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SYNDICATED CONSERVATION-EASEMENT TRANSACTIONS

BIPARTISAN INVESTIGATIVE REPORT
AS SUBMITTED BY CHAIRMAN GRASSLEY
AND RANKNG MEMBER WYDEN

COMMITTEE ON FINANCE
UNITED STATES SENATE

CHARLES E. GRASSLEY, *Chairman*
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"*I would steer clear of this. It is a 'syndicated conservation easement' tax shelter deal. These have been labeled tax avoidance transactions by the IRS, and are 'listed transactions.' An audit is guaranteed. And the odds are heavily in favor of the IRS prevailing. How do you justify paying less than $3 million for a property that an appraiser says is worth $81 million, with a conservation easement worth $78 million?*"[1]

-Email from independent attorney to potential investor in syndicated conservation-easement transaction

1. Introduction

This report discusses the findings of the United States Senate Committee on Finance's investigation into syndicated conservation-easement transactions. The investigation began on March 27, 2019, when Chairman Charles Grassley and Ranking Member Ron Wyden jointly sent letters to 14 individuals suspected of promoting these transactions. The letters requested information and documents about the transactions. Six of those individuals failed to voluntarily comply, so the Finance Committee issued subpoenas to them to compel production of that information. Those six individuals were Robert McCullough of EcoVest Capital; Matt Ornstein and Frank Schuler of Ornstein-Schuler Investments; and Matthew Campbell, Eugene "Chip" Pearson, Jr., and Mark Pickett of EvrSource Capital. The documents provided in this investigation confirm that syndicated conservation-easement transactions appear to be highly abusive tax shelters.

In general, the conservation-easement tax incentive established under Internal Revenue Code (the "Code") section 170(h) has enjoyed broad bipartisan support.[2] However, over the last decade, the syndication of conservation-easement transactions among unrelated participants, or "investors," has developed a controversial reputation within the tax community. Some argue syndicated conservation-easement transactions are an effective method for conserving land, while others argue they are abusive shelters. During the 115th Congress, the controversy had made its way to Capitol Hill, with lobbyists representing interests on both sides of the matter advocating for policies that would either increase or decrease the Federal government's scrutiny of the transactions. On December 23, 2016, in the closing days of the Obama Administration, the Department of the Treasury and the IRS issued a notice, known as IRS Notice 2017-10,[3] which designated syndicated conservation-easement transactions as "listed transactions," meaning their promoters and participants must affirmatively tell the IRS they were and are

[1] Ex. 1 – Email from Tom [REDACTED] to Robert [REDACTED] and David [REDACTED] (Dec. 9, 2017, 4:25:34 AM GMT), at ex. p. ECOVEST-SF_0308688.

[2] *See*, Conservation Easement Incentive Act of 2015, S. 330, 114 Cong. (2015), sponsored by Sens. Heller, Stabenow, and 50 other Senators.

[3] IRS Notice 2017-10, 2017-4 IRB 544 (Dec. 23, 2016), *available at* https://www.irs.gov/pub/irs-drop/n-17-10.pdf.

participating in those transactions. Like all such notices about listed transactions, IRS Notice 2017-10 also communicated to the public that the IRS generally considered the transactions to be tax shelters. In March 2017, the *Wall Street Journal* reported,

> Promoters of tax-advantaged land conservation investment deals, stung by an IRS decision last year that cracked down on the activity, are lobbying Congress to protect their interests.
>
> They've hired well-connected Washington firms and filed the paperwork to start a political fundraising account that will allow industry players to donate money to members of Congress with influence over IRS enforcement.
>
> This week, they will engage in another well-worn Washington ritual: The fly-in, where members from 10 states will walk the halls of the Capitol complex and meet face-to-face with lawmakers from their home states.
>
> While lobbying is Washington's stock in trade, it is rare when it comes to protecting a practice that the government has labeled as a tax shelter.[4]

That lobbying effort included EcoVest Capital, a company that promoted its own syndicated conservation-easement transactions, as well as a nonprofit organization known as Partnership for Conservation (or simply, P4C) comprised of transaction promoters from other companies. These groups generally lobbied Members of Congress and their staffs to first ask the IRS to withdraw the notice making syndicated conservation-easement transactions into listed transactions, and when that did not come to fruition, to withhold funding from the IRS' enforcement efforts surrounding IRS Notice 2017-10. Another group known as the Land Trust Alliance, which is made up of land trusts that hold land for conservation but do not accept land donated by syndicated transactions, lobbied Congress in the opposite direction, generally asking Congress not to interfere with the IRS' work in this space. Ultimately IRS Notice 2017-10 remained active, and the IRS kept its funding for enforcing that notice. These competing lobbying efforts and related questions about abuse of syndicated conservation-easement transactions are the motivation for this investigation and this report.

The IRS estimates that between 2010 through 2017, syndicated conservation-easement transactions generated $26.8 billion in charitable contribution deductions for the transactions' investors.[5] Assuming such deductions reduced reportable income that would have otherwise been taxed at the then-existing top federal income tax rate of 39.6 percent, these transactions collectively lowered the taxpayer-investors' Federal income tax bills by approximately $10.6

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[4] Richard Rubin and Brody Mullins, *Land-Tax Deal Promoters Lobby Congress After IRS Crackdown*, WALL STREET JOURNAL, March 28, 2017.

[5] Ex. 2 – Letter from David J. Kautter, Acting Commissioner, Internal Revenue Service, to Orrin G. Hatch, Chairman, U.S Senate Committee on Finance, United States Senate (July 12, 2018); Ex. 3 – Letter from Charles P. Rettig, Commissioner, Internal Revenue Service, to Charles Grassley, Chairman, U.S Senate Committee on Finance, United States Senate (Feb. 12, 2020).

billion.[6] The IRS has identified scores of syndicated partnerships that appear to be vehicles for this activity, specifically 169 partnerships in tax-year 2015, 249 partnerships in tax-year 2016, and 244 partnerships in tax-year 2017, the latter of which all existed despite the IRS putting the tax community on notice, by way of IRS Notice 2017-10, that it considered the transactions to be abusive tax shelters. As of February 2020, the IRS is either auditing or planning to audit 84 percent of these partnerships.[7]

Tax Year	***Syndicated Conservation-Easement Transactions Identified by the IRS***
2015	169
2016	249
2017	244

Over the last decade, thousands of high-income U.S. taxpayers have used syndicated conservation-easement transactions to substantially reduce their Federal and State tax obligations. Those participants have included doctors, lawyers, small-business owners, large-business executives, professional athletes, rock stars, entertainers, and other celebrities, most of whom appear to reside or work in the southeastern United States. The subjects of this investigation were sometimes reluctant to provide the identities and communications of these individuals to the Committee, but securing the identities of the individual taxpayer-investors and their emails was necessary for gaining a full understanding of how the transactions worked. The identities of those individuals are withheld in this report because the probative value of specifically identifying them is minimal.

The syndicated conservation-easement transactions examined in this report appear to be nothing more than retail tax shelters that let taxpayers buy tax deductions at the end of any given year, depending on how much income those taxpayers would like to shelter from the IRS, with no economic risk. Although the various offerings differ in their specifics, the general outcome is the same: for every dollar a taxpayer pays to a promoter to become an "investor" (or a "partner" or a "member") in a syndicated conservation-easement transaction, he or she commonly purchases a little more than four dollars' worth of tax deductions. For most taxpayers involved, this ultimately means that for every dollar paid to tax-shelter promoters, the taxpayers saved two dollars in taxes they did not pay.

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[6] A deduction is simply a reduction of a taxpayer's income that gets taxed. In simplified terms, if a taxpayer has $100,000 in income but gets to deduct $20,000 before figuring out his or her tax liability, he or she only gets taxed on $80,000 of income. The value of the deduction to the taxpayer is the amount he or she saves in taxes by not otherwise having to pay tax on the deducted income. This is determined by multiplying the deduction amount by the tax rate that would otherwise apply to that income. If the tax rate on this hypothetical $20,000 amount had been 25 percent, the taxpayers saves $5,000 in taxes with his or her $20,000 deduction ($20,000 * .25 = $5,000).

[7] Ex. 3 – Letter from Charles P. Rettig, Commissioner, Internal Revenue Service, to Charles Grassley, Chairman, U.S Senate Committee on Finance, United States Senate (Feb. 12, 2020).

Based on the information gathered in this investigation, the Senate Finance Committee Chairman and Ranking Member conclude the IRS has strong reason for taking enforcement action against syndicated conservation-easement transactions as it has to date. Furthermore, in light of the continued use of these abusive transactions despite the issuance of IRS Notice 2017-10, the Chairman and Ranking Member believe Congress, the IRS, and Department of the Treasury should take further action to preserve the integrity of the conservation-easement tax deduction.

2. Summary

All tax shelters benefit from the same characteristic: they avoid wide-scale publicity and public scrutiny because they are hard to understand. The investigation behind this report involved the review of hundreds of thousands of pages of documents and several state and municipal land databases. This report finds syndicated conservation-easement transactions to be transactions designed to provide tax deductions to high-income taxpayers by way of (1) inflated appraisals of undeveloped land through (2) partnership entities that appear to serve no non-tax business purpose for existing other than the provision of tax deductions. Where the report describes appraisals as inflated, it does so because those appraisals value property at multiples of what transaction promoters or their investors paid to acquire ownership interests in that property, as is discussed in this report. The report is structured so that the most relevant information for understanding these transactions is provided in the beginning sections, and the later sections go into greater details about the transactions and the pieces of land involved in them.

The section immediately below, Section 3, discusses the relevant tax law for understanding and critiquing syndicated conservation easement transactions. Specifically, this section examines (1) what a conservation easement is for tax purposes and how Federal tax law provides a charitable deduction for granting a conservation easement, (2) partnership tax law and why partnerships are a critical ingredient for tax shelters, and (3) the "the sham entity doctrine," which is a common-law doctrine that says the IRS or a reviewing court does not have to respect a partnership for tax purposes if it finds the partnership exists solely for tax reasons and has little or no non-tax business reason for existing – namely, if the partnership is a sham.

