment: Appraisers clearly need to be reminded that the adjustment amount must reflect the thinking in the market. Where no well or septic is in place, and the buyer is to bear all of the risk regarding cost overruns, or complete failure, to complete them, it is clear that the discount in the market value is greater than just the cost of a well, or successful system. That discount belongs to the party who bore that risk, usually the permittee.

These recommendations will sound familiar to those who have already read H.R. 3327. The cabin coalition has made available to the Chairman's staff, and to Representative Nethercutt's staff, over the past two years as much information as was available to the coalition about various alternatives worth examining. A number of alternatives were discarded as unworkable and unlikely to produce a reliable, fair process of determining fees over time.

There are a number of methodologies available to the subcommittee for setting fees in a manner that returns fair market value. For example, you can mandate an entrance or user day fee, to be paid every time the cabin owner visits the cabin. Or, you can determine the average cost of renting and divide this number by days or value. You can establish "market value," or what the use (amenity) would be worth for rent or sale in the general market, exposed to a large number of people. A more nebulous measure of fair market value is "use value," the value to a specific user for a specific use.

It was clear to me in discussions with the cabin owners and the Forest Service that capturing fair market value is both a consideration in setting policy and a consideration in compliance with statute. In making new law, it is the choice of the Congress whether to further the practice of capturing fair market value, or to set some new course.

The recommendations I have offered further the policy and practice of capturing fair market value for the occupancy and use of forest cabin lots.

I believe that, if adopted, these recommendations will do the job without the inconsistencies, errors and ambiguities contained in the current Forest Service policies, procedures and instructions for determining the market value of cabin lots. The current fee determination process leads to errors, misapprehensions and misunderstandings on the part of appraisers in the field, who are being asked, without sufficient and clear direction, to examine a very complex and unusual setting.

I also believe it is unlikely we will see the appropriate changes occur, absent clear guidance from Congress and one or more of our professional appraisal organizations about how to do it.

I very much appreciate this opportunity to testify. As the subcommittee continues its work on H.R. 3327, I will be available and pleased to assist as needed.

SECTION C-2 SPECIFICATIONS FOR THE APPRAISAL OF RECREATION RESIDENCE SITES

SECTION C-2.1 - GENERAL SPECIFICATIONS

C-2.1(a) - Scope of Service. The contractor shall furnish all materials, supplies, tools, equipment, personnel, travel (except that furnished by the Government listed in Section I, and shall complete all requirements of this contract including performance of the professional appraisal services listed herein.

The project consists of one or more narrative appraisal reports which include all the recreation residence sites listed in Appendix A. The contractor may use her/his discretion in presentation of the market data and analysis. For example, it may be appropriate to include transaction data in one report and description/analysis of all the sites in one or more additional reports. Each appraisal report shall be furnished in an original and 2 copies. The appraisal shall provide an estimate of fair and equitable cash market value for a typical site, a site within a tract 3r group of tracts, as if in fee ownership and restricted to a recreation residence site use, excluding all permittee (hereafter called "holder") provided improvements on and to the site.

C-2.1(b) - Narrative Appraisal Report. The contractor shall make a detailed field inspection of the designated typical site(s) and all other listed sites within each recreation residence tract. The contractor must make investigations and studies as are appropriate and necessary to enable the contractor to derive sound conclusions in conformance with recognized appraisal standards; and shall prepare a written report.

The date of value in the appraisal shall not be more than 30 days from the last inspection of the typical sites(s), inspected by the contractor, if possible; but in no event, no later than 60 days.

C-2.1(c) - Meeting Notice. The contractor is obligated to provide recreation residence holders in a tract grouping a minimum of thirty (30) days of advance written notice of the site examination date. Notices shall be sent, certified mail, return receipt requested, to addresses furnished by the Forest Service, in Appendix A. Receipts shall be given to the contracting officer representative. The contractor shall give holders, holder representatives, and the Forest Service Sr. Review Appraiser the opportunity to meet with the contractor to discuss the assignment. The meeting shall be held at a location most convenient to the tract grouping and at a time when most affected holders could be expected to attend. This notice, and the responses thereto, shall be documented in the contractor's letter of transmittal of the appraisal report. The appraiser shall have available for review full and complete copies of all appraisal instructions, directions, and requirements at said meeting. The Forest Service will provide such copies.

EXHIBIT ____

C-2.1(d) - Updating of Report. Upon the request of the Forest Service, the contractor, during a 2-year period following the valuation date of the appraisal report, shall update the value as of a specified date. The updated report shall be submitted in original and 2 copies and include sales data or other evidence to substantiate the updated conclusion of value if a change in value occurs.

C-2.1(e) - Definition of Terms. All terms, words, and processes (unless specifically defined and given herein) shall have the meaning and be interpreted in accordance with the definitions of same as contained in the most recent edition of The Dictionary of Real Estate Appraisal published by the Appraisal Institute.

C-2.1(f) - Assignment of Specific Definitions:

(1) Permit - A permit is a special use authorization to occupy and use National Forest System land for a specified period and is revocable and compensable according to its terms.

(2) Recreation Residence - A privately owned, non-commercial principal structure, its auxiliary buildings, and land improvements located upon National Forest System lands as authorized under a permit issued by an authorized officer. The residence is maintained by the holder for the use and enjoyment of individuals, families, and guests. As a recreation facility, it is intended for use as a recreation residence for a minimum period each year, but not to the exclusion of a permanent residence elsewhere. As a private privilege use of National Forest System lands, the occupancy cannot interfere with public or semi-public uses having a documented higher priority.

(3) Site - The site is the actual physical area of National Forest System land as described in a permit, said land being in a natural, native state when the exclusive use was first permitted by an authorized officer.

(4) Tract - A tract is a logical grouping of recreation residences occupying an area of National Forest System land in a planned and/or approved manner similar to private-sector subdivisions. Typically located near scenic natural attractions (lakes, streams, mountains, scenic views, etc.), tracts are designed to be environmentally acceptable, compatible with the public interest, and to provide full public use and enjoyment of the natural attraction. Residences within a tract are subject to terms and conditions of individual permits issued. In general, permits within a tract grouping provide for similar privileges, restrictions, terms, and fees; and apply to land units having similar utility of physical, legal, economic, locational and functional characteristics.

SECTION C-2.2 - TECHNICAL SPECIFICATIONS

C-2.2(a) - Format. The report, in form and substance, must conform to recognized appraisal principles and practices applicable to estimating cash market value as outlined in the 1992 edition of Uniform Appraisal Standards for Federal Land Acquisitions, except as modified or amended herein. The appraisal report shall present and document adequate factual data and analysis to support any rate, ratio, percentage or dollar adjustment made to any comparable sale; as well as any other value information in sufficient detail to permit an intelligent peer review.

The report shall be typewritten on bond paper sized 8 1/2 by 11 inches with all parts of the report legible; shall be bound with a durable cover; and labeled on the face identifying the appraised property including contract number, appraiser's name and address, and the date of the appraisal. All pages of the report, including the exhibits, shall be numbered sequentially.

C-2.2(b) - Contents. The report shall be divided into tabulated parts of at least:

PART I - INTRODUCTION
PART II - FACTUAL DATA
PART III - ANALYSES AND CONCLUSIONS
PART IV - ADDENDA

The content of the report shall contain, as a minimum, the following:

C-2.2(b)(1) - PART I - INTRODUCTION

A. Title Page. This shall include (1) the name and location of the recreation residence tract; (2) that the appraisal is for the Forest Service-USDA; (3) name and address of the individual or firm making the appraisal; (4) date of value estimate; (5) the report date and appraiser's signature.

B. Table of Contents. This shall be arranged in accordance with the sequence of typical headings with corresponding page numbers.

C. Summary of Facts and Conclusions. This is a brief resume' of the essential highlights of the report. The purpose is to offer convenient reference to basic facts and conclusions. Items which shall be included are (1) name of recreation residence tract; (2) size range of sites; (3) authorized use which is highest and best use; (4) improvements furnished by Forest Service included in appraised value; (5) estimated value of each typical site.

D. Statement of Assumptions and Limiting Conditions

1. All holder-provided improvements on and to the land (site) have been identified in the body of this appraisal report, but have been fully excluded from the value conclusion cited herein.

2. The legal description cited herein was furnished by the Forest Service and is assumed correct.

3. The site(s) as appraised in this appraisal report were jointly selected by the Forest Service and the holders; and provided to the appraiser. The site(s) are assumed typical, unless noted and documented elsewhere in this appraisal report that, in the appraiser's opinion, the selected site(s) is not representative of the recreation residence tract grouping.

The Appraiser may add additional assumptions and limiting conditions as necessary so long as they do not limit the scope, function, or purpose of the appraisal report; and accurately reflect attitudes found in the real property market as well as the "Uniform Standards of Professional Appraisal Practice," as published by The Appraisal Foundation.

E. References. The contractor shall list the source of data incorporated within the report such as records, documents, technicians or other persons consulted, along with a statement of their qualifications and identification of the contribution to the report. To be included in the ADDENDA, such list shall contain the name, address, telephone, and date contacted for each person or organization from which the contractor obtained data included in the appraisal report.

C-2.2(b)(2) - PART II - FACTUAL DATA

A. Purpose of Appraisal. The appraisal purpose is a cash market value estimate of the fee simple interest of the National Forest System land underlying an area authorized by a permit, but without consideration as to how the permit would, or could, affect the fee title of the site(s) within a recreation residence tract, or the designated typical site(s) within a recreation residence tract grouping.

B. Definition of Market Value. The amount in cash or on terms reasonably equivalent to cash for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy. The value estimate must give accurate and careful consideration of all market forces and factors which tend to influence the value of property, and which bear on the most probable price in terms of money which the site should bring in a competitive and open market under all conditions requisite to a fair sale.

C. Estate Appraised is the unencumbered fee simple title of the typical site(s) as if held in private ownership, restricted to a recreation residence use, and subject to all applicable local governmental police powers. Federal government property is typically not impacted by non-Federal police powers such as zoning, building, health and land use codes, or development restrictions. Such use controls are a function of the permit in order to protect the public. Reconciliation of non-Federal police powers with permit restrictions of a like nature must be made.

Warranted adjustments for these matters external to the site(s), but influencing the sites(s), must be quantified and made in the appraisal. For the purpose of the appraisal, the site(s) shall be considered as in private ownership subject to the more stringent of applicable local police powers or permit restrictions of a like nature.

D. Area and Local Data. The report shall include a concise discussion of market area, trends in use, and neighborhood or area analysis. This type of information is usually background data leading to the appraiser's conclusion of the highest and best use. In this instance, the highest and best use is the authorized use which is a recreation residence site within the constraints of all known physical, legal, economic, locational, functional, and amenity characteristics of the site and the market in which it competes.

E. Property Data. Include a narrative description of the significant land features appraised. Briefly describe the recreation residence site tract and the group(s) within the tract, access, location, physical features, recreation amenities, and other features creating value or detracting therefrom.

Briefly describe the actual designated typical site(s) within each group in the recreation residence tract. Show the reasoning leading to the differences between the typical site(s) within each group as measured in the market.