Section 4 discusses how syndicated conservation easements work. This includes a hypothetical example of how a landowner can get a tax deduction by granting a conservation easement on the land and forever preventing it from being developed. It also includes a hypothetical example of how the landowner's conservation easement might look if it were similar to a syndicated conservation-easement transaction. The section ends with a discussion of how promoters of syndicated conservation-easement transactions have defended the transactions.

Section 5 discusses the history of syndicated conservation easement, particularly a 2009 Tax Court case called *Kiva Dunes Conservation, LLC v. Commissioner of Internal Revenue*, which has since become a seminal case in the otherwise niche world of conservation easements. In that case, the Tax Court found mostly in favor of the taxpayer, which was a developer of the Kiva Dunes resort in coastal Alabama. The case involved the valuation of a conservation easement granted on the resort's golf course, and this investigation finds that the transactions' promoters have since been relying heavily on this case for justifying their syndicated conservation-easement transactions.

Section 6 shows how the promoters of syndicated conservation-easement transactions took a seemingly complicated transaction and distilled it down to a very simple proposition to would-be taxpayer-investors. That proposition is this: for every dollar you give us to "invest" in a partnership that would grant a conservation easement on land owned by the partnership, we will provide you with between $4 and $4.40 worth of charitable deductions that you can claim on

your tax returns, which will reduce your tax bill by about two dollars. To put it even simpler, the promoters told their taxpayer-investors that for every dollar the taxpayer-investors paid to the promoters, they would save two dollars on their taxes.

Section 7 examines the email communications between the transactions' promoters and their taxpayer-investors, where the parties to these transactions appear to speak more directly and honestly about their reasons for participating in syndicated conservation-easement transactions. Tax-shelter promoters generally defend their transactions by arguing that the transactions are something other than what they really are, and the complicated nature of tax-shelter transactions help them shield the true nature of the transactions. But these emails provide transparency and simplicity, and they demonstrate in plain words what the transactions are really all about. The best way for a government to successfully argue against a tax shelter in court is to show the court the transaction promoters' emails.

The emails the Committee reviewed here demonstrate a significant gap between how promoters publicly characterize syndicated conservation-easement transactions and the true nature of the transactions. The promoters of syndicated conservation-easement transactions sometimes argued in their letters to the Committee that their transactions were investment vehicles that provided their investors with opportunities to partake in developing or mining land, holding the land for future investment, or granting a conservation easement on the land. The promoters went to great lengths to make it appear, on paper, that these were all viable investment options. But their emails tell a much different story, that the taxpayer-investors had no interest in a wide variety of land-investment possibilities; they just wanted to buy tax deductions.

Section 8 discusses the engine of every syndicated conservation-easement transaction: an inflated appraisal. It gives an example of an appraisal used in a relatively small syndicated conservation-easement transaction that took place in Alabama, called Black Bear Enterprises. The appraiser in that transaction was a man named Claud Clark, III. Mr. Clark played a prominent role in the world of syndicated conservation easements, as the appraiser for numerous transactions, especially for transactions promoted by EcoVest Capital. The Black Bear Enterprises transaction is an important transaction because, in 2019, the regulatory body for real estate appraisers in Alabama, known as the Alabama Real Estate Appraisers Board, challenged the Black Bear Enterprises appraisal for not conforming to the proper standards of an appraisal. Rather than defend himself before the board, Mr. Clark surrendered his appraisal license in Alabama. This report's Section 8 discusses the Alabama Real Estate Appraisers Board critique of Mr. Clark's Black Bear Enterprises appraisal, as those critiques are helpful in understanding the appraisals and transactions that are discussed in detail in this report's Section 9.

Section 9 goes into detail about some of the syndicated conservation-easement transactions that have been promoted over the last decade, including:

- First, several of the transactions promoted by EcoVest Capital in the area of North Myrtle Beach, South Carolina between 2015 through 2016. EcoVest told taxpayer-investors that this land, in a city with fewer than 17,000 people as of 2018, was quite valuable because EcoVest could have built several thousand apartment complexes, with over 40,000 new

bedrooms, in an area that was ten minutes from the beach and, in one case, next to a solid-waste treatment plant. In 2015 and 2016, EcoVest's taxpayer-investors would claim approximately $919 million worth of deductions by way of conservation easements granted on 1,300 acres of land in North Myrtle Beach, reducing their Federal income taxes by about $377 million.

- Second, transactions promoted by EvrSource Capital in Hamilton County, Florida in 2015 and 2016 around the bass-fishing destination known as Bienville Plantation, where the promoters said the land was worth between $45,000 and $71,000 per acre at around the same time that the new owners of the Bienville Plantation paid $274 per acre for neighboring land. These EvrSource transactions created over $156 million worth of tax deductions for their taxpayer-investors, saving them $61.8 million in Federal income taxes.

- Third, a 2013 transaction known as Adam Smith Ventures promoted by a company called Webb Creek, which told taxpayer-investors that land in Clay County, Georgia – a county in one of the most impoverished areas of the United States – was prime real estate, worth over $54,000 per acre, for a senior-living facility. Because of this, Webb Creek generated $12 million worth of deductions for its taxpayer-investors in 2013, saving them about $4.8 million in taxes.

- Fourth, transactions from 2015 through 2017 promoted by Ornstein-Schuler that involved reclaimed phosphate mines in Polk County, Florida, an area nicknamed "Bone Valley." Ornstein-Schuler told its taxpayer-investors that their land was worth upwards of $164,000 per acre at a time when no one actually wanted to buy that land for even $3,495 per acre. Between 2015 and 2017, this created $288 million in deductions for Ornstein-Schuler's taxpayer-investors, saving them over $114 million in Federal income taxes.

- Fifth, transactions in Humphreys and Perry County, Tennessee, which are rural counties near Interstate 40 about one third of the way from Nashville to Memphis. Two different syndicated conservation-easement transaction promoters, Dr. Kyle Carney and Thomas Jason Free, both from Rome, Georgia, promoted their own transactions involving land they paid between $1,200 and $1,500 per acre for in the middle part of the last decade. In 2015 and 2016, however, they told investors that their lands were worth between $12,000 and $15,000 per acre because of the potential for low-density residential development. All together, these transactions generated $72.6 million in deductions for taxpayer-investors, savings them $28.8 million in Federal income taxes.

This report provides as much detail as possible, especially in the later sections, so as to offer the clearest understanding to date of how syndicated conservation-easement transactions have worked over the last decade. After this report's conclusion, its appendix outlines the most important details of many of the transactions used with the lands discussed in Section 9. The appendix also lists the exhibits used to substantiate the findings of this report.

3. Relevant Law for Syndicated Conservation-Easement Transactions

This section discusses the Federal tax laws governing conservation easements. The first subsection below discusses how the law permits a taxpayer to claim a deduction for a conservation easement. The second subsection discusses the Federal tax laws governing partnerships. This is important because, unlike businesses that are corporations, businesses that are partnerships are not taxed at the business level (or at the "partnership level"), but rather, the owners of the partnership are taxed directly (or at the "partner level"). In tax lingo, this means the tax effects – taxes owed, deductions and credits claimed, etc. – *pass through* to the partners of the partnership rather than stop at the partnership. This is critical for syndicated conservation-easement transactions to work because they exist in order to transfer a tax deduction created by a partnership down to the partnership's "investors." The transactions would not work if only the business could use the tax deduction. The third subsection below discusses what is known as the sham entity doctrine. This is a common-law doctrine that courts can use to disregard, or ignore, the existence of a partnership, and therefore eliminate the tax benefits that come with being a partnership, when the partnership exists solely to create tax benefits for its owners rather than carry on a real business. When this happens, the partnership is considered a sham. This is important because the partnerships discussed in this report appear to do exactly this: try to make themselves look like legitimate investment opportunities with real non-tax economic reasons for being, but in reality, appear to operate as shams designed with no other purpose than to transfer large tax deductions to their taxpayer-investors.

a. Charitable Deductions, Qualified Conservation Contributions, and Conservation Easements

Tax law permits an income tax deduction for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the type of recipient organization.[8] The amount of the deduction generally equals the fair market value of the contributed property on the date of the contribution, except as specified in the Code. The donor must properly substantiate the contribution in order to claim the deduction.[9]

As a general matter, a taxpayer may not claim a charitable deduction for a contribution of a partial interest in property, such as a remainder interest or a grant of only certain rights to a piece of land. The Code provides an exception to this partial interest rule, however, for "qualified conservation contributions."[10] A qualified conservation contribution is a contribution of a qualified real-property interest to a qualified organization exclusively for conservation

[8] 26 U.S.C. § 170.

[9] *See* 26 U.S.C. § 170(f)(8) (requiring the taxpayer to obtain a contemporaneous written acknowledgment from the donee organization) and § 170(f)(11) (imposing additional documentation and/or appraisal requirements for contributions with a claimed value in excess of $500, $5,000, and $500,000).

[10] 26 U.S.C. §§ 170(f)(3)(B)(iii) and 170(h).

purposes.[11] A qualified real-property interest is defined as: (1) the entire interest of the donor other than a qualified mineral interest; (2) a remainder interest; or (3) a restriction (granted in perpetuity) on the use that may be made of the real property (*i.e.*, an easement).[12] Qualified organizations include certain governmental units, public charities that meet certain public support tests, and certain supporting organizations.[13] Conservation purposes include: (1) the preservation of land areas for outdoor recreation by, or for the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or a similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation will yield a significant public benefit and is either for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy; and (4) the preservation of an historically important land area or a certified historic structure.[14] A contribution is not a qualified conservation contribution unless the conservation purpose of the contribution is protected in perpetuity and certain other requirements are satisfied.[15]

Conservation easements are a common type of qualified real-property interest. Essentially, a conservation easement is a legal agreement in which a landowner voluntarily gives a qualified organization the right to prevent the landowner (and any future landowners) from developing the land, subject to the terms of the easement. The landowner is said to "grant" a conservation easement to the qualified organization, which is the "holder" of the conservation easement. Under the Code, when a landowner grants a conservation easement to a qualified organization, the landowner is able to claim a charitable deduction.

If the easement property is long-term capital gain property (generally, a capital asset that has been held for more than one year), the taxpayer may deduct the fair market value of the donated easement determined as of the time of the contribution.[16] Under Treasury regulations, if there is a substantial record of sales of easements comparable to the donated easement, the fair market value is based on the sales prices. In the absence of a substantial record of comparable easement sales, the fair market value generally is determined by comparing the fair market value of the underlying property before it is encumbered by the conservation easement to the fair market value of the underlying property after the easement is granted.[17] Under Treasury regulations, the fair market value of the property before the granting of a conservation easement

[11] 26 U.S.C. § 170(h)(1).

[12] 26 U.S.C. § 170(h)(2).

[13] *See* 26 U.S.C. § 170(h)(3). For example, a section 501(c)(3) land trust might be a qualified organization to which a conservation easement is contributed.

[14] *See* 26 U.S.C. § 170(h)(4).

[15] 26 U.S.C. § 170(h)(5)(A).

[16] 26 U.S.C. § 170(e)(1). Otherwise, the value of the contribution must be reduced by the amount of gain that would not have been long-term capital gain if the property contributed had been sold at its fair market value, generally resulting in a reduction to the taxpayer's basis in the property contributed. 26 U.S.C. § 170(e)(1)(A).

[17] 26 C.F.R. § 1.170A-14(h)(3).

> must take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the [easement], would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use.[18]

Generally, a substantial record of sales of easements comparable to the donated easement does not exist. Therefore, the diminution in value of the property that results from placing easement restrictions on the property generally is the fair market value of the easement for charitable deduction purposes.[19]

The promoters of syndicated conservation easement transactions often defend their transactions by arguing the Treasury regulation discussed above, sometimes referred to as the "highest and best use" requirement, makes appraisals for conservation easements different from appraisals commonly used by purchasers of land and their lenders. For example, Robert Ramsay of the Partnership for Conservation recently wrote in the Exempt Organization Tax Review that it is a "myth" that a "conservation easement's value cannot exceed the current value of the land." Mr. Ramsay purported to correct this "myth" by stating,

> A conservation easement's value is the value of the development rights that are forfeited in perpetuity when an easement is in place. Treasury's own regulations require that these rights be valued based on the land's highest and best use. When the existing state of land is different from its highest and best use, giving up the opportunity to develop the land forgoes substantial value. It is that value that the law permits as a deduction.[20]

The Committee is aware of this argument and agrees that the fair market value of land involves consideration of the land's highest and best use. However, courts and the IRS have long held that where a taxpayer asserts that the highest and best use of land is different than the land's current use, the taxpayer is obligated to demonstrate that such alternative use is reasonably probable, not simply within the realm of possibility.[21] Courts have clearly stated that the concept

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[18] 26 C.F.R. § 1.170A-14(h)(3)(ii).

[19] The applicable charitable deduction percentage limits are more generous for qualified conservation contributions than for most other types of charitable contributions. In the case of an individual taxpayer, a qualified conservation contribution generally is allowed up to 50 percent of the individual's contribution base (adjusted gross income computed without regard to net operating loss carrybacks), or 100 percent of the individual's contribution base if the individual is a qualified farmer or rancher. *See* 26 U.S.C. §§ 170(b)(1)(E) and (H). In the case of a corporation that is a qualified farmer or rancher, a qualified conservation contribution generally is allowed up to 100 percent of the corporation's taxable income. 26 U.S.C. § 170(b)(2)(B). Excess qualified conservation contributions may be carried forward 15 years. 26 U.S.C. §§ 170(b)(1)(E)(ii) and 170(b)(2)(B)(ii).

[20] Ex. 4 – Robert Ramsay, *A Dirty Dozen Myths About Conservation Easements and One Sad Truth*, EXEMPT ORGANIZATION TAX REVIEW, May 2020, at 280.

[21] *Stanley Works & Subsidiaries v. Comm'r of Internal Revenue*, 87 T.C. 389 (1986), *citing Olson v. United States*, 292 U.S. 246 (1934) ("Elements affecting value that depend upon events or combinations of

of highest and best use is an element in the determination of fair market value, but it does not eliminate the requirement that fair market value is the amount a willing buyer would agree to pay a willing seller for the land.[22]

Many of the transactions reviewed in this investigation and analyzed in this report rely on this type of argument as the basis for appraisals used to establish charitable deductions claimed by taxpayer-investors. However, the transactions reviewed in this report illustrate a consistent pattern of land (or interest in a partnership holding land) sold in an arm's length transaction, followed shortly thereafter by an appraisal asserting land values multiple times higher than the value established in that prior arm's length transaction. This pattern clearly calls into question the accuracy of these appraisals that consistently value property many times higher than was established in prior arm's length transactions.

b. Partnerships and Other "Pass-Through" Entities

i. Partnerships in General

Generally, federal law treats partnerships as pass-through entities for Federal income tax purposes, meaning that a partnership generally is not subject to Federal income tax at the entity level.[23] Instead, the items of income (including tax-exempt income), gain, loss, deduction, and credit of the partnership pass through to the partners in accordance with partners' shares of the items. Partners take these items into account when computing their Federal income tax liabilities, regardless of whether income is distributed to the partners.[24]

A partner's deduction for the partner's share of partnership losses and deductions is limited to the partner's adjusted basis in its partnership interest.[25] Losses and deductions not

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occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable should be excluded from consideration.").

[22] *Boltar, L.L.C. v. Comm'r of Internal Revenue*, 136 T.C. 326 (2011) ("The concept of 'highest and best use' is an element in the determination of fair market value, but it does not eliminate the requirement that a hypothetical willing buyer would purchase the subject property for the indicated value."); *Stanley Works & Subsidiaries v. Comm'r of Internal Revenue*, 87 T.C. 389 (1986), *citing United States v. 320.0 Acres of Land, More or Less in Monroe County, State of Fla.*, 605 U.S. 762, 781 (5th Cir. 1979) ("If a hypothetical buyer would not reasonably have taken into account that potential use in agreeing to purchase the property, such potential use should not be considered in valuing the property.").

[23] 26 U.S.C. § 701. A partnership with employees is, however, subject to payroll tax (paying both the employer's share, and withholding and paying over the employee's share) under sections 3102 and 3111. Under section 7704, a publicly traded partnership generally is subject to tax as a corporation, but an exception from corporate treatment is provided for certain publicly traded partnerships, 90 percent or more of whose gross income is qualifying income (as defined in section 7704(d)). This qualifying income exception does not apply to any partnership resembling a mutual fund (*i.e.*, that would be described in section 851(a) if it were a domestic corporation). 26 U.S.C. § 7704(d)(3).

[24] 26 U.S.C. § 702(a).

[25] 26 U.S.C. § 704(d). In addition, passive loss and at-risk limitations limit the extent to which certain types of income can be offset by partnership deductions (§§ 469 and 465). These limitations do not apply to

allowed as a result of that limitation generally are carried forward to the next year. A partner's adjusted basis in the partnership interest generally equals the sum of (1) the partner's capital contributions to the partnership, (2) the partner's distributive share of partnership income, and (3) the partner's share of partnership liabilities, less (i) the partner's distributive share of losses allowed as a deduction and certain nondeductible expenditures, (ii) any partnership distributions to the partner, and (iii) certain deductions for depletion.[26] A partner generally may receive a distribution of partnership property without recognition of gain or loss, though the basis of the distributed property and the partner's basis in its partnership interest are adjusted to reflect the distribution.[27]

A partnership may allocate items of income, gain, loss, deduction, and credit among the partners, provided the allocations have "substantial economic effect."[28] In general, an allocation has substantial economic effect to the extent the partner to which the allocation is made receives the economic benefit or bears the economic burden of such allocation and the allocation substantially affects the dollar amounts to be received by the partners from the partnership independent of tax consequences.[29]

ii. LLCs

Since 1977, States have enacted laws providing for a form of business entity known as an LLC, which is short for limited liability company.[30] LLCs are neither partnerships nor corporations under applicable State law but they generally provide limited liability to their owners with respect to business obligations.

Treasury regulations promulgated in 1996[31] generally treat any domestic nonpublicly traded unincorporated entity, such as a partnership or LLC, with two or more members as a partnership for Federal income tax purposes. The regulations also treat any single-member domestic unincorporated entity as disregarded for Federal income tax purposes (*i.e.*, treated as

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corporate partners (except certain closely-held corporations) and may not be important to individual partners who have partner-level passive income from other investments.

[26] 26 U.S.C. § 705.

[27] 26 U.S.C. §§ 731 and 732. Gain or loss may nevertheless be recognized, for example, on the distribution of money or marketable securities in excess of the adjusted basis of the partnership interest (§ 731(a)(2)), or on distributions with respect to contributed property (§§ 704(c)(1)(B) and 737), or in the case of certain disproportionate distributions that give rise to ordinary income (§ 751).

[28] 26 U.S.C. § 704(b). Otherwise, the partner's share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with the partner's interest in the partnership, taking into account all the facts and circumstances. *Ibid.*

[29] 26 C.F.R. § 1.704-1(b)(2).

[30] The first LLC statute was enacted in Wyoming in 1977. All States (and the District of Columbia) have LLC statutes, though the treatment of LLCs for State tax purposes may differ between jurisdictions.

[31] 26 C.F.R. § 301.7701-3.

not separate from its owner). However, a State-law partnership or LLC may instead elect to be treated as a corporation for Federal income tax purposes. The regulations providing this election, known as the "check-the-box" regulations, were a response, in part, to the growth in popularity of LLCs.