Any improvements on or to the site(s) provided by or at the expense of the holder must be explicitly identified in the appraisal report. Emphasize and document that these improvements are not included in the value conclusion, nor are similar type improvements included in the adjusted market price for comparable sales. Additionally, those items effecting value external to the typical site(s) provided by the Forest Service or third parties bearing on the value conclusion in a positive or negative manner are to be documented, discussed, and adjusted for as necessary as they relate to the subject and comparable sales. Private-sector transactions consider any and all improvements on and to the land. Permits require the holders to provide all improvements on and to the native, natural land to make it ready for the purpose for which it was intended--a recreation residence site. All similar such improvements on comparable market sales shall be excluded from value consideration and adjustments made to the comparables reflecting any such factors contained within the property boundary.

C-2.2(b)(3) - PART III - ANALYSIS AND CONCLUSIONS

A. Highest and Best Use/Authorized Use. The highest and best use of the site is for its permitted use, being a recreation residence site which cannot be used as a permanent and sole place of residence.

B. Estimate of Value

1. The appraiser shall ensure values of the designated typical site(s) in each grouping are based on comparable sales of sufficient quantity and quality which result in the least amount of dollar adjustment (in terms of absolute dollars) to make comparables reflective of the subject site(s). A permitted site is a unique blending of public and private interests. All site characteristics shall be addressed within the appraisal in terms of current market standards of value in relationship to, but not limited to:

(a) Physical differences between subject and comparables;

(b) Legal constraints imposed upon the market by governmental police powers;

(c) Economic considerations evident in the market;

(d) Locational considerations of subject typical site(s) in relation to the market comparable sales;

(e) Functional usability and utility of the typical site(s).

(f) Amenities accruing to the subject in relation to comparable sales;

(g) Availability of improvements or services provided by parties other than permit holders, including services provided by the Federal Government;

(h) Other market forces and factors identified as having a quantifiable effect on value.

2. Cash market value shall be based upon the typical site(s) use as a recreational residence homesite and shall be supported by confirmed recent transactions of comparable sites having similar uses, but adjusted for differences from the subject site(s). Only the market data approach (sales comparison analysis) need be developed by the contractor, unless there is market evidence another appraisal technique is more applicable.

3. In the designated recreation residence tract, appraise the typical lots identified, rather than all individual lots. The typical site(s) for each recreation residence tract have been pre-selected by the Forest Service and the holders. The objective is to keep the number of typical sites appraised to a minimum.

4. For each sale used in the market data approach, list: parties to the transaction, date of the transaction, confirmation of transaction, size, legal description, interest conveyed, consideration, conditions of payment (cash or terms--contract sales shall be discussed and conclusions made as to their cash equivalence), improvements (kind and whether they contribute to highest and best use), outstanding rights and reservations and their effect on value, zoning, and physical description--topography, cover, etc.

. Much of this type data need not be repeated in the narrative portion of the appraisal if included in a complete analysis of the sale data write-up included in the Addenda.

For each sale, describe water, roads, electric power, sanitation systems, and other site external influences such as road maintenance, as well as who provides them and on what frequency--the buyer or seller, governmental agency, or no one. Specifically relate external influences to the appraised typical sites(s). Each of these items should be measured in the market as to what effect they have on the market value of the site (s) being appraised.

5. Market value is cash market value or terms equivalent to cash. All value estimates shall be made on the basis of cash or cash equivalence. The effect of term sales on market value shall be considered and conclusions documented in the appraisal report. Normally, when recreation homesites are sold on terms, subdividers shall sell at a lower price for cash. If sufficient cash sales are found, comparisons should be made to cash sales in lieu of contract sales. Contract sales may be used, but should be adjusted for terms when evidence in the marketplace indicates a discount rate for such sales. In all cases, the reason for making or not making an adjustment shall be stated and supported.

6. Each comparable sale should be described in narrative form in sufficient detail to indicate how it compares with the appraised property in elements effecting value.

When the subject typical site(s) and comparable sale differ substantially in value, adjustments must be shown in sufficient detail (and in dollars or percentages, if appropriate) to allow the reviewer to judge validity and acceptability.

When the value of the subject typical site(s) and comparable are not substantially different, lump sum adjustments are acceptable, though the elements of dissimilarity effecting value must still be listed.

7. Sales with improvements (such as water systems, electric power, etc.) dissimilar to the appraised site(s) may be used if appropriately adjusted. It is essential to spell out in the appraisal what improvements were provided and included in the sales price by the subdivider or previous owner of the comparable sites, and which improvements were left for the buyer to perform. The appraiser must demonstrate all differences in improvements between the National Forest System typical site(s) and the comparable sales--such as roads, water and utilities--were considered and equated to the value of the subject with appropriate adjustments made to the comparable(s).

8. The final estimate of value shall be on the basis of the total value for the typical site, rather than a value per square foot, per front foot, etc. Normally, the unit of comparison in the appraisal of recreation residence sites shall be <u>the site</u>.

Permitted size is not an overriding factor where only one residence is allowed on a site. National Forest recreation residence sites often enjoy a much greater effective area than the permitted area. Many offer equal or better privacy or view than larger private lots. Price per front foot for waterfront sites may be appropriate where it is demonstrated similar sites are bought and sold on a front-foot basis. However, the final estimate of value for the typical recreation residence site shall be in terms of total value for the site.

Wherever price per front foot is used as the unit of comparison, a value estimate shall also be developed using the overall price per comparable as the unit of comparison.

9. If there is a public access strip retained between the lot boundaries and a river, lake, or other natural attraction, it is to be identified clearly how the appraiser considered and made, or did not make, allowances for the effect of this public access area. The proximity, accessibility and control of the site frontage upon the natural attraction is unique in the relationship with the non-public sector. Private transactions shall typically convey the full use and enjoyment of all the land down to (and at times including) the actual frontage on a natural attraction (lake, stream, etc.). To adequately provide for the full public use and enjoyment of natural features in a recreation residence tract area, the government prohibits private control of the actual frontage and it is excluded from all permits.

When private market comparables include exclusive control in the conveyance, warranted adjustments may be needed to account for the subject under appraisal not having the same quality of frontage as that of the comparable. Should market transactions not be available in the immediate comparable area(s), transactions from any similar area shall be acceptable for purposes of establishing percentage adjustments to market prices of comparable sales.

10. Information furnished by holders shall be considered, and relevant material referenced in the report.

C. Reconciliation and Final Value Estimate. The appraiser must interpret the foregoing data, analyses, and estimates; and state reasons why conclusions reached in the Estimate of Value section of the appraisal report are the best indications of the market value of the typical site(s). The indications given by the various sales cited and compared shall be analyzed to reach the final value estimate, showing which sale or sales were considered most comparable and provided the best reliable indication of value for the typical site(s). The final value estimate as sought by the appraisal purpose, assumptions and limiting conditions represents the appraiser's reasoned, professional opinion of market value consistent with:

1. The definition of value being sought;

2. Highest and best use(s) of the site as of the date of appraisal;

3. Quanity of available market evidence;

4. Quality of available market evidence;

5. Applicability of underlying appraisal theory and practice;

6. Assumptions bearing on the appraisal problem;

7. Limiting conditions specified or identified.

D. Certification - The certification of appraisal shall contain, at a minimum, the following:

I certify that, to the best of my knowledge and belief:

1. "The statements of fact contained in this report are true and correct and no important facts have been withheld."

2. "The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions."

3. "I have no (or the specified) present or prospective interest in the property that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved."

4. "My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report."

5. "My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the 'Uniform Appraisal Standards for Federal Land Acquisitions' and the 'Uniform Standards of Professional Appraisal Practice'."

6. "I have made a personal inspection of the appraised property which is the subject of this report and all comparable sales used in developing the estimate of value. The date(s) of inspection was _____, and the method of inspection was _____."
(If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.)

7. "No one provided significant professional assistance to the person signing this report." (If there are exceptions, the name and qualifications of each individual providing significant professional assistance must be stated.)

8 "The recreation residence holders or their representative jointly inspected the property with the appraiser on (date)." (or the recreation residence holders were invited to jointly inspect the property and declined)

9. "I certify understanding, and agree, this report shall be subject to review in conformity with the "Uniform Standards of Professional Appraisal Practice", as published by The Appraisal Foundation; and any documented finding of inadequacy shall be discussed and corrected as need be at no cost to the government."

10. "The appraisal is made and submitted in accordance with the standards of professional practice and code of ethics of the professional group(s) or association(s) in which I hold membership and to which I am held subject to penalties for violation thereof."

11. "In my opinion, the cash fair market value of the typical site(s) is _____ dollars ($_____) as of_____(date)."

By _____(Appraiser's Signature)_____.
(Name and Title)

E. Qualifications of Appraiser. The qualifications of the appraiser shall be included in the report as evidence the appraiser is qualified to make such an appraisal. Additionally, the appraiser shall be required to execute and be bound by this contract which provides for:

1. The approved appraisal format to be used.

2. A full, complete, and accurate definition of the appraisal problem.

3. The standards of professional competence, ethics, and practices to which the appraiser shall adhere.

4. Those requirements of the appraisal assignment that may be imposed under (1) statutes, (2) Federal Regulations, (3) Forest Service policies and procedures, (4) situations unique to the given appraisal assignment. (1/)

C-2.2(b)(4) - Part IV Addenda and Exhibits (2/)

A. Exhibit A - Vicinity Map. This is normally a small-scale map 1/2" to 1" per mile. It shall show the appraised site(s) and surrounding area, as well as cultural and topographic features.

B. Exhibit B - Comparable Sales Location Map. This map shall show the location of sales used in estimating market value of the subject property. It may be combined with Exhibit A.

1/ These requirements are primarily found throughout the appraisal contract or as separate attachment.

2/ The Exhibits do not necessarily have to be placed in the Addenda. They may be placed where appropriate throughout the report.

C. Exhibit C - Recreation residence tract plat as furnished by the Forest Service and designating tract groupings and typical site(s) within a tract group.

D. Exhibit D - Color photographs of all typical sites(s) appraised and all comparable sales selected shall show pertinent details and features, including features for which value adjustments were made. The appraiser is free to include such photographs with the analysis of the site(s) and analysis of comparable sales to better illustrate the relationship of the properties. All copies of the appraisal report shall contain original photographs or comparable color copies.

E. Exhibit E - Other material--including pertinent documents, charts, maps, etc., not included in the exhibits listed above.

F. Exhibit F - Comparable Sale Data. Each sale listing shall include sale date, name of seller and buyer, assessor parcel number, legal or adequate description, size, consideration and terms of sale (down payment, payment schedule, interest rate, release clauses, etc.), confirmation or verification (date, by and with whom), purpose for which purchased, physical characteristics, access and location, outstanding rights and reservations, site improvements and utilities provided, special conditions or restrictive covenants, a map or sketch, and a photograph.

G. Exhibit G - A full and complete copy of the most stringent standards of professional practice and code of ethics of the professional group(s) or association(s)in which the appraiser holds personal membership and to which the appraiser personally ascribes.

H. Prework Conference - Prior to commencement of work, the appraiser will meet with Sr. Review Appraiser, Kim Brower, to discuss the project;preferably on-site. Dot in all Specs

I. Use of Appraisal Reports - All submitted appraisal reports become the property of the United States and may be used for any legal and proper purpose. If requested by a holder or other interested party, a copy of the appraisal report shall be furnished by the Forest Service to the requesting party. The requesting party has 45 days in which to review the appraisal.