Many of the entities listed in this report are LLCs, meaning tax law may treat those companies like partnerships for tax purposes, with tax deductions created by those companies flowing directly to their "investors."

c. Sham Partnerships

A basic principle of Federal tax law is that a partnership or other pass-through entity such as an LLC must have a reason for existing aside from simply creating tax benefits for its partners. Under certain circumstances, such entities may be disregarded for Federal tax purposes under what is often referred to as the sham entity doctrine. In general, under this doctrine, an entity may be disregarded for Federal tax purposes if (1) the entity does not have a non-tax business purpose, and (2) the entity does not engage in business activity.[32] Moreover, under the doctrine, some courts have disregarded an entity, including a partnership, when the entity does not have a non-tax business purpose, even if the entity does, in fact, engage in business activity.[33] Furthermore, two Supreme Court cases, *Culbertson v. Commissioner*[34] and *Commissioner v. Tower*,[35] address the circumstances in which a State-law partnership is recognized as a partnership for Federal tax purposes, and provide an intent-based test. Under this intent-based

[32] See *Moline Properties, Inc. v. Comm'r of Internal Revenue*, 319 U.S. 436 (1942) ("Whether the purpose be to gain an advantage under the law of the state of incorporation or to avoid or to comply with the demands of creditors or to serve the creator's personal or undisclosed convenience, so long as that purpose is the equivalent of business activity or is followed by the carrying on of business by the corporation, the corporation remains a separate taxable entity"); see also *Bollinger v. Comm'r of Internal Revenue*, 485 U.S. 340 (1988); *National Carbide v. Comm'r of Internal Revenue*, 336 U.S. 422 (1949); *Ross v. Comm'r of Internal Revenue*, 129 F.2d 310 (5th Cir. 1942); *Paymer v. Comm'r of Internal Revenue*, 150 F.2d 334 (2d Cir. 1945). While the Supreme Court case law addresses the application of the sham entity doctrine to corporations, the sham entity doctrine has been applied by the courts and the Internal Revenue Service in evaluating whether to recognize a partnership as an entity that is distinct from one or more of its partners. See, *e.g.*, *Friedlander Corp. v. Comm'r of Internal Revenue*, 216 F.2d 757 (5th Cir. 1954); *Seminole Flavor Co. v. Comm'r of Internal Revenue*, 4 T.C. 1215 (1945); *Buffalo Meter Co. v. Comm'r of Internal Revenue*, 10 T.C. 83 (1948); *Campbell County State Bank v. Comm'r of Internal Revenue*, 37 T.C. 430 (1961), *rev'd on a different issue*, 311 F.2d 374 (8th Cir. 1963); *Cooper v. Comm'r of Internal Revenue*, 61 T.C. 599 (1974); *Masoni v. Comm'r of Internal Revenue*, T.C. Memo. 1968-129 (1968); see also General Counsel Memorandum 35990 (Sept. 18, 1974) (the "principles governing when the separate identity of a corporation should be recognized also apply to determine when the separate identity of a partnership should be recognized"; "the same rules that govern whether a corporation is a viable entity separate from its creator are applied to determine whether a partnership is a viable entity. If a partnership is a sham formed solely for purposes of avoiding taxes, then the Service would not have to recognize it for federal income tax purposes.").

[33] See, *e.g.*, *ASA Investerings v. Comm'r of Internal Revenue*, 201 F.3d 505 (D.C. Cir. 2000), *aff'g* T.C. Memo. 1998-305 (1998) ("[T]he absence of a non-tax business purpose is fatal."); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435 (1934).

[34] *Culbertson v. Comm'r of Internal Revenue*, 337 U.S. 733 (1949).

[35] *Comm'r of Internal Revenue v. Tower*, 327 U.S. 280 (1946).

test, a partnership is recognized for Federal income tax purposes only if "the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise."[36]

In recent cases, partners have claimed partnership-allocated deductions for conservation easement contributions.[37] However, courts have not yet considered whether the sham entity doctrine should be applied to the specific syndicated conservation-easement partnership structures described in this report.

Generally, the transactions discussed below involved pass-through entities that formed quickly and toward the end of a tax year with multiple purported business purposes. For example, a promoter may state that the entity will choose one of three courses of future action, subject to a vote of the investors: (1) developing land, (2) holding land for investment, or (3) conserving that land in order to share the resulting tax deduction with the partnership's investors. The third option, conserving land for the tax benefit, may be viewed as an illegitimate business purpose and could jeopardize the partnership under the sham-entity doctrine if it were the partnership's only business purpose. By nominally considering additional non-tax business purposes (developing land or holding it for investment), promoters of these transactions seek to avoid negative treatment under the sham entity doctrine. However, as this report details, both the investors and promotors in these transactions share an understanding that the partnership is organized exclusively for the potentially illegitimate purpose of syndicating tax benefits. In every case, investors in the partnerships voted overwhelmingly to grant a conservation easement on the land for the tax benefits. Section 9 discusses these and other similar facts in greater detail below.

[36] *Culbertson v. Comm'r of Internal Revenue*, 337 U.S. 733, 742 (1949).

[37] See, *e.g.*, *PBBM-Rose Hill, Ltd. v. Comm'r of Internal Revenue*, 900 F.3d 193 (5th Cir. 2018); *Coal Property Holdings, LLC v. Comm'r of Internal Revenue*, 153 T.C. 7 (2019); *Palmolive Bldg. Investors, LLC v. Comm'r of Internal Revenue*, 149 T.C. 380 (2017); *Belk v. Comm'r of Internal Revenue*, 140 T.C. 1 (2013); *TOT Property Holdings, LLC v. Comm'r of Internal Revenue*, T.C. No. 5600-17 (Dec. 13, 2019).

4. How Do Syndicated Conservation-Easement Transactions Work?

In general, the syndicated conservation-easement transactions described in this report involve high-income individuals purchasing large charitable deductions in order to shelter income from Federal and State tax. Specifically, taxpayers buy an interest in a pass-through entity, such as a partnership, that owns real property (or, more commonly, owns another pass-through entity that owns the property) based on promotional materials advertising a specified amount of tax deductions in exchange for the purchase price. Once the promoter of the transaction has sold all the available interests in the partnership, the entity places a conservation easement on the land and grants it to a tax-exempt organization, usually known as a land trust, which is nominally a charity that is supposed to make sure the land stays undeveloped forever. Using an inflated appraisal to claim the lost value of the land, because of the easement, is greater than it actually is, the investors then claim a charitable-contribution deduction on their income tax returns for granting that easement.

By their nature, tax deductions are not profitable unto themselves. The ability to deduct from gross income a dollar spent should only provide the taxpayer with a value less than that dollar spent, namely the amount of tax he or she did not have to pay on that dollar of income. But that unpaid amount of tax is still less than the dollar spent to get that dollar's worth of deduction. If a taxpayer's top income tax rate is 37 percent and she gives a dollar to a charity, the taxpayer gets to deduct that dollar as a charitable deduction (assuming she itemizes her deductions rather than takes the standard deduction), so she saves 37 cents in taxes. But she is still poorer by one dollar – she gave it away to charity – even if she is richer by 37 cents, giving her an overall loss of 63 cents.

When done properly, this principle also should apply to conservation-easement deductions. If a farmer owns land that has been in his family for generations, meaning he paid nothing for it, and he does not want his children to develop that land after he passes away, the farmer can grant a conservation easement on the land. If the pre-easement value of the land is $1 million because of its development potential, but only worth $100,000 after the easement when that land can no longer be developed, the farmer gains up to $333,000 in a reduced tax bill ($900,000 diminution in land value multiplied by the farmer's top tax rate, perhaps 37 percent under current law, with limitations on how much can be deducted each year). On the surface it might look like the farmer gained $333,000 by way of land he paid nothing for, but in reality the farmer is still economically poorer than he otherwise would have been before granting the easement. Economically speaking, he lost $900,000 by taking land that was worth $1 million and chopping its value down to $100,000. No rational taxpayer would give up $900,000 in value to reduce a tax bill by $333,000. The farmer would grant the easement for a purpose different than financial profit, namely a non-economic desire for the land to stay undeveloped forever.

Syndicated conservation-easement transactions turn this principle on its head. They use inflated appraisals to achieve deductions, making the transactions *financially profitable* to taxpayers. In the syndicated conservation-easement transactions reviewed in this investigation, taxpayer-investors purchased nominal interests in land that came with inflated appraisals based on development or mining potentials of that land – potentials that never actually bore fruit. The

promoters pitched the transactions as investments in land with substantial economic potential, but it does not appear those promoters ever intended for the land to profit their investors aside from the creation of tax benefits. The promoters typically substantiated tax deductions by procuring an inflated appraisal to say the land has substantial development potential and is therefore worth a lot, grant a conservation easement on the land, then get another appraisal (generally in the same document as the first appraisal) to say how little the land is worth after granting the easement. This before-and-after difference in value is the manufactured charitable deduction that is shared among the "partners" (or "members") in the "investment."

To apply this situation to the hypothetical farmer discussed above, if that farmer were to get an aggressive appraiser to say – fraudulently – his land, which is really worth $1 million, is actually worth $10 million for tax purposes, and then grant a conservation easement on that land, that would actually be more profitable for the farmer than selling the land. In that case, the farmer fraudulently represents that a conservation easement granted on the land would be worth the difference between $10 million and $100,000, or simply $9.9 million. If the farmer claimed that conservation-easement value as a charitable deduction (again, fraudulently), he would save up to $3,663,000 ($9,900,000 multiplied by a 37-percent tax rate) in taxes even though he could not have actually sold the land for more than $1 million.[38] And if that were the case, it would essentially mean the federal government paid $3,663,000 in the form of foregone tax revenue to conserve land that would have only cost the government $1 million to buy outright. This is a simplified example of how the transactions reviewed in this report and discussed below benefited promoters and taxpayer-investors, except that the taxpayers are high-income individuals in seemingly sham partnerships looking to get a piece of that $9.9 million deduction.