SECTION I - GOVERNMENT FURNISHED PROPERTY, DATA, AND SERVICES

The Government shall furnish the following at the appropriate Forest Service Supervisor's Office at the Contractor's request after the award:

I-1. Opportunity to view or possibly use of aerial photographs of the appraised property and of such other aerial photographs as are available. (To be returned to the COR upon completion of the appraisal.

I-2. Copies of pertinent Forest Service administrative maps as available, for use in the appraisal report.

INFORMATION

For additional information contact Kim Brower, Sr. Review Appraiser, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408, Telephone number (909) 884-6634, extension 3190.

INSTRUCTIONS TO BIDDERS

1. A prework meeting with Forest Service Sr. Review Appraiser Kim Brower is required. This may be accomplished during the appraiser's inspection of the properties. It is preferred that the meeting be conducted on the "typical sites" involved in the report.

2. The appraisal report must be reviewed and approved by the authorized Forest Service review appraiser before final payment will be authorized.

PERFORMANCE

Contract time will proceed according to the following phases. Upon the completion of one phase, unused contract time will not be carried forward.

PHASE 1 - 60 calendar days following meeting with holders, the contractor shall submit to the Sr. Review Appraiser, at the address in INFORMATION, above, one (1) original draft appraisal report and two (2) copies covering the Federal lands contained in each of the various Recreation Residence Tracts listed in Appendix A.

PHASE 2 - The Government will inspect the draft appraisal report for compliance with the specifications and return the report to the contractor with instructions for preparation of the final appraisal report.

PHASE 3 - 30 calendar days following return of the reviewed draft report, the contractor shall comply with the instructions provided by the Sr. Review Appraiser and submit the final appraisal report in one (1) original and two (2) copies to her. One (1) copy submitted should be left un-bound for future duplication purposes.

PHASE 4 - The Government will review the final report for approval.

PAYMENT

Partial payments will be authorized as follows:

1. 75 percent of the contract price will be authorized upon approval by the Government of the draft appraisal report.

2. 25 percent of the contract price will be authorized upon approval of the final appraisal report (plus receipt of the required copies).

Ms. CHENOWETH-HAGE. Thank you, Mr. Betts.

Mr. Smith, you are recognized for questions.

Mr. SMITH. I have no questions.

Ms. CHENOWETH-HAGE. Thank you. Mr. Schaffer, you are recognized for questions.

Mr. SCHAFFER. Thank you, Madam Chairman. Let me just kind of think out loud with your help and assistance about this whole process.

The references have been made often that the history on these cabin leases go back to 1915. There seems to be somewhat of a nostalgic connection because 1915 was a long time ago and we have done this for a long time. It was about the time we got income taxes and about the time the Federal Reserve Board was created, so a lot of other decisions have negative impacts on the country. So I am not particularly persuaded just by the—because we have been doing this for a long time. The conflict that we struggle with all the time, is the desire to have large national estate for the benefit of the country and to utilize the value of these lands, a decision that was made in the last century.

And so now we find ourselves trying to—struggling with our desire to have the benefits of the marketplace superimposed on the impracticality of a socialized asset that belongs to all of the country and this is a hard thing we do. We tried to do this with the utilities and transportation and all the rest. We always fight over it. There is never really a good answer, but we can try to be as fair as we can. I think that is the goal of the Nethercutt bill that is before us.

My question, I guess, is does the fee, do the fees that are charged, do they have any relationship at all to the cost associated with managing and maintaining and providing the services that these cabins require? Presumably, putting a permanent cabin in a national forest is just slightly different than me setting up my tent over a weekend backpacking trip. I just pack it up and take it with me, you leave your dwelling there permanently rather and so I presume there should be some proportional costs where you would pay more than I do as a taxpayer and citizen to use the lands that we own in common.

It seems that determining the value of that expense, the extent to that expense should be somewhat associated with the costs associated with using it and really nothing more. I do not pay more if I decide to stay in a campsite for 7 days versus 1 day. The Forest Service charges me the same as the taxpayer. In fact, they do not even know I am there half the time, but what role does the cost to the Forest Service to have that cabin there play in determining the fee?

Ms. VER HOEF. If I might attempt to address this issue. First, I am going to assume that the American public wants to see different forms of recreation on Federal lands. This is one type of recreation. You noted that you can stay in your campground for fairly small amount per night. Recognize that it cost the Federal Government a lot of money to put up that campground and the concrete vault toilets. They are $200,000 toilets. The cost, the current cost of putting in a campground are very high. The cost of the cabin program has not been great to the Federal Government be-

cause all of the improvements were supposed to be and generally are those of a cabin owner.

Mr. SCHAFFER. So the dollars raised off the fee, how much in excess are they than the cost of actually maintaining these leases?

Ms. VER HOEF. Off the top of my head I think I have that in my testimony, the Forest Service at one of the last testimonies came up with a $3 million figure for the cost of administering the program. Before the current round of appraisals we bring in $9 million. It could go up to $22 million and more with the current stuff. So we more than pay our way. This is, of course, not assuming that they want to charge us for every last little bit of the forest planning process that might approach dealing with recreation. There are ways to play with those figures, obviously, but we are cost-effective. This does not even deal with those issues, where my tract is where we spend a lot of time working with the Forest Service in managing all the public uses that come through there. We man the kiosk. We help them with putting together trails, so there is a lot of incidental helpfulness that we provide.

Mr. SCHAFFER. Thank you, Madam Chairman.

Ms. CHENOWETH-HAGE. Ms. Napolitano.

Ms. NAPOLITANO. Thank you again, Madam Chair. In listening to the testimony, especially Mr. Mead, I was rather intrigued by the fact that you do not have some of the amenities inside the cabin.

Is the cost of what you are paying to Forestry, the same as other cabins who might have those amenities in them on their property, inside their cabin?

Mr. MEAD. There are 34 cabin lots in the Valley View tract where my cabin is. There is one typical which means we all pay the same fee. Some of the people in my tract are just like I am, they do not want all the modern. We want to get away from it. We use kerosene lamps, et cetera. We have a one holer and all that. And there are some who have electricity and indoor plumbing and a well. They do not have to use a bucket like we do. This is pretty much the same all over the Nation, all the tracts I have seen and everybody I have talked with. There are some people who go a little fancier than we do, but we all pay the same fee within the tract, in our tract. Another tract nearby, about 5 miles away by the road, there are three typicals, one by the lake, one a little back from the lake and one further back from the lake.

Ms. NAPOLITANO. And they all pay the same?

Mr. MEAD. No, those three typicals, each one of those are appraised differently, different value and therefore the time is a 5 percent factor comes up with a different amount. For instance, I mentioned the Pettit Lake tract, low will be paying $22,500. That is the low end. That goes up to about $30,000 to $38,000 on the second typical and then the third typical which is by itself, $67,500 a year. Well, most of those cabins were not obviously sold or taken down. I do not know whether you realize, if the cabins are abandoned, we have to take them down.

Ms. NAPOLITANO. You own them.

Mr. MEAD. That is right and we have to take them down or the Forest Service takes them down. They bill us.

Ms. NAPOLITANO. Is there any other, Ms. Ver Hoef, you indicated that you pay property taxes in addition to this user fee.

Ms. VER HOEF. Right.

Ms. NAPOLITANO. Generally, what are the property taxes going for?

Ms. VER HOEF. Well, I am in California. I pay about $500 a year for property taxes. I also have a lake, I am not on the lake. I am back from the lake, but I have a tract that is around a lake. I am one of the few that does not have the pit toilet. When Logan was born I really wanted to be indoors and my husband set up, it is basically a pit system that gets pumped, but most people there do not have running water either.

Remember, that is not something the Forest Service provides.

Ms. NAPOLITANO. I understand.

Ms. VER HOEF. So you are only looking at the underlying raw land so you are classifying based on the land itself. If you are back from the lake——

Ms. NAPOLITANO. The footprint itself, where you are located.

Ms. VER HOEF. Well, no, it is the site. The site or the lot. For ease of allowing an appraiser to look at this, you give him a lot to look at and in the market place a lot on a lake goes for more than a lot away from the lake. So you can classify a typical lot along there, along the lake and one back and that is the—you are appraising the sites, the places for them and not the amenities. You are supposed to be having raw, undeveloped land be appraised.

Ms. NAPOLITANO. I understand. Now you did make one statement in that you said this was used for, it was one type of recreation. Do you have the ability to rent or lease?

Ms. VER HOEF. Generally, the permit provides a limitation on that. I think it is maybe 2 weeks. You have to get prior permission from the Forest Service. I do not know anybody who has actually ever done that. It just does not happen.

Ms. NAPOLITANO. So it does not come in as a second income to the cabin owner?

Ms. VER HOEF. No. It is quantitatively and qualitatively different from your typical vacation home. It is a totally different animal.

Ms. NAPOLITANO. It is also my understanding that there have not been any new permits issued for a number of years.

Ms. VER HOEF. That is correct.

Ms. NAPOLITANO. How do we allow other Americans to be able to participate?

Ms. VER HOEF. I would love to see that happen. One of the things that we have seen is every time I come and have to write something for one of these things, I have to cross out the number of current cabins available. Each year they go down significantly. No one in the Forest Service is making any attempt to replace them at all, so you can say, "Oh, we only take out a few a year," which is what the Forest Service will say, but there has been a steady decline of these cabins.

In 1962, in California alone, there were about 15,000. Now there are only 6,000 left in California. In 1988, there were 15,600, according to Forest Service written documents. Now there are about 14,800 and I guess to ask me how we change that, you obviously know, as far as my personal opinion, that there are plenty of places in the vast forests that we have where these things could be appropriate, where they would not bother anybody, but you are going to

have to address that issue to the Forest Service, I am afraid. That is not something I can do anything about.

Ms. NAPOLITANO. Thank you.

Ms. CHENOWETH-HAGE. Thank you. Mr. Smith.

Mr. SMITH. Yes. I apologize Madam Chair. I actually have to leave. This question is really more for the Forest Service than the appraisers. I was just hoping they could address it.

In flipping through the bill, I had a hard time understanding it to be perfectly honest with you, even though I am a lawyer. And what I am curious about is if you could testify, you are certainly free to answer the question as well, what specifically in the bill changes the appraisal value? There is a whole lot of talk about things that they need to consider which allegedly they already do consider, but there have been estimates that have been made that it is going to dramatically change the value and both sides agree on that point.

What I am curious about is what specifically, what page, what line, what words are going to result in the lower value being estimated?

Ms. VER HOEF. Can I clarify something here? We are not looking for lower values. We are not aimed at lower values. We are aimed at having them do it right. And we think if they do it right, we will end up with some fees we can live with that are fair to both the American public and to the cabin owner.

Mr. SMITH. OK. It is a rhetorical point——

Ms. VER HOEF. Nevertheless——

Mr. SMITH. The point is you want lower fees because you think the ones currently arrived at are too high.

Ms. VER HOEF. Some of them are OK. One of the things the bill does provide is that if you do not have a problem with your current one, you do not have to redo it. Some of them are OK. It is very interesting because we have seen in some lakes, the fees come in totally reasonable and the appraisal is done right. In other places, they are not.

Mr. SMITH. The problem is it being too much. I do not think there is a lot of cabin owners coming forward saying that is too low, they are not being fair.

Ms. VER HOEF. We have had those discussions, be fair.