EcoVest Capital claims their syndicated conservation-easement transactions should be viewed in a different light. They claim their transactions are vehicles for encouraging conservation by landowners who have valuable land that might be worth preserving but not a lot of income and therefore not a large need for a charitable deduction. By sharing the charitable deduction with high-income individuals who buy an interest in the land, that charitable deduction is spread around among taxpayers who can use the deduction to shelter their income from taxation, and the landowner has greater incentive to conserve the land. An EcoVest promotional document drafted by the law firm Sirotte & Permutt, PC describes the benefits of syndicating the transaction this way, with a different take on the farmer example:

> Conservation Easement and Real Estate Partnerships
>
> The use of partnership structures can allow, under the right circumstances, the maximum use of the tax benefits attributable to a conservation easement donation. This results in allowing preservation of land that might not be otherwise protected.

[38] Charitable deductions for conservation easements cannot reduce adjusted gross income by more than 50 percent in any given tax year. This example assumes the farmer is quite wealthy, having an adjusted gross income for the year of at least $19.8 million.

Many landowners are not able to take advantage of a deduction for a conservation easement on their property because they lack sufficient income. However, there are high-income taxpayers willing to invest in land owning entities if they can receive the benefit of a conservation easement deduction. This matching of interests allows preservation of the land on terms satisfactory to all and increases the amount of land preserved by fully utilizing the tax incentives of section 170(h).

For example, this may occur if, after the investment is made by the high-income taxpayer, the entity chooses to donate a conservation easement on the property and forego other options available to it. The charitable deduction resulting from the conservation easement would then be allocated to the current owners of the land owning entity, which would include the high-income investor. Thus, the tax incentive for conservation easements found in Section 170(h) will achieve its purpose by encouraging the donation of a conservation easement on property and by protecting the conservation values Congress wants to preserve in perpetuity for future generations.

These transactions can be complex, but they are designed to allow the tax incentives of Section 170(h) to be used as Congress originally intended. Below is an example of how this works.

Assume that Mr. Jones … owns the property with his son, Casey, in a partnership, and assume that Mr. Jones and Casey each have an annual adjusted gross income of only $50,000. If Mr. Jones and Casey were to donate a conservation easement over their property, they would likely be unable to fully utilize the $9 million deduction attributable to an easement donation[, which reduced the property's value from $10 million to $1 million,] because of the deduction limitations discussed above (Mr. Jones and Casey would each be limited to deducting $25,000 of the $9 million deduction in the year of donation, and roughly the same amount for each carryover year afterward.) However, if Mr. Jones and Casey admitted other high-income investors into their partnerships by selling them LLC interests, and the partnership subsequently elected to donate an easement over the property, the investors would be able to share in the deduction. Thus, the partnership structure, and the admission of additional partners, can enable the tax benefits attributable to a conservation easement donation to be fully utilized.[39]

This example begs certain questions that are critical to this example working as a syndicated conservation-easement transaction. First, is the land really worth $10 million if Mr. Jones and Casey were willing to sell interests in their land-holding partnership for an amount far less than $10 million? According to the Joint Committee on Taxation's *General Explanation of Tax Legislation Enacted in* 2015, Congress did not intend for the value of a conservation

[39] Ex. 5 – Ronald Levitt and David Woolridge, Sirotte & Permutt PC, Conservation Easement Overview (2013), at 5 (ex. p. ECOVEST-SF_0105665) (emphasis original).

easement to exceed the fair market value of the land, as "[t]he amount of [the] deduction generally equals the fair market value of the contributed property on the date of the contribution."[40] In order for the high-income "investors" to make a profit from the deduction created in this example, they would have had to pay far less than $10 million for their combined ownership interests in the property. And if they did that, was the property really worth $10 million? Second, did these investors have a non-tax reason for entering into the partnership? If not, the partnership risks being considered a sham in which case a reviewing court would deny the investors their tax deductions.

In September 2017, a lawyer named Michael M. Smith at the Baker Donelson law firm described on a webcast the structuring of syndicated conservation-easement transactions, and the partnerships necessary for them to work, in this way:

> Generally speaking – and a lot of these deals are structured the same – is, you've got a property-owning entity, which is structured as a pass-through entity, which could be a partnership, a limited-liability partnership, an LP, LLC, S corps in some situations, as well as an investment vehicle, which is what we call "InvestCo," or the company that actually undergoes private placement offering to outside investors. Following the private placement offering and closing of it, the normal structure is that the investment vehicle acquires a controlling interest in the property-owning entity through some type of membership-interest purchase agreement, membership-unit purchase agreement, contribution agreement – I mean, there's a number of different forms that this takes, but generally speaking, it's an acquisition of a controlling interest, and we're always using pass-through entities so that the deductions flow upwards to the investors. *The thing that I like that I want to point out about this slide is that, even though a lot of the investors have participated in these transactions are participating for tax-planning purposes, we do very – we're very mindful about how we structure these transactions. Even though Bill noted that we talked in the hypothetical with a lot of these transactions, and case law supports that, the best deals that we can put together is when there is an absolute viable business purpose, and there's an alternative for investors participating in the offering. So, you normally will see is after the— sometime after the closing of the private placement offering, the decision is made at the investor level on what to do with the property, and sometimes it is to conserve the property. But other times it could be to hold for long-term investment or actually do— move forward and pursue the development activity, and that's why we, a lot of our clients put a lot of emphasis on this, because the better the situation is, not only does it support the value but also*

[40] Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in 2015* (JCS–1–16), March 2016, at 121.

supports things like having true and separate economic substance in the partnerships. So that's one thing I want to point out.[41]

This emphasized portion of the transcript raises the question of whether promoters created the transactions to include non-tax business purposes or whether the promoters created the transactions *to look like* they had non-tax business purposes. The facts surrounding the purported business purposes in the transactions discussed in Section 9 indicate the latter.

[41] William M. Osterbrock, Baker Donelson, Webinar Presentation – Current Issues Concerning Charitable Gifts of Real Estate (Sep. 28, 2017), https://www.bakerdonelson.com/current-issues-concerning-charitable-gifts-real-estate (beginning at approximately 43:13, last visited May 13, 2020) (emphasis added), see audio recording at Ex. 6 and accompanying presentation slide at Ex. 6.1.

5. History of Syndicated Conservation-Easement Transactions

Kiva Dunes is a beach resort on Alabama's Fort Morgan peninsula separating Mobile Bay and Bon Secour Bay to the north, and the Gulf of Mexico to the South. Its website describes it as "a mile of sugar-white private beachfront" that includes a "full restaurant and bar with breathtaking views of the Gulf of Mexico, and the only resort offering food and drink service on the beach."[42] It is also home to an 18-hole golf course designed in 1995 by professional golfer Jerry Pate, a course that claims awards such as "Top 100 Gold Resorts by GolfWeek" and "No. 1 Public Golf Course in the state by Golf Advisor."[43]

In addition to being a picturesque golf venue, the Kiva Dunes Golf Course also holds an obscure distinction in the history in U.S. tax controversy. It is bound by a conservation easement that was the first conservation easement involving a golf course to go to trial against the IRS, a seminal case in the otherwise niche world of syndicated conservation-easement transactions. Bill Sylvester, a tax lawyer in the Birmingham, Alabama office of the Baker Donelson law firm, describes the genesis of the Kiva Dunes conservation-easement transaction like this:

> "I've been involved with conservation easements since 2002. A now-deceased stock broker from Birmingham, Alabama met a fellow from Columbia – no Charleston, South Carolina when they were boat fishing in the Virgin Islands and they had a good conversation about: was there a way to transfer interest in a good conservation-minded property to someone with a higher tax bracket? The would-be client brought that to our office when he returned, and over a weekend I looked at the Subchapter K and 170(h) rules and came up with the plan that ultimately resulted in the Kiva Dunes transaction later that year. And also we did another golf course, so I've had – this has been a part of my practice since then, and it's very enjoyable."[44]

Seven years later, the IRS challenged the developer of the Kiva Dunes Golf Course in Tax Court, alleging the taxpayer overvalued the contribution from that conservation easement.[45] In 2002, the taxpayer claimed a deduction of $30,588,235 for a conservation easement on the Kiva Dunes Golf Course granted on December 31, 2002. Essentially, in that case, the developer argued that by forever preventing itself from developing homes on its golf course, it suffered a loss in value in that land and therefore was entitled to a corresponding charitable deduction. The developer's appraiser and expert witness in the case, Mr. Claud Clark, III, who had decades of

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[42] Kiva Dunes, *at* https://www kivadunes.com/.

[43] The Kiva Dunes Golf Course, *at* https://www.kivadunes.com/golf/

[44] William R. Sylvester, Baker Donelson, Webinar Presentation – Current Issues Concerning Charitable Gifts of Real Estate (Sep. 28, 2017), https://www.bakerdonelson.com/current-issues-concerning-charitable-gifts-real-estate (beginning at approximately 2:32, last visited May 13, 2020), see audio recording at Ex. 7 and accompanying presentation slide at Ex. 7.1.

[45] *Kiva Dunes Conservation, LLC v. Comm'r of Internal Revenue*, T.C. Memo. 2009-145, *1-2 (June 22, 2009).

experience in the Kiva Dunes area according to the Tax Court, estimated the golf course was worth approximately $32 million, prior to its conservation easement, because of its pre-easement potential for residential development.[46] The IRS' appraiser estimated that pre-easement value at only $10 million.[47] In their analyses, both appraisers looked to comparable sales as well as using what is known as a discounted cash flow analysis, which is a determination of value based on estimated costs and revenues associated with developing the land.[48] After making a relatively small downward adjustment to the charitable deduction allowed, the Tax Court agreed with Mr. Clark's appraisal and found for the taxpayer in *Kiva Dunes*. In a footnote, the Tax Court emphasized the desirability of the Kiva Dunes land as justifying a pre-easement premium: "With Kiva Dunes Golf Course sitting on one of the most beautiful stretches of coastline in the United States, a willing buyer and a willing seller would necessarily anticipate a premium price for the property."[49]

In the decade that followed, promoters of syndicated conservation-easement transactions invoked that *Kiva Dunes* opinion as the legal basis for similar transactions involving highly inflated appraisals.

For example, in December 2017, a would-be investor named David emailed his attorney asking about the legitimacy of an EcoVest-sponsored conservation-easement transaction known as Azul Bay, which David was "investing in … personally as a tax shelter."[50] That email developed into a thread between David, one of his attorneys who expressed skepticism about the transaction's land valuations, and an investment advisor named David Mirolli who helped promote the transaction to David. Mr. Mirolli defended the transaction's land valuation by invoking the *Kiva Dunes* case:

> "[A] conservation easement appraisal is very different from a normal real estate appraisal since it takes in to account all future economic benefit on the land and takes future value discounted to present day. Claude Clark [sic] of Clark Davis Appraisal has the most experience of any conservation easement appraiser in the country with over 500 CE appraisals to his credit. Claude has been tested under fire with the tax courts particularly in the Kiva Dunes case in [sic] known to be a huge victory for conservation easements."[51]

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[46] *Id.*, *9-10.

[47] *Id.*, *10.

[48] *Id.*, *10, 14-16.

[49] *Id.*, *11 n.9.

[50] Ex. 1 – Email from David [REDACTED] to Robert [REDACTED] (Dec. 7, 2017, 5:09:23 PM), at ex. p. ECOVEST-SF_0308689.

[51] Ex. 1 at ex. p. ECOVEST-SF_0308687.

On Dec 9, 2017, at 11:37, Dave Mirolli <[redacted]> wrote:

David,
I will address Tom's issues but want to also make available a conference call with all interested parties on Monday to verify you are comfortable proceeding with this investment.

As referenced in the circular 230 tax opinion, a conservation easement appraisal is very different from a normal real estate appraisal since it takes into account all future economic benefit on the land and takes future value discounted to present day. Claude Clark of Clark Davis Appraisal has the most experience of any conservation easement appraiser in the country with over 500 CE appraisals to his credit. Claude has been tested under fire with the tax courts particularly in the Kiva Dunes case in known to be a huge victory for conservation easements. Claude is often brought in by other tax payers to do valuations on properties under audit and his work in that capacity was accepted by the IRS He personally has a track record with the IRS of having anywhere from a zero change to a 20% reduction in the CE valuations as the CE appraiser.

(This email thread is further discussed in Section 7.)

Other promoters of syndicated conservation-easement transactions have since cited the *Kiva Dunes* case in promotional materials, including private placement memoranda. Two such promoters, Lane Lawler of Acworth, Georgia, and Thomas Jason Free of Rome, Georgia sold interests in a transaction named Tennessee Ranch Estates Investors, LLC, which involved placing a conservation easement on 1,010 acres in Humphreys County, Tennessee and claiming a $13 million charitable deduction to be split among 26 partners in 2015. In marketing this transaction, they wrote,

> [I]n 2002 the well-known Kiva Dunes easement was granted in coastal Alabama. Sixty-one percent (61%) of the members acquired their interests in late December, and a conservation gift followed immediately. The IRS challenged the Kiva Dunes charitable deduction. In 2009, the Tax Court sustained $27.5 million of a $29 million claimed deduction. *Kiva Dunes Conservation, LLC v. Commissioner*, T.C. Memo 209-145. Each member, including the members who acquired their interests in late December, received his or her distributive share of the deduction.[52]

Since at least 2002 there has been an interest in combining through partnership those land owners who may have little need for additional "conservation easement" deductions with high bracket taxpayers who may have a desire to participate in these gifts. In PLR 200208019 the IRS ruled that two former employees of a farm could partner with a local resident "heavily involved in conservation" to take their distributive shares of a conservation easement for the farm.[1] Also in 2002 the well-known Kiva Dunes easement was granted in coastal Alabama. Sixty-one percent (61%) of the members acquired their interests in late December, and a conservation gift followed immediately. The IRS challenged the Kiva Dunes charitable deduction. In 2009, the Tax Court sustained $27.5 million of a $29 million claimed deduction. *Kiva Dunes Conservation, LLC v. Commissioner*, T.C. Memo 209-145. Each member, including the members who acquired their interests in late December, received his or her distributive share of the deduction.

What these and other promoters did not appear to tell their investors was that the land at issue in *Kiva Dunes* could command a premium price because, as the Tax Court stated, the property was one of "the most beautiful stretches of coastline in the United States." Meanwhile,

[52] Ex. 8 – Tennessee Ranch Estates Investors, Confidential Private Placement Memorandum, LLC (Oct. 16, 2015), at FREE00000413 (emphasis original).

the promoters offered conservation-easement transactions on land that could not sell at anywhere near the prices they said it was worth.

Since then, promoters of syndicated conservation-easement transactions have been relying on the *Kiva Dunes* opinion to aggressively market such transactions involving inflated appraisals for lands that often appear to have questionable commercial values, at least at the values claimed by the promoters.

6. Promotion of Tax Benefits

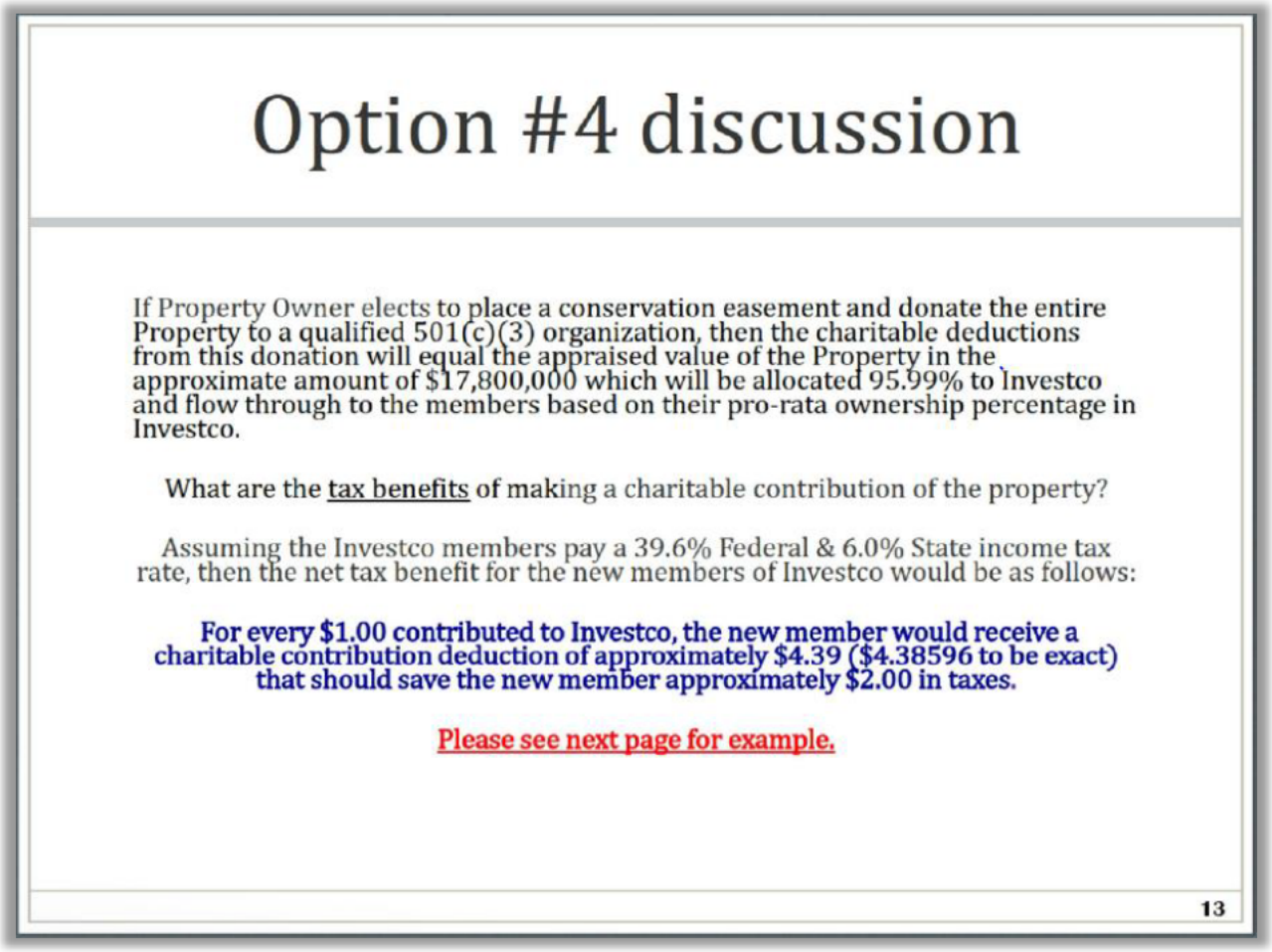
Imagine walking up to a vending machine with a sign on it that read, "The Dollar Machine." Instead of selling sodas or candy for a small amount, this supposed Dollar Machine offered to give you two dollar bills back for every dollar bill you inserted. This would be a simple, 100-percent return on investment, virtually guaranteed. It would not be subject to market forces, such as how well the overall economy is doing, or how well the housing market is doing, or how well the stock market is doing. You would not have to do an economic risk/reward analysis of any kind, such as whether you want to buy a share in a startup company that might skyrocket in value but might also go bankrupt in sixth months. Your dollar investment would not be subject to credit risk, such as the chance of your borrower failing to pay you back on the loan you made to him or her. There would be no defaulting of any kind; the Dollar Machine is definitely giving you two dollars back. You simply insert the dollar bill and then watch the Dollar Machine return two dollar bills to you. No rational investor would skip this kind of chance to double his or her money, but the skeptical ones would probably think it is too good to be true.

This is essentially what promoters of syndicated-conservation easement transactions promised their taxpayer-investors every year: for every dollar you give us, you will get back two dollars, sometimes a little more and sometimes a little less. But it was not the promoters who gave back the two dollars; it was the Federal government by way of foregone tax revenue, and the only risk involved was whether or not the transaction would lead to an audit.