Mr. SMITH. At any rate, what I am interested in is what in the bill, where, on what page, what does it say that is going to reduce the fees and you do not have to parse that out right now. To the Forest Service, if you cannot answer it right now either, if you can just submit something to my office so that——

Ms. VER HOEF. Probably do not have time to do that right now, but I can do that for you. As we said, it was attempted to be written for appraisers and I have some legal background also and I had to use appraisal experts to figure out how to do it.

Mr. SMITH. OK, thank you very much. Thank you, Madam Chair, I appreciate your indulgence.

Ms. CHENOWETH-HAGE. I wanted to refer back to part of Mr. Mead's testimony and my initial question. I believe that you stated the total national acreage that was involved with cabins is 5,000 acres out of 192 million acres?

Mr. MEAD. Between 4,000 and 5,000 acres, that is right, a rather small spot on the millions of acres in the forest. Many people, Madam Chairman, feel that the cabins are taking up too much space. You will also get sometimes the Forest Service person saying that, the cabins are taking up too much area. And yet when you show even the Forest Service person, what do you mean? Here in the Sawtooth Forest we have very few acres, nationally 4 to 5, probably more like 4,000 acres out of 191, 192 million acres. Now we are only in 25 States and Puerto Rico, but there are only probably that many States that have national forests too.

Ms. CHENOWETH-HAGE. Does not that calibrate out to about 1/500,000th of the total land base?

Mr. MEAD. I think it is point zero two thousandths percent.

Ms. CHENOWETH-HAGE. OK.

Mr. MEAD. In other words, we are not talking about much land. And as Mary has testified and said, I think the Forest Service says that the expenses are $3.5 million to administer the program and I think we had $9.8 million a couple of years ago, the Forest Service testified came in, so we are more than paying the expenses and we would want to pay the expenses. We are taxpayers. We are part of the public.

Ms. CHENOWETH-HAGE. Mr. Mead, are all the fees going up or are some going down? What has been your experience?

Mr. MEAD. No, all the fees are not going up. And all of the appraisals have not been made. I forget what the Forest Service, 65 percent, I think Mary says yesterday the Forest Service testified, 63 percent are done. That means there is still a lot to be done. Some of those high peaks that will be coming in from now on have not been done. There are places where the appraisals have gone down. Even in the Sawtooth Forest, well, nothing went down in the Sawtooth Forest, but some went up much less on the Nevada line than they did up north, the SNRA, the Sawtooth National Recreation Area.

Part of that, on the other forests going down it, as Mary has suggested, is that the appraiser, the standards that were set up by the Forest Service are so—definitions and the way it was done, it was not done right by one appraiser and he got maybe a spike, and the other appraiser, second appraiser, looked at it in a little different light and it went down.

Now there is one who has been with the Forest Service for 1 year on Pettit Lake and they still have not made a decision. That appraiser is looking at it and defining what the Forest Service says because it is not very plain. That is why this bill has standards in it and asks the national appraising organization to come up with better standards. Standards are not really in here. That has got to be done. In other words, do it right, we say. Do it right, Forest Service.

Ms. CHENOWETH-HAGE. Thank you, Mr. Mead. I wanted to ask Mary, to the best of your knowledge, do the cabin owners ever really formally agree to the use of 5 percent of the appraised value of the cabin lot to determine the user fee? Where did they get that 5 percent?

Ms. VER HOEF. That is a hard question to answer. I did—no, we did not agree to any 5 percent. I included a copy of a statement

in my testimony by three remaining members of the Chiefs Committee who were around at the time that the original underlying policy was created. There are no Forest Service members that are left in the agency. This is their recollection of what actually happened and what everybody thought they were doing at the time. The bill is an attempt to get back to where they thought we were. The 5 percent was capitalization rate, was basically something that was dictated by the agency. It was not agreed to. Further, the joint statement that I have attached goes in specific detail into every one of those things that we have heard over recent years, the Forest Service saying we have agreed to this. The problem is they have changed what they are doing from what was originally our understanding and everybody else's understanding at the time. There is nobody left in the Forest Service from then.

Ms. CHENOWETH-HAGE. Well, they want to compare values of the cabins on Forest Service lands to those values held in private property.

Ms. VER HOEF. And rentals and they come up with a percentage that they think is equivalent to a standard rental and 5 percent being lower.

Ms. CHENOWETH-HAGE. Tell me, what is the ad valorem tax rate for private property in California?

Ms. VER HOEF. I do not know. I think it is a lot less.

Mr. BETTS. It is 1 percent, the ceiling, except for bonds, amortization of bonds that are specifically authorized by the voters.

Ms. VER HOEF. Now, we do not pay a real property tax in California. We pay a possessory use tax in California. I have personal experience with the local appraisers there. They do not know what they are taxing. So if you go—I suspect having talked with Mr. Mead about this, that if you go from State to State, the appraisers—I know for a fact that appraisers from State to State are appraising different things. Assessors, thank you, are appraising or looking at or assessing different things. And they have varying degrees of understanding of what this particular cabin is.

I know that when I got my first bill it said real property tax and I said wait a minute, called them up and they said, "Oh, we do not have any other forms, we just put it on there."

Ms. CHENOWETH-HAGE. Well, I know that the ad valorem tax rate in Idaho is 1 percent. Some of the counties bump it up a little higher than that, but the difference between 1 percent and 5 percent, even after the valuation is completed is enormous.

I do want to let the witnesses know that we will go for a second round of questions and so the Chair would recognize Mr. Schaffer.

Mr. SCHAFFER. I have to admit I was reading something here and I only caught the last part. So you pay a possessory interest tax on these lands. It is not really a property tax.

Ms. VER HOEF. It is theoretically, although my little bit breaks it down for Sheriff and for the hospitals and the various different things, schools, although this is not my—I am not allowed to have this as my primary residence.

As I said, they really do not know what they have, but by law, it is supposed to be the possessory interest tax and I took a seminar on that once just to figure out what it is and you better not

ask me. I know how the formula works and it ended up being the same as my fee that year.

Mr. SCHAFFER. I rewrote Colorado's possessory interest laws when I was in the State Senate back home and it is a pretty complicated topic and nobody is sure whether it is right or not, it is just the best you can do.

I want to go back to the philosophy of having the Government be in the real estate business and in the management, whether that is even a good idea in the first place, I do not think it is. I am for national forests, but I am not for having Federal Government be a landlord to Americans. That just seems at cross purposes from my way of thinking.

Nonetheless, we have got these Federal lands and there are people who rent or lease the space to put their property on it.

Ms. VER HOEF. Permit.

Mr. SCHAFFER. You lease the permit.

Ms. VER HOEF. We get a special use permit, so we are a permittee.

Mr. SCHAFFER. So you are permitted for a temporary period of time to put your property on the Government's land?

Ms. VER HOEF. Yes.

Mr. SCHAFFER. Now if we really wanted to arrive at a fair market value, I guess we would be talking about the Federal Government selling these lands for the value that they believe they are worth?

Ms. VER HOEF. I think you have got to distinguish the fair market value, what is fair for this particular kind of use where the Federal Government provides a spot. Just like your spot for a tent.

Mr. SCHAFFER. Right.

Ms. VER HOEF. But in those cases they provide a lot of underlying things you are probably not aware of when you put your tent in.

Mr. SCHAFFER. Well, when I go in the back country which is what I usually do, you just hop on a trail and set it up where, you follow the rules and I am only paying to the extent that I am a taxpayer, through my income taxes in that case.

Ms. VER HOEF. And we all pay income tax too.

Mr. SCHAFFER. Yes.

Ms. VER HOEF. It is different and distinct from the fair market value of land. We just happen to be using this mechanism to back into a fee that is geographically relevant for a cabin in Idaho as opposed to Tennessee as opposed to California and that is where people get confused. They keep saying fair market value, fair market value. Well, this is a particular odd duck of use by the American public as a recreation use. I get to keep my tent up longer than you do. I get to keep my tent up for 20 years. If at the end of the 20 years the Federal Government decides they want to use it for something else, they want to put the campground there. They want to just have it as visual clear corridor, then I have to remove everything and restore it to its natural and native State that changes kind of the feeling you have about having——

Mr. SCHAFFER. I guess I am trying to explore what are the legitimate charges for which the—legitimate charges the Government

should be charging lease holders for versus I guess what you are willing to concede to.

Ms. VER HOEF. It is a balancing act, is it not?

Mr. SCHAFFER. It is because as I say it is a questionable thing here. This is a property that we all, as Americans own collectively and we are trying to figure out how to have you pay fairly. So there is a cost of actually maintaining and providing whatever services that are required. You got to cover that.

What else should we pay for in addition to the actual cost of letting you enjoy the national forest, just like I do when I hop on a trail and set up my tent out in the middle of nowhere?

What other expenses should you have to pay?

Ms. VER HOEF. Well, currently proposed is a cost recovery kind of fee which will be involved with a small fee for administering, for actually doing the paperwork on issuing a new permit at the end of a 20-year cycle if they decide to issue that.

Mr. SCHAFFER. But we are talking on management and regulatory costs that are necessary just to accommodate——

Ms. VER HOEF. Right, everything else is generally our expense. If there is a plowed road, it is usually because there is a campground or some other use. They are never plowing for us. Those sort of things get done by cabin owners, if we are allowed to. I know in Idaho, they are prohibited from plowing because that would get in the way of a cross country trail that occurs in the winter.

So it is different from—it is quite different from what you are thinking about in terms of the cost because there is not a whole lot of cost. We have our resource officer come to our meetings once every 6 months and he comes and we talk and we generally sit down and figure out what planned projects he might have this year. We worked on a bridge that they needed to build. So I do not know how you figure that that is a cost to the Government because what we are really doing is doing what we have always been pushing for over the last 10 years, work in partnership with the Forest Service to come up with help that is useful for administration of that particular area by the Forest Service.

Ms. CHENOWETH-HAGE. I thank the gentleman. The Chair recognizes Ms. Napolitano.

Ms. NAPOLITANO. Thank you once more, Madam Chair. Very interesting because it is a very different type of issue that I am used to dealing with. In fact, having sat on city council and there is property fees involved and there is all kinds of issues that emanate from that.

I guess one of the things I am hearing is that there is an issue with the fair market value versus the fair market fee is what fits your particular, the cabin users fee issue versus the fair market fee and that that is something that I am really beginning to try to grasp to see how do you deal with the issues that you are dealing with, because you are paying property tax, although albeit it is not what normal people would pay who live in a home and own it.

Ms. VER HOEF. Actually, it is the same amount.

Ms. NAPOLITANO. No, because the property value would be much less.

Ms. VER HOEF. No, because I am thinking of other real property I know of and it is about the same.

Ms. NAPOLITANO. I am talking about regular home owner. Unless your prior Prop. 13 in L.A. in California, your taxes are exceedingly high, I would say in the $2,000 to $3,000 range per month. Post-Prop. 13.

Mr. BETTS. If you have the same situation, in other words if you get by the restrictions of Prop. 13 because we are talking about a recently transferred cabin site on the one hand, versus a recently transferred private home that is nearby, same size, they are going to be about the same amount.

Ms. NAPOLITANO. You are talking about cabins. I am talking about property owners.

Ms. NAPOLITANO. I paid $50,000 for my cabin in 1985. I paid $500 a year. That is 1 percent.

Ms. NAPOLITANO. What I am saying is the property value of that footprint of your cabin is worth $50,000, so you pay 1 percent of that whereas I may have land that my footprint sits on and I am paying three times as much or so. There are certain differences and you are right, I own it and that is something else. Again, you choose to be there and that is fine. That is not a problem. But I am looking at the fair market value versus the fee. And I would like to ask the Forest Service when they come up how much of this is going to be—how much money are they talking about? How many cabins are involved? Because you pointed out that some of the cabins do not have a problem with their fee because it is not exorbitant or the increase was not such that it is making a terrible dent and as was mentioned before, they are not saying, "Well, my fees are real low, increase them."

So what is the disparity? How can we begin to come to the middle to understand and assist, but I think the Forest Service needs to answer some questions in regard to what their future look at other cabins and are they—you are saying you are losing cabins, yet if they really are looking to allow other Americans throughout the areas where these cabins are to come in and be able to purchase cabins, then how do we deal with the problem because they are going to come in at a higher level and they may not be able to afford it. So how do we come to the middle? How do we begin to work so that you do get some assistance in addressing your issue and your problem and help others be able in future to understand that they are coming in to an area and they better know up front that this may be an issue later on for them as you either increase, for whatever reason.

Do you follow what I am trying to get?

Mr. BETTS. Yes. I would suggest that, of course, there is first off the philosophical question that Mr. Schaffer has suggested, which is the issue of whether one charges a fee based on costs or charges a fee based on market value. In my work for the Coalition, I have only been working with the issue of market value, so I get to bypass that very interesting question that he has posed.

There is the issue with market value that, if you can get it right, it is at least an equitable independent outside gauge that can be applied to all alike, and I think that basically the point that we are trying for with this bill, is to correct serious problems, in my opin-

ion, in the administration of the appraisal portion of the fee-setting process, because it is a two-step process, The appraisal is the first step, to estimate market value, and then the 5 percent fee, is charged on that market value as the license fee, and we are not trying to change that. That is also loaded with some really difficult philosophical questions, inside that 5 percent fee, but that is not on this discussion, only the market value is fundamentally what is being addressed with this bill.

Ms. NAPOLITANO. I am really concerned and Madam Chair, just a last statement is that we are charged with making sure that the taxpayer is protected and I wanted to be sure that all taxpayers are protected and not just one faction of them.

Mr. BETTS. Absolutely.

Ms. CHENOWETH-HAGE. I thank the lady. I have some questions. I will direct my questions primarily to Mr. Betts, but I do want to ask Mr. Mead and Ms. Ver Hoef first about some testimony that we received when we held a hearing a Cordelain a couple of years ago. We received testimony from a Mr. Adrian De Vries and I doubt that you can see this, but he entered into the record a picture of his little cabin and believe me it is a humble little cabin and I would like to pass this to the Members and for this cabin he is being charged by the Forest Service $1,076 a year in fees. But in addition to that, the County charges an assessment of $78.58 for just county business. He is also taxed $23.54 for the jail override. He is also taxed $91.96 for School District No. 82 and then the school override. He is charged an $11.50 additional tax. Now for counties, roads and bridges he is charged $31.88 in taxes from the County. For hospital, he is charged $5.74. For the library, he is charged $12.12 for a total of $255 a year and then for solid waste, he is charged $95 a year. How often do the solid waste trucks come out to your cabin, Mr. Mead and pick up garbage and carry it back?

Mr. MEAD. Zero, Madam Chairman.

Ms. CHENOWETH-HAGE. Mary.

Ms. VER HOEF. Zero. We pay for garbage removal.

Mr. MEAD. We pay $41 to Blaine County. They just started this year. Some people—we have to take the trash out, just like a camper, we take the trash away from our cabin. Some people dump it at the Smythe Creek store in a dumpster provided by a private contractor. The Forest Service allows it to be there.

Ms. CHENOWETH-HAGE. And is that close to your cabin?

Mr. MEAD. Five miles.

Ms. CHENOWETH-HAGE. Is that typical for most cabin owners?

Mr. MEAD. Oh yes, every one of us has to carry. Nobody burns and nobody dumps. We all have to either take it home, which I generally do. I do not even stop at Smythe Creek Store generally.

Ms. CHENOWETH-HAGE. But like Mr. De Vries, he is being charged $95 a year for solid waste disposal just like all the other private property owners.

Mr. MEAD. If that cabin is in Idaho, the lot is in Idaho too, we are charged by the county as a personal property tax, not as a real estate property tax. We pay personal—they charge us personal property because we own the cabin. And by the way, I have got pictures if anybody wants to see them. That looks like my cabin up there. But the Forest Service, and this is very easy to mix up, the

Forest Service does not appraise our cabin. You could have and I think in the Los Angeles area there are some castles on some Forest Service land, cabin land, but the Forest Service is only charging you for the use of the lot and they are not appraising that building whatsoever.

Ms. CHENOWETH-HAGE. Mr. De Vries is also being charged for roads and bridges. How often is it that the county comes out and plows out the roads and fixes up the bumps.

Mr. MEAD. Never.

Ms. CHENOWETH-HAGE. Mr. Betts, I have some questions for you. What factors are not being considered specifically by the Forest Service in its appraisals that will be addressed in this bill?

Mr. BETTS. Madam Chairman, I believe the major, one of the major issues is the failure to consider what appraisers call the entrepreneurial incentive, which is when you adjust for a cost-based difference between a transaction that is sold and the property that you are appraising, you need to look not only at the cost of putting, for example, the utilities on that lot, but also the risk that the person faced in doing that. So there is a risk allowance and there is a profit allowance, and those are part of appraisers' routine procedures everywhere, but the Forest Service apparently holds to the belief that they are improper here.

The second problem has to do with this issue that I mentioned, of describing or selecting the right type of properties. What are you appraising? Some of the appraisals that I have reviewed essentially handled these lots as if they were finished, subdivided lots. And they are not. They simply are not. Most of them had no access, no utilities. They simply are a spot in the middle of a meadow and that makes them a very different beast in the world of economics and the appraisal language that is being used; particularly, some of the memoranda, simply does not reflect that correctly.

Ms. CHENOWETH-HAGE. So, am I correct in assuming that it is your position that the process the Forest Service uses right now defeats the purpose of reaching a real fair market value?

Mr. BETTS. Yes, precisely.

Ms. CHENOWETH-HAGE. And do you think that H.R. 3327 gets us closer to the fair market value—the process that will lead to fair market value?

Mr. BETTS. I am comfortable that it will get us closer, yes.

Ms. CHENOWETH-HAGE. That is good. Well, I want to thank this panel for your outstanding testimony and will have other questions that we will submit to you in writing. Thank you all for coming so far and delivering such valuable testimony.

Ms. VER HOEF. Thank you, Madam Chair.

Ms. CHENOWETH-HAGE. The Chair now recognizes the third panel. Mr. Schultz, on behalf of the Appraisal Foundation in Washington, DC., Mr. Paul Brouha, Associate Deputy Chief, National Forest Service System here in Washington, DC.; accompanied by Mr. Randy Karstaedt, Special Uses Program Manager, and Mr. Paul Tittman, Chief Appraiser.

Gentlemen, I thank you for attending the hearing and now if you will please stand and raise your hand to the square?

[Witnesses sworn.]

Mr. Schultz, you are recognized for your testimony.

STATEMENT OF J. CARL SCHULTZ, THE APPRAISAL FOUNDATION, WASHINGTON, DC.

Mr. SCHULTZ. Thank you, Madam Chair. I want to thank you for the invitation to appear before the Subcommittee on Forest and Forest Health this morning, this afternoon, actually. It was supposed to be this morning, I understand. My name is Carl Schultz. I am from Atlanta, GA and I am a general certified appraiser in nine States throughout the southeastern United States and have developed and taught numerous appraisal courses. I am also the past chair of the Board of Trustees of the Appraisal Foundation and a former national president of the Appraisal Institute.

I am here today on behalf of the Appraisal Foundation, a nonprofit educational organization headquartered here in Washington. The Appraisal Foundation was founded in 1987 by the leading appraisal organizations of the United States to promote professionalism in appraising. It accomplishes this through two independent boards, the Appraisal Standards Board and the Appraisal Qualifications Board. I wish to emphasize to the Committee that these two boards are independent and I am not here speaking for either one, the Standards Board or the Qualifications Board. I am here on behalf of the Foundation itself.

The Appraisal Standards Board promulgates and generally recognizes performance standards for appraisers which are known as the uniform standards of professional appraisal practice. The Appraisal Qualifications Board establishes minimal qualification criteria for certified appraisers in areas of education, experience and State examinations.

What makes the Appraisal Foundation unique is the public responsibility bestowed upon it by Congress as mandated by the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989. The Appraisal Foundation plays an important role in the real estate appraiser regulatory system. All State real estate appraisal boards are required to use at a minimum the standards and qualifications established by the boards of the Foundation.

Last fall, the Foundation entered into a contract with the United States Forest Service to perform an independent evaluation of its appraisal policies and procedures. The evaluation which has been conducted over the past 4 months is nearly complete. An evaluation team appointed by the Foundation performed the review and I served as the team leader.

As part of the overall evaluation, several weeks ago we were specifically asked to review the policy relating to cabin permit fees. The existing policy entitled "Required Specifications for Present Recreation Resident Sites" is contained in Chapter 6.9, Exhibit 6 of the Forest Service Handbook. In addition, we had available House Bill 3327, several appraisals prepared for the Forest Service and permittee and information submitted by appraisers engaged by the permittee associations.

In reviewing the policy of Chapter 6.9, Exhibit 6 of the Forest Service Handbook, the members of our evaluation team were unable to completely understand the meaning of some of the instructions. Accordingly, we believe the instructions related to the appraisal of recreation resident sites needs to be clarified.

It is also our opinion that this lack of clarity is the primary reason for the current divergence in the valuations of these properties. We will be making specific recommendations to the Forest Service to clarify the instructions. Our recommendations will include clearly stating what interest is to be appraised as well as what improvements either onsite or offsite ought to be considered in the appraisal.

In addition, it needs to be established whether the site or the entire tract is in its native and natural undeveloped State for purposes of the appraisal.

Turning to H.R. 3327, I want to emphasize that the Appraisal Foundation neither endorses nor opposes the legislation. The purpose of our appearance before the Subcommittee today is to provide you with information relating specifically to Section 6 of the bill.

In reviewing Section 6 appraisals, subsection (b) we have serious concerns about the proposed specific appraisal guidelines. The terminology used in the legislation and restriction on the comparable properties an appraiser may consider are inconsistent with generally recognized appraisal practice. Dictating changes to the methodology or approaches to the appraisal process will have a direct impact on the appraisal. Based on our review of the proposed legislation, an appraiser will not be able to develop a credible market value estimate. In our opinion, this legislation is not necessary if Chapter 6.9 is clarified. If Congress deems that a legislative remedy is necessary, we believe it should concentrate on the specifics of the property to be appraised and the purpose of the appraisal, rather than the appraisal process. Simply stated, the focus needs to be on what is being appraised rather than how it should be appraised. We can sympathize with the financial burden being faced by the cabin owners, but modifying traditional appraisal techniques is not the appropriate resolution. Perhaps thought should be given to further reducing the renewal period and/or modifying the 5 percent. However, because these particular issues are more of what we call public policy matters, we are not making specific recommendations.