Documents received in this investigation showed how promoters made clear to U.S. taxpayers that participating in a syndicated conservation-easement transaction would lower their tax obligations significantly. According to slide-deck language that promoters Matt Ornstein and Frank Schuler of Ornstein-Schuler would reuse for a variety of transactions, "For every $1.00 contributed to Investco, the new member would receive a charitable deduction of approximately $4.39 ($4.38596 to be exact) that should save the member approximately $2.00 in taxes."[53]

[53] Ex. 9 – The 2015 Information Package for FG River Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000029444).

This is page 13 of a slide deck for a syndicated conservation-easement transaction known as FG River Partners LLC, which involved 122.5 acres of property in Polk County, Florida.



Option #4 discussion

If Property Owner elects to place a conservation easement and donate the entire Property to a qualified 501(c)(3) organization, then the charitable deductions from this donation will equal the appraised value of the Property in the approximate amount of $17,800,000 which will be allocated 95.99% to Investco and flow through to the members based on their pro-rata ownership percentage in Investco.

What are the tax benefits of making a charitable contribution of the property?

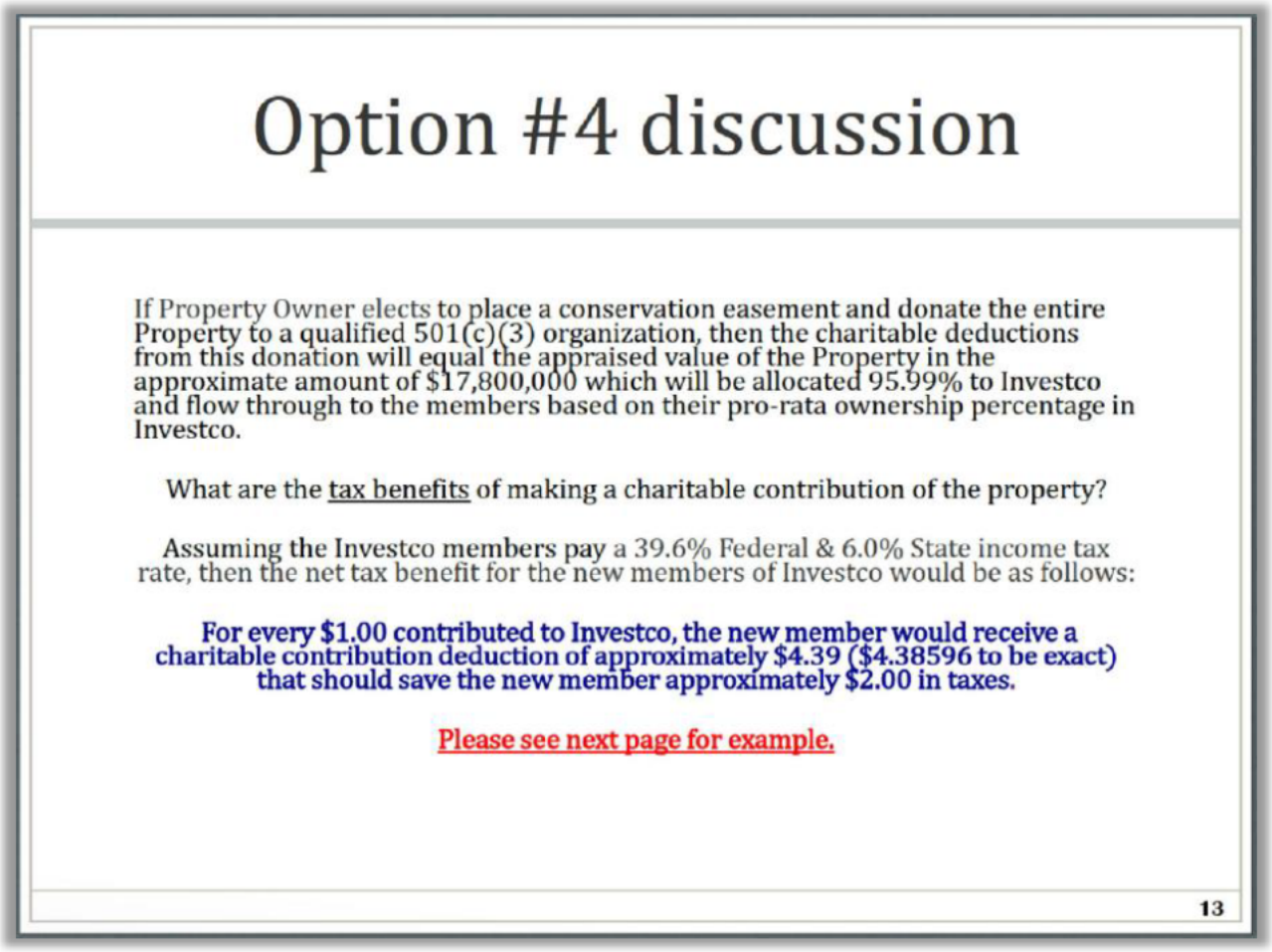
Assuming the Investco members pay a 39.6% Federal & 6.0% State income tax rate, then the net tax benefit for the new members of Investco would be as follows:

For every $1.00 contributed to Investco, the new member would receive a charitable contribution deduction of approximately $4.39 ($4.38596 to be exact) that should save the new member approximately $2.00 in taxes.

Please see next page for example.

13

Around the same time in late 2015, Matt Ornstein used the same slide to discuss the tax benefits associated with another conservation-easement transaction known as Green Cove Group LLC, which involved 128.2 acres of property in Florida, this one adjacent to and directly south of the FG River Partners property.[54]



These slides are identical, but they discuss the tax benefits for purportedly different transactions. In fact, both slide decks for both transactions are virtually identical, except for basic differences such as the entity names and map locations.[55]

Messrs. Ornstein and Schuler, then working under an entity known as "Conservation Saves LLC," recycled this language for slide decks of similar conservation-easement transactions, with the only real difference being the purported values of the lands to be preserved.

[54] Ex. 10 – The 2015 Information Package for Green Cove Group LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000037142).

[55] *Compare* Ex. 9 *and* Ex. 10.

EcoVest provided similar language to its taxpayer investors. In documents it called "Managers Analysis," EcoVest discussed various issues surrounding the purported land-investment alternatives, which included granting a conservation easement, developing the land, or holding the land for future investment. While developing the land would generally take 11 years to complete and would require the investors to contribute several million dollars more in capital, granting a conservation easement on the land would create a very clear benefit for the taxpayer-investors:

> If the Conservation Option is selected, and based on the Appraisal, it is expected that the Members would receive a charitable contribution deduction approximately 4.1 times their gross investment in the Company ($42,655,410/$10,403,505 = 4.10).

[56]

Another promoter of syndicated conservation-easement transactions, Dr. Kyle Carney, a dentist by trade in Rome, Georgia,[57] also marketed to his potential taxpayer-investors the Federal tax deduction that investors would receive. His investors would save two dollars in taxes for every dollar they spent on his transaction. From his investment summary for a transaction called Little Pumpkin Creek North Investments, LLC (discussed below):

[56] Ex. 11 – Azalea Bay Resort Holdings LLC, Manager's Analysis, EcoVest Capital, Inc. (Sept. 4, 2015), at ECOVEST-SF_0001095.

[57] Staff Spotlight: Dr. Kyle Carney *at* https://hortmancarneydental.com/staff-spotlight-dr-kyle-carney (last visited May 11, 2020).

Assuming all offered Units are sold, the tax benefits that an investor should expect if the conservation easement is pursued are:

Aggregate Tax Benefits for Little Pumpkin Creek North, LLC	
Total Federal Charitable Contribution Deduction	$18,711,000
Per Unit Tax Benefits for Little Pumpkin Creek North Investments, LLC[2]	
Federal Charitable Contribution Deduction Per $40,350 Unit	$177,755
Ratio of deduction to cost per unit(rounded to nearest .1)	4.4 to 1
Federal and State Income Tax Savings per Unit (assuming blended federal and state income tax rate of 45.5%)	$80,888
Per Unit Subscription Price	$40,350

58

The math was simple. For every "unit" a taxpayer-investor "subscribed" to, at a cost of $40,350, he or she would save slightly more than twice that, $80,888 in taxes. Dr. Carney would repeat this same language in promoting his other conservation-easement transactions. From his investment summary for a transaction called Little Pumpkin Creek Investments, LLC (separate from "Little Pumpkin Creek *North*, LLC" and also discussed below):

[58] Ex. 12 – Investment Summary for Little Pumpkin Creek North Investments, LLC, at SFC-Carney_00002333.

Aggregate Tax Benefits for Little Pumpkin Creek, LLC	
Total Federal Charitable Contribution Deduction	$20,000,00
Per Unit Tax Benefits for Little Pumpkin Creek Investments, LLC[2]	
Federal Charitable Contribution Deduction Per $45,000 Unit	$196,000
Ratio of deduction to cost per unit(rounded to nearest .1)	4.4 to 1
Federal and State Income Tax Savings per Unit (assuming blended federal and state income tax rate of 45.5%)	$89,180
Per Unit Subscription Price	$45,000

59

And from Dr. Carney's investment summary for a transaction called Ginn Creek Investments, LLC:

Aggregate Tax Benefits for Ginn Creek, LLC	
Total Federal Charitable Contribution Deduction	$12,595,000
Per Unit Tax Benefits for Ginn Creek Investments, LLC[2]	
Federal Charitable Contribution Deduction Per $27,000 Unit	$119,652
Ratio of deduction to cost per unit(rounded to nearest .1)	4.4 to 1
Federal and State Income Tax Savings per Unit (assuming blended federal and state income tax rate of 45.5%)	$54,441
Per Unit Subscription Price	$27,000

60

[59] Ex. 13 – Investment Summary for Little Pumpkin Creek Investments, LLC, at SFC-Carney_00002182.

[60] Ex. 14 – Investment Summary for Ginn Creek Investments, LLC, at SFC-Carney_00001955.

The ratio was always almost exactly 2:1. For every "unit" a taxpayer-investor "subscribed" to, at a cost of $27,000, he or she would save slightly more than twice that, $54,441 in taxes.

Everything about these transactions were designed to create a tax deduction that would save the taxpayer-investors two dollars for every dollar they gave the promoter.