Madam Chair, I appreciate having the opportunity to appear before the Subcommittee. I hope you and your colleagues in Congress will not hesitate to use the Appraisal Foundation in areas of appraisal evaluation as you see fit and I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Schultz follows:]

Testimony of
J. Carl Schultz, Jr.

On behalf of



The Appraisal Foundation

Before
the

Forests and Forest Health Subcommittee
of the
Resources Committee

U.S. House of Representatives

March 23, 2000

Madame Chair, I want to thank you for the invitation to appear before the Subcommittee on Forests and Forest Health this morning.

My name is Carl Schultz and I am from Atlanta, Georgia. I have over thirty years of real estate appraisal experience involving most types of real estate including commercial, recreational and special use properties. I am a general certified appraiser in nine states throughout the Southeast and have developed and taught numerous appraisal courses. I am also a past Chairman of the Board of Trustees of The Appraisal Foundation and former National President of the Appraisal Institute.

I am here today on behalf of The Appraisal Foundation, a non-profit educational organization headquartered here in Washington, DC. The Appraisal Foundation was founded in 1987 by the leading appraisal organizations in the United States to promote professionalism in appraising. It accomplishes this through two independent Boards: the Appraisal Standards Board and the Appraiser Qualifications Board. I wish to emphasize that these two Boards are independent and that I am not here as a representative of either of these Boards.

The Appraisal Standards Board promulgates the generally recognized performance standards for appraisers, the *Uniform Standards of Professional Appraisal Practice* (USPAP). The Appraiser Qualifications Board establishes

minimum qualification criteria for certified appraisers in the areas of education, experience and state examinations.

What makes the Appraisal Foundation unique is the public responsibility bestowed upon it by the Congress. As mandated in the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), The Appraisal Foundation plays an important role in the real estate appraiser regulatory system.

All state real estate appraisal boards are required to use, at a minimum, the standards and qualifications established by the Boards of the Foundation. Over the past decade the Foundation has successfully carried out its charge and has developed a solid working relationship with the state and federal regulators that oversee the regulation of real estate appraisers.

Approximately one year ago officials from the Forest Service approached The Appraisal Foundation to discuss the possibility of the Foundation conducting a review of its appraisal organization. Last fall the Foundation entered into a contract with the Forest Service to perform an evaluation of its appraisal policies and procedures. The evaluation, which has been conducted over a four-month period, is nearly complete. An Evaluation Team appointed by the Foundation performed the review and I served as the Team Leader.

As part of the overall evaluation, we were specifically asked to review the policy relating to cabin permit fees. The existing policy, entitled *Required*

Specifications for Appraisal of Recreation Residence Sites, is contained in Chapter 6.9 - Exhibit 6 of the Forest Service Handbook. In addition, we had available House Bill H.R. 3327, several appraisals prepared for the Forest Service and permitees and information submitted by appraisers engaged by the permittee associations.

In reviewing the policy in Chapter 6.9 – Exhibit 6 of the Forest Service Handbook, the members of our Evaluation Team were unable to understand the meaning of some of the instructions. Accordingly, we believe the instructions relating to the appraisal of recreation residence sites need to be clarified. It is also our opinion that this lack of clarity is the primary reason for the current divergence in the valuations of these properties. We will be making specific recommendations to the Forest Service to clarify the instructions. Our recommendations will include clearly stating what interest is to be appraised as well as what improvements, either on-site or off-site, are to be considered in the appraisal. In addition, it needs to be established whether the site or the entire tract is in its native and natural (undeveloped) state for the purpose of the appraisal.

Turning to H.R. 3327, I want to emphasize that The Appraisal Foundation neither endorses nor opposes the legislation. The purpose of our appearance before the Subcommittee today is to provide you with information relating specifically to Section 6 of the bill.

In reviewing *Section 6.Appraisals, subsection(b)*, we have serious concerns about the proposed Specific Appraisal Guidelines. The terminology used in the legislation and the restriction on comparable properties an appraiser may consider are inconsistent with generally recognized appraisal practice. Dictating changes to the methodology or approaches to the appraisal process will have a direct impact on the appraisal. Based on our review of the proposed legislation, an appraiser will not be able to develop a credible market value estimate.

In our opinion, this legislation is not necessary if Chapter 6.9 of the Forest Service Handbook, *Required Specifications for Appraisal of Recreation Residence Sites,* is clarified. If the Congress deems that a legislative remedy is necessary, we believe it should concentrate on the specifics of the property to be appraised and the purpose of the appraisal, rather than the appraisal process.

Simply stated, the focus needs to be on *what* is being appraised rather than *how* it should be appraised.

We can sympathize with the financial burden being faced by the cabin owners, but modifying traditional appraisal techniques is not the appropriate resolution. Perhaps thought should be given to further reducing the renewal period and/or modifying the five percent of value figure currently being used. However, because these particular issues are more of a public policy matter we are not making specific recommendations.

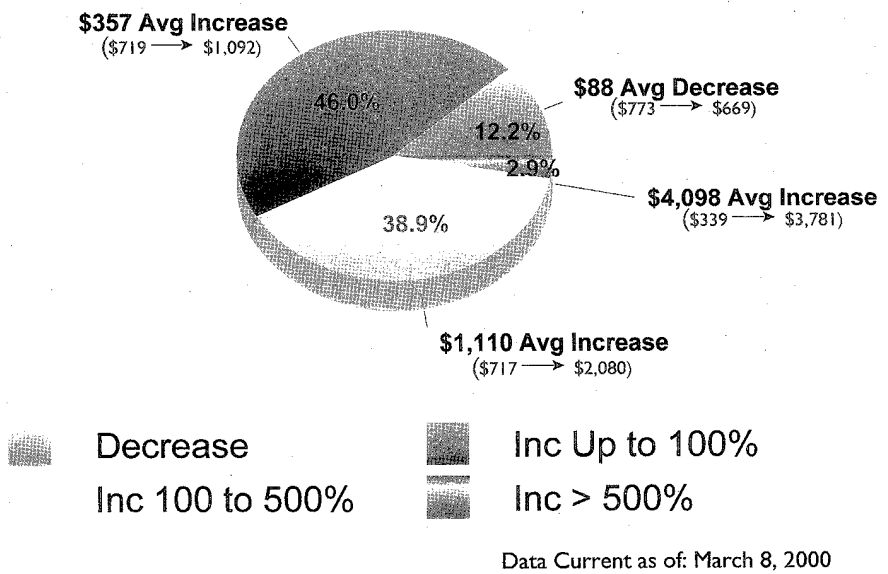
Madame Chair, I appreciate having had the opportunity to appear before the Subcommittee today. I hope that you and your colleagues in Congress will not hesitate to use The Appraisal Foundation as a resource in the future on any valuation related issues. I would be pleased to answer any questions that you or other members of the Subcommittee may have.

###

Comparison of 20-Year Old Appraisals (with IPD indexing) And Current Appraisals

National Summary Including Sawtooth NRA

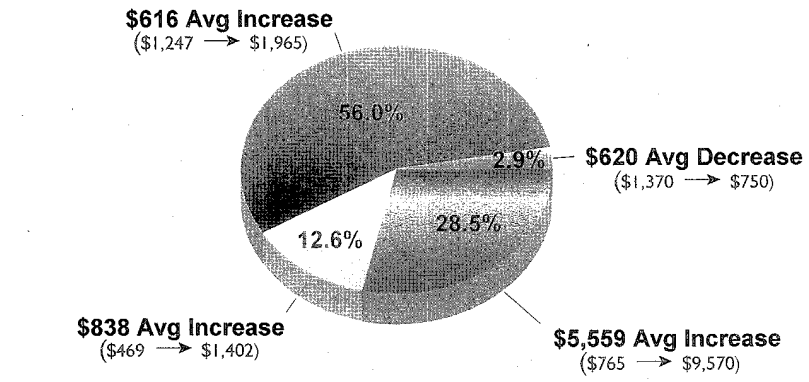
9,599 Cabins Appraised (63% of the Total)



Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing) And Current Appraisals

All Idaho Recreation Residences

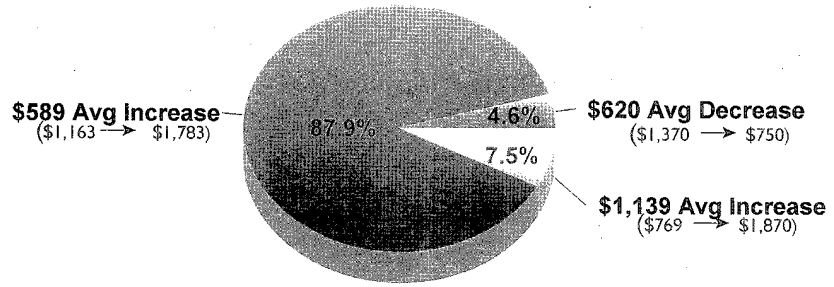


Decrease
Inc Up to 100%
Inc 100 to 500%
Inc > 500%

Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing) And Current Appraisals

Idaho (without Sawtooth NRA)



Decrease

Inc Up to 100%

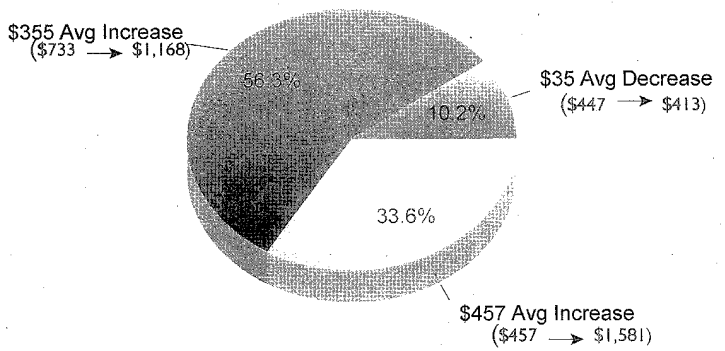
Inc 100 to 500%

Inc > 500%

Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing)
And Current Appraisals

Nevada Recreation Residences



Decrease
Inc Up to 100%
Inc 100 to 500%
Inc > 500%

Data Current as of: March 8, 2000

Ms. CHENOWETH-HAGE. Thank you very much, Mr. Schultz.
The Chair recognizes Mr. Brouha for his testimony.

STATEMENT OF PAUL BROUHA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE

Mr. BROUHA. Madam Chairman and Members of the Subcommittee, good afternoon. I am accompanied by Randy Karstaedt, our chief Forest Service Special Uses Program manager, and by Paul Tittman our chief appraiser. Enactment of H.R. 3327 would replace the recreation residence fee policy for the National Forest System Lands and direct the Secretary of Agriculture to establish a new set of guidelines for arriving at an annual fee for the privilege to use and occupy a national recreation residence lot. The proposed stipulated practices would be different from the appraisal standards that all Federal agencies are required to use in assessing fair market value. The Administration strongly opposes H.R. 3327 and I will address three of my most specific concerns in the testimony.

First, let me give you some background. In 1908, we established cabin tracts and issued special use term permits for cabin owners. Owners were charged annual rent representing the market value of the land at that time. The permit fee is only for the site. It is not related to the value of the structure. As was noted, the Forest Service grants this privilege only to approximately 15,200 owners nationwide. In the 1980's, the Forest Service worked closely with the public and permit holders in revising our recreation residence policy and in 1987 published for public review and comment proposed revisions to appraisal and fee determination procedures and policies for recreation residence uses. Nearly 3,200 respondents commented. Ninety-six percent of them were permit holders or associations for holders. Eighty-five percent responded favorably. The regulations were subsequently published and adopted in 1988.

The terms and conditions of every permit direct the lots be appraised at least every 20 years. In 1996, we started a 5-year effort to appraise the fee simple value of all lots. We will complete appraisals in the next 2 years, using the same appraisal specifications and procedures today that were set in 1988.

For the record, I would like to include several charts displaying changes nationally as well as in several States in annual rental fees resulting from the appraisals. The national information resulted from 9,600 appraisals or about 63 percent of the total. More than 58 percent of our holders will experience either a decrease or a relatively moderate increase. Less than 3 percent will experience dramatic increases of more than 500 percent. The remainder will see significant increases averaging a tripling of their fee. Now keep in mind this is based on annual appraisals that were done more than 20 years ago, not annual appraisals, but market appraisals.

We realize that a sudden rise in user fees can be a hardship for some summer residence owners. Therefore, once the appraisal is completed, we phase in increases that exceed 100 percent over a 3-year period. Also, increases in recreation residence fees will be implemented in Fiscal Year 2000 only to the extent that they do not exceed 1999 fees by $2,000.

In addition, no fee can be increased any sooner than 1 year from the time the Forest Service has notified the holder of the results of the appraisal.

At this time, our appraisal procedures are being evaluated by the Appraisal Foundation as we have already heard from Mr. Schultz. This is the governing body over all appraisal practices and we have no reason to believe that the general process will not be accepted as professionally supported. We do agree, however, because the standards have changed since 1988, that there is room for improvement.

Mr. Chairman, let me now briefly discuss our objections to the legislation. First, H.R. 3327 would exempt the permit fee from fair market value provisions and existing law and regulations. The Congress and the Administration have a long-standing policy that the people of the United States receive not a fair fee, but fair market value for the use of public lands and resources. Based on our analysis, we estimate that the fair fee of H.R. 3327, would result in return to the Treasury of between $8 and $12 million less than fair market value annually. That has already been noted. A significant percentage of our recreation residence permit holders would be paying an annual fee that is less than the fee now being paid, fees based on appraisals on land values that were done more than 20 years ago.

Second, the fair fee would be different from a fair market value rental fee and in a market economy we rely on the market to determine what is fair. Trying to establish a rental fee without regard to market rates of similar properties cannot lead to a fair outcome, but rather only to a subsidized result. That is not fair, although it is likely to be welcomed by the permit holders.

Moreover, the standard for setting fees would thus be different than the standard by which the Forest Service assesses and collects fees from those who hold permits and easements for the 130 other types of special uses occurring on the national forests and grasslands.

By exempting recreation residence permit holders from the principle of fair market value rental fees this bill would set a precedent for other user groups to follow.

Third, H.R. 3327 would create a 4- to 5-year period of disruption and inequity in the assessment and collection of fees through recreation residence uses because the bill would require the Secretary to contract with a professional appraisal organization to develop appraisal guidelines and promulgating new regulations could take several years.

In the interim, the transition fees that would be imposed are broken down into several different methodologies which has the potential to be inequitable among the users at this time.

H.R. 3327 would suspend all current appraisals pending promulgation of those new regulations and we basically would be forced to likely redo much of what we have done. Most of the $4 million spent on appraisals since 1996 would be lost if the bill were enacted. In addition, we estimate a $500,000 cost to develop new guidelines and regulations. After that, most of the 9,600 folks who have already had appraisals completed would likely request another appraisal which would cost in the range of $3 to $4 million.

Ms. CHENOWETH-HAGE. Mr. Brouha, I am going to have to ask you to wrap up your testimony because we have a vote pending. I also want to advise you that we will have to adjourn the hearing after you have concluded your testimony.

Mr. BROUHA. I have just a few more remarks, Madam.

Ms. CHENOWETH-HAGE. We have a vote pending and we have very little time left. So I need to ask you to submit the rest of your testimony in writing, Mr. Brouha. I have never had to do this, but I have just been advised that the Speaker has asked for a certain process on the floor and then all Republicans will be asked to meet with the Speaker.

So I, unfortunately, will not be able to attend my own hearing and Mr. Schaffer will not be able to return. So your entire testimony will be submitted in the record and we do have a number of questions that we will be sending to you in writing, Mr. Brouha and Mr. Schultz. We will be submitting those within the next day or two. Today is Thursday. They will probably be in the mail to you by Friday. We would appreciate your answers within 10 working days. As you know, the hearing record will remain open for 10 working days and should anyone who has given testimony wish to amend their testimony, please do so within that 10-day-period.

This is somewhat unusual and I am very sorry, but I want to thank you for all the time that you have spent in the hearing and at this time this hearing is adjourned.

Thank you.

The prepared statement of Mr. Brouha follows:]

STATEMENT OF PAUL BROUHA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE

Madam Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss H.R. 3327, the "Cabin User Fee Fairness Act of 1999." I am accompanied by Randy Karstaedt, Forest Service Special Uses Program Manager, and Paul Tittman, Forest Service Chief Appraiser.

Enactment of H.R. 3327 would replace the recreation residence fee policy for National Forest System lands and direct the Secretary of Agriculture to establish a set of guidelines for arriving at an annual fee for the privilege to use and occupy a National Forest recreation residence lot. H.R. 3327 identifies specific, technical provisions to be included in those guidelines. The stipulated practices would be different from the appraisal standards that all Federal agencies are required to use in assessing fair market value.

The Administration strongly opposes H.R. 3327. I will address three of our most significant concerns in my testimony. First, let me give some background.

The Forest Service has encouraged people to use the national forests since 1908. We encouraged them to recreate, watch for fires, render emergency aid, and report damages or abuse of forest resources. We established cabin tracts and issued special use term permits for cabin owners. Owners were charged an annual rent representing the market value of the land at that time. This permit allowed the holder to build a structure for recreational purposes, not to be used as a permanent full-time residence. The permit fee is only for the site, it is not related to the value of the structure. The Forest Service grants this privilege only to approximately 15,200 cabin owners nationwide.

In the 1980's, the Forest Service worked closely with the public and permit holders, including the National Forest Homeowners in revising our recreation residence policy, including the manner in which we determine and assess fair market rental fee. In 1987, the Forest Service published for public review and comment proposed revisions to its appraisal and fee determination procedures and policies for recreation residence uses. Nearly 3,200 respondents commented on the proposed regulations, 96 percent of whom were permit holders or associations of holders. Eighty-five percent of those who commented responded favorably to our proposed appraisal procedures. The regulations were subsequently published and adopted in 1988.

The terms and conditions of every recreation residence special use permit direct that recreation residence lots be appraised at least every 20 years. In 1996, we started a 5 year effort to appraise the fee simple value of all 15,200 of our recreation residence lots. We will complete appraisals for all of those lots within the next 2 years. We are using the same appraisal specifications and procedures today that were set in 1988.

For the record, I would like to include several charts displaying the changes nationally, as well as in several states, in annual rental fees resulting from appraisals that have been completed to date. The national information is the result of completed appraisals that affect approximately 9,600 recreation residence lots, or about 63 percent of the total. More than 58 percent of our holders will be experiencing either a decrease in their annual rental fee, or relatively moderate increases. Less than 3 percent will experience dramatic fee increases of more than 5 times the current fee being paid. The remainder will see less dramatic but still significant increases that, on average, will result in an approximate tripling of their current annual rental fee. Note that the changes in fee amounts shown in the charts are cumulative averages.

We realize that a sudden rise in user fees can be a hardship for some summer residence owners. Therefore, once the appraisal is completed, in accord with Sec. 343 of Public Law 105–83, we phase in fee increases that exceed 100 percent over a three-year period. Also, in accord with Sec. 342 of the Department of Interior and Related Agencies Appropriations Act, 2000, increases In recreation residence fees will be implemented in FY 2000 only to the extent they do not exceed FY 1999 fees by $2000. In addition, no fee can be increased any sooner than one year from the time the Forest Service has notified the holder of the results of the appraisal. It is also our policy to allow the permit holder to get a second appraisal if they disagree with the results of the first appraisal. If necessary, our policy allows for a third appraisal when there is an unresolved disagreement in value.

Many of the permit holders who are most concerned with our appraisals occupy lots with high-appraised values, or will experience significant increases in their land use rental fees. At this time, we have contracted with the Appraisal Foundation, the governing body over all appraisal practices carried out by licensed appraisers in the United States, to evaluate our appraisal specifications for recreation residences. I would be happy to provide a copy of the Foundation's findings to the Subcommittee when it is available.

Mr. Chairman, I will now briefly discuss our objections to the legislation.

First, H.R. 3327 would exempt the permit fee for a recreation residence cabin owner from the fair market value provisions in existing law and regulation. The Congress and the Administration have had a longstanding policy that the people of the United States receive not just a "fair" fee, but fair market value for the use of public lands and resources. The current recreation residence fee policy and procedures that the Forest Service are now implementing were developed to do what Congress has directed us to do: to assess and collect land use rental fees for special uses based on the fair market value of the rights and privileges granted to the holders of our authorizations.

Based on our preliminary analysis of the valuation procedures specified in this legislation, we estimate that the "fair fee" H.R. 3327 proposes to establish would result in a return to the Treasury of fees that are between $8 and $12 million less than fair market value annually. A significant percentage of our recreation residence permit holders would be paying an annual fee that is less than the fee now being paid, fees based on appraisals of land values that are now more than 20 years old.

Second, the "fair-fee" that would be established by H.R. 3327 for recreation residence special uses would be different than a fair market value rental fee. In a market economy, we rely upon the market to determine what is "fair." Trying to establish a rental fee without regard to market rates for similar properties cannot lead to a fair outcome, but rather only a subsidized result. That is not "fair," although it is likely very welcome by permit holders.

Moreover, the standard for setting fees would thus be different than the standard by which the Forest Service assesses and collects fees from those who hold permits and easements for the 130 other types of special uses occurring on the National Forests and Grasslands. By exempting recreation residence permit holders from the principle of fair market value rental fees, this bill sets a precedent for other user groups.

If H.R. 3327 were to become law, it would encourage other users of National Forest System lands to seek comparable statutory authorities that would similarly exempt them from land use rental fees based on the principles of fair market value. The communications, oil and gas pipeline, outfitting/guiding, and commercial film-

ing industries, along with other user organizations, might well seek similar downward adjustments in their own user fees to satisfy their particular economic interests at a time when the Forest Service is criticized for failing to charge sufficient fees for the use of the public land.

H.R. 3327 would create a 4-5 year period of disruption and inequity in the assessment and collection of fees for recreation residence uses. H.R. 3327 would require the Secretary to contract with a professional appraisal organization to develop appraisal guidelines that would include the specific, technical provisions provided in section 6(b) of the Bill. We estimate that the procedures needed to develop the guidelines proposed in H.R. 3327 would take more than a year to complete. Before the Forest Service could adopt those guidelines, they would be subject to public notice and comment, and Congressional review. Promulgating regulations could take several years.

H.R. 3327 would suspend all current recreation residence appraisal activities pending the promulgation of those new regulations. In addition, H.R. 3327 would provide all permit holders who have already had their lot or tract appraised by the Forest Service the opportunity to request a new appraisal anytime within a 2-year period following the Secretary's promulgation of new regulations.

In the interim, H.R. 3327 proposes three options for the Forest Service to assess what are characterized as "transition fees." The manner in which H.R. 3327 proposes to assess transition fees would create fee inequities between permit holders occupying comparably valued lots during the 4-5 year transition period.

Since 1996, the Forest Service has spent $3.5 million of appropriated funds completing recreation residence appraisals. Another $500,000 is being spent on ongoing appraisals. Most of this $4 million investment would be lost if H.R. 3327 were enacted.

In addition, we estimate it would cost the Forest Service $500,000 to develop the appraisal guidelines and regulations directed in this Bill. After that, we estimate that more than 90 percent of the 9,600 permit holders who occupy lots affected by appraisals that the Forest Service has already completed would take advantage of the opportunity provided in this Bill and request another appraisal. In satisfying those requests, the agency could spend more than $3-4 million in another round of appraisals.

The use of National Forest land for private recreation residences is a privilege afforded to a relatively few number of persons. Taxpayers should be adequately compensated for this private use of their public lands.

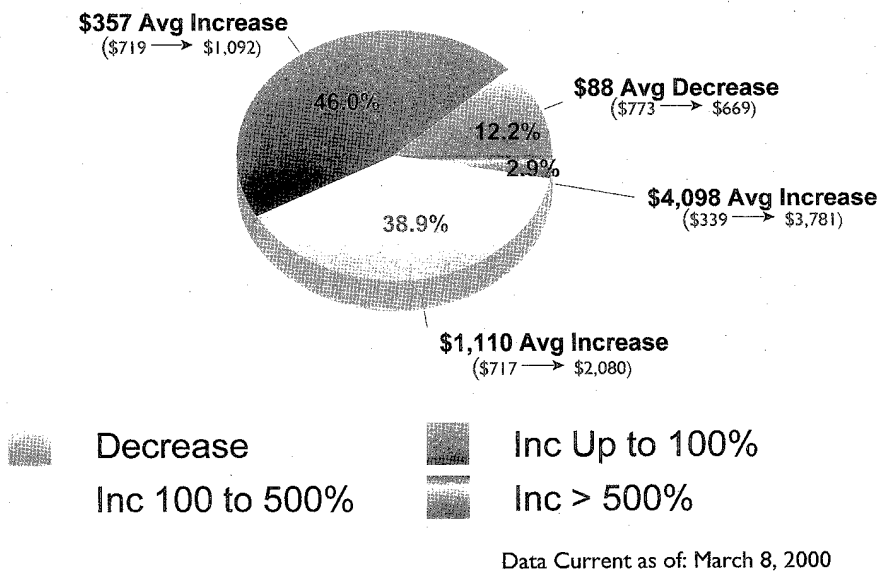
The appraisals we have completed confirm that the value of the National Forest System land being occupied by recreation residences has increased over the last 20 years. For some lots, with particularly desirable amenities, that value has increased significantly. We are implementing our fee policy in a manner consistent with Federal laws, agency management direction, and sound management principals concerning fair market rental fees for these uses of the public's land and we believe the appropriate course would be to allow us to continue this process.

Thank you for providing me this opportunity to testify on H.R. 3327. We would be pleased to answer any questions you may have, particularly on other, more technical, concerns with the legislation.

Comparison of 20-Year Old Appraisals (with IPD indexing) And Current Appraisals

National Summary Including Sawtooth NRA

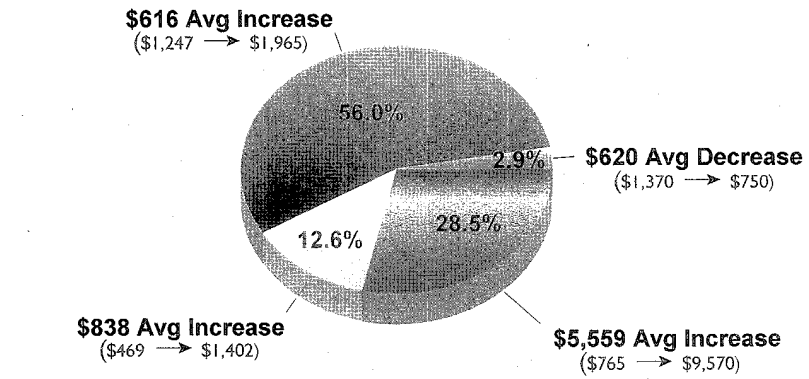
9,599 Cabins Appraised (63% of the Total)



Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing) And Current Appraisals

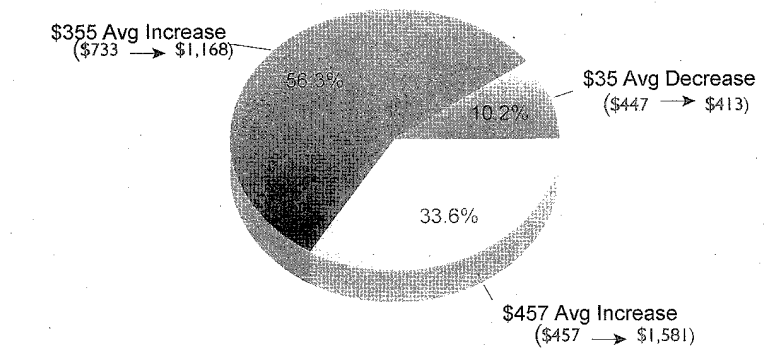
All Idaho Recreation Residences



Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing)
And Current Appraisals

Nevada Recreation Residences

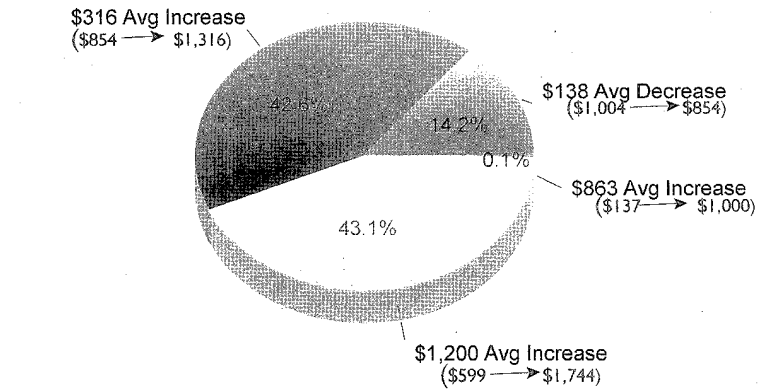


Decrease
Inc 100 to 500%
Inc Up to 100%
Inc > 500%

Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing) And Current Appraisals

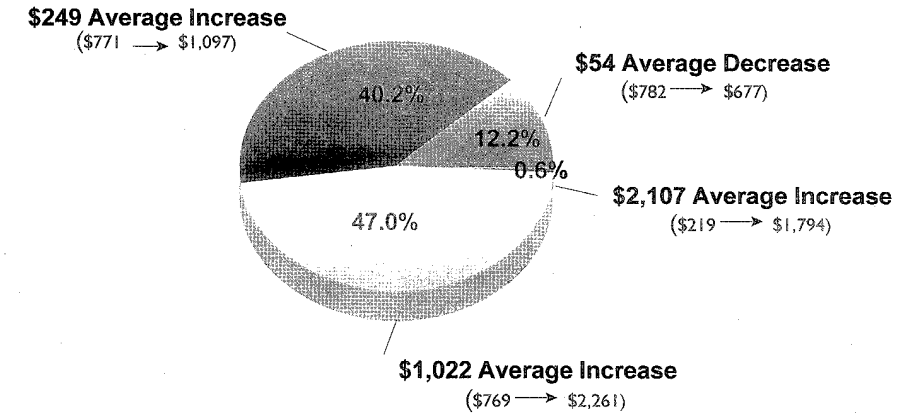
Oregon Recreation Residences



Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing) And Current Appraisals

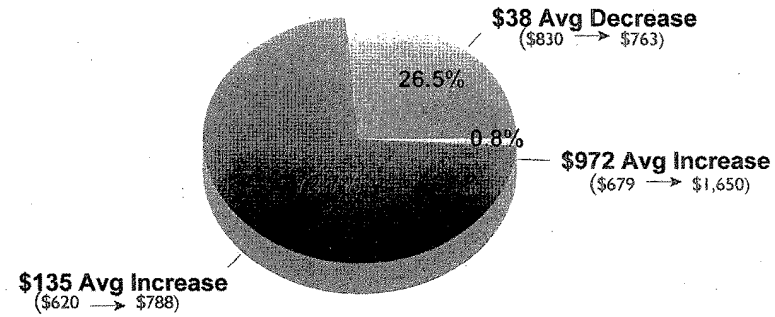
California Recreation Residences



Data Current as of: March 6, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing)
And Current Appraisals

Washington Recreation Residences

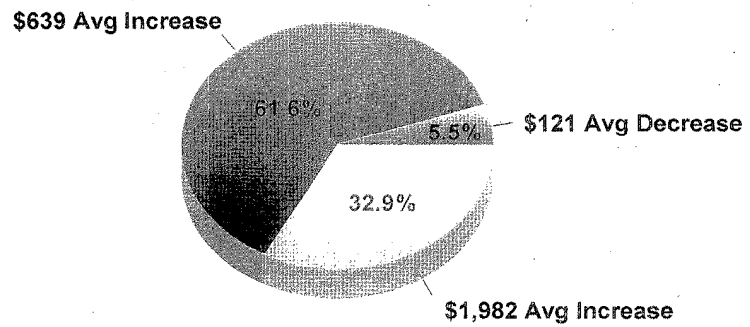


Decrease
Inc Up to 100%
Inc 100 to 500%
Inc > 500%

Data Current as of: March 8, 2000

Comparison of 20-Year Old Appraisals (with IPD indexing)
And Current Appraisals

Montana Recreation Residences

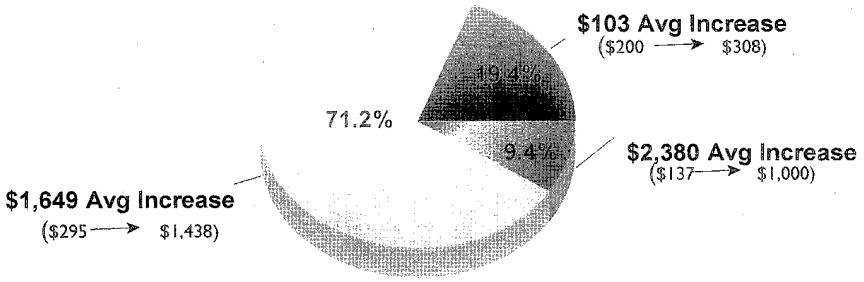


Decrease
Inc Up to 100%
Inc 100 to 500%
Inc > 500%

Data Current as of: March 25, 1999

Comparison of 20-Year Old Appraisals (with IPD indexing)
And Current Appraisals

Michigan Recreation Residences



Decrease
Inc Up to 100%
Inc 100 to 500%
Inc > 500%

Data Current as of: March 8, 2000

[Whereupon, at 3:52 p.m., the Subcommittee was adjourned.]

○