7. Communication of Tax Benefits

The Committee on Finance requested and subpoenaed copies of emails exchanged between transaction promoters and their taxpayer-investors in order to fully understand the nature of the transactions at issue in this investigation. Generally, those emails make clear that taxpayer-investors were exclusively interested in receiving tax deductions by participating in the transactions. The emails did not reflect any investor interest in developing land or holding it for investment.

This report redacts the last names of taxpayer-investors, non-owner employees of promoters, and third parties, such as the taxpayers' advisors, as well as their identifying information. Where revealing even just the first name might identify an individual, the individual's first initial is used, and spouses' first names are redacted to reduce the risk of identifying couples by their first names together.

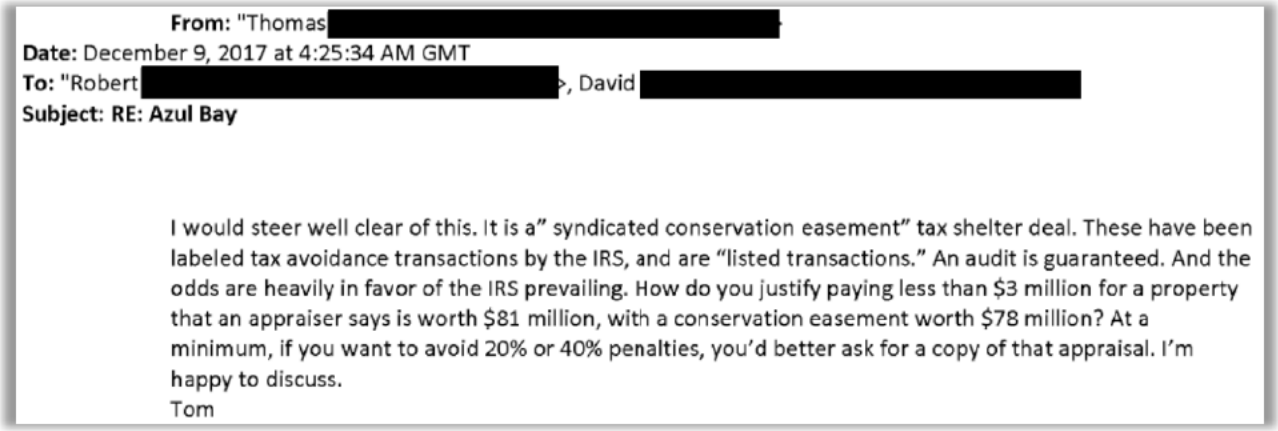
a. EcoVest Capital Emails

As partially discussed above, on December 7, 2017, a taxpayer named David sent an email to his attorney named Rob asking Rob's opinion about a tax shelter promoted by EcoVest Capital called Azul Bay. David wrote, "I'm investing personally in this as a tax shelter. Can someone from your firm review to check its legitimacy prior to me wiring the funds? Lauren from [REDACTED] approved it with some caveats, but I want a legal perspective. I'll send you the emails describing the 'investment.'"[61] Rob forwarded the inquiry to his partner Tom, who then responded to both with the following advice:

> I would steer clear of this. It is a 'syndicated conservation easement' tax shelter deal. These have been labeled tax avoidance transactions by the IRS, and are 'listed transactions.' An audit is guaranteed. And the odds are heavily in favor of the IRS prevailing. How do you justify paying less than $3 million for a property that an appraiser says is worth $81 million, with a conservation easement worth $78 million?[62]

[61] Ex. 1 – Email from David [REDACTED] to Robert [REDACTED] (Dec. 7, 2017, 5:09:23 PM), at ex. p. ECOVEST-SF_0308689.

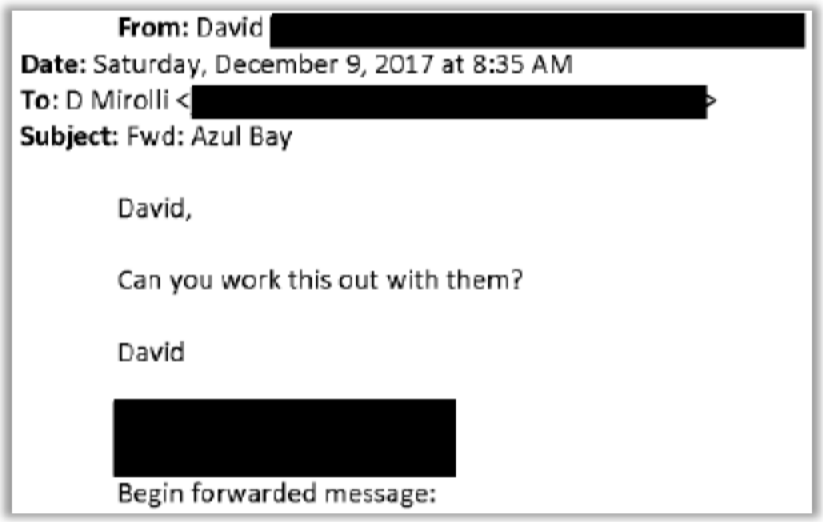
[62] *Id.* at ex. p. ECOVEST-SF_0308688.



From: "Thomas [redacted]
Date: December 9, 2017 at 4:25:34 AM GMT
To: "Robert [redacted], David [redacted]
Subject: RE: Azul Bay

I would steer well clear of this. It is a" syndicated conservation easement" tax shelter deal. These have been labeled tax avoidance transactions by the IRS, and are "listed transactions." An audit is guaranteed. And the odds are heavily in favor of the IRS prevailing. How do you justify paying less than $3 million for a property that an appraiser says is worth $81 million, with a conservation easement worth $78 million? At a minimum, if you want to avoid 20% or 40% penalties, you'd better ask for a copy of that appraisal. I'm happy to discuss.
Tom

The taxpayer, David, then forwarded that advice to his broker dealer, named David Mirolli of Catalyst Wealth Management and Kalos Capital, who initially sold the transaction to the taxpayer,[63] asking the broker dealer, "Can you work this out with them?"[64]



From: David [redacted]
Date: Saturday, December 9, 2017 at 8:35 AM
To: D Mirolli <[redacted]>
Subject: Fwd: Azul Bay

David,

Can you work this out with them?

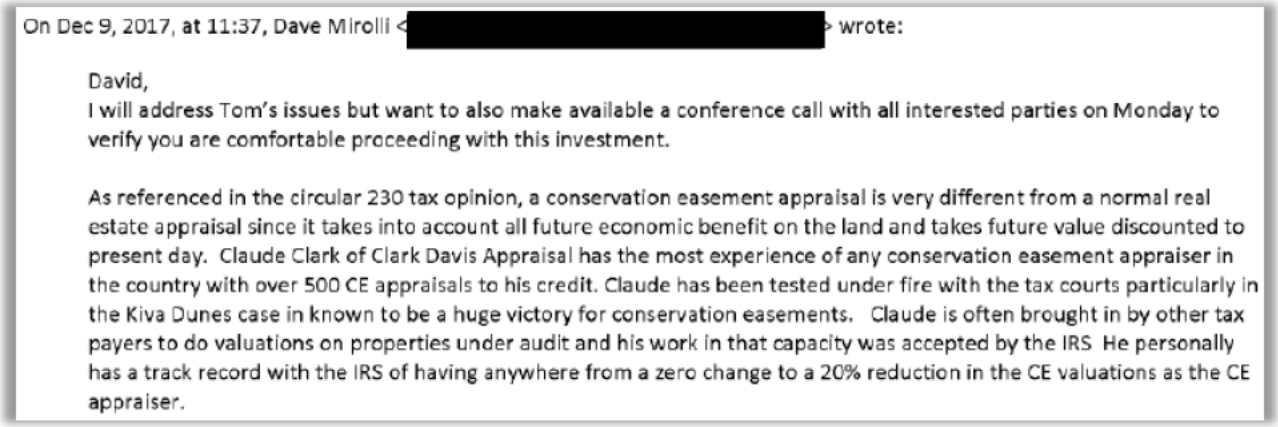
David

[redacted]
Begin forwarded message:

[63] EcoVest Capital used broker dealers to sell the syndicated conservation-easement transactions to taxpayers. *See* Ex. 15 – Letter from Sean M. Akins, Partner, Covington & Burling LLP, to John L. Schoenecker, Senior Investigative Counsel, United States Senate Committee on Finance (June 21, 2019), at 2, 28.

[64] Ex. 1 at ex. p. ECOVEST-SF_0308688.

Mr. Mirolli then responded to David by arguing that syndicated conservation-easement transactions involved appraisals that are different from "normal" real estate appraisals:



On Dec 9, 2017, at 11:37, Dave Mirolli <[redacted]> wrote:

David,
I will address Tom's issues but want to also make available a conference call with all interested parties on Monday to verify you are comfortable proceeding with this investment.

As referenced in the circular 230 tax opinion, a conservation easement appraisal is very different from a normal real estate appraisal since it takes into account all future economic benefit on the land and takes future value discounted to present day. Claude Clark of Clark Davis Appraisal has the most experience of any conservation easement appraiser in the country with over 500 CE appraisals to his credit. Claude has been tested under fire with the tax courts particularly in the Kiva Dunes case in known to be a huge victory for conservation easements. Claude is often brought in by other tax payers to do valuations on properties under audit and his work in that capacity was accepted by the IRS He personally has a track record with the IRS of having anywhere from a zero change to a 20% reduction in the CE valuations as the CE appraiser.

65

This email thread is illuminating for several reasons. First it shows the taxpayer-investor in this syndicated conservation-easement transaction was not looking for an investment that might involve developing or holding land for future investment; he simply wanted to shelter income from the IRS. Similarly, Mr. Mirolli says nothing about the transaction other than issues surrounding the creation of a tax deduction (see the full exhibit for his full email), giving further doubt to the idea that the transaction might involve developing or holding land for investment purposes. Finally, Mr. Mirolli asserts that appraisals for conservation easements are somehow different from the general concept of fair market value at issue in normal real estate appraisals.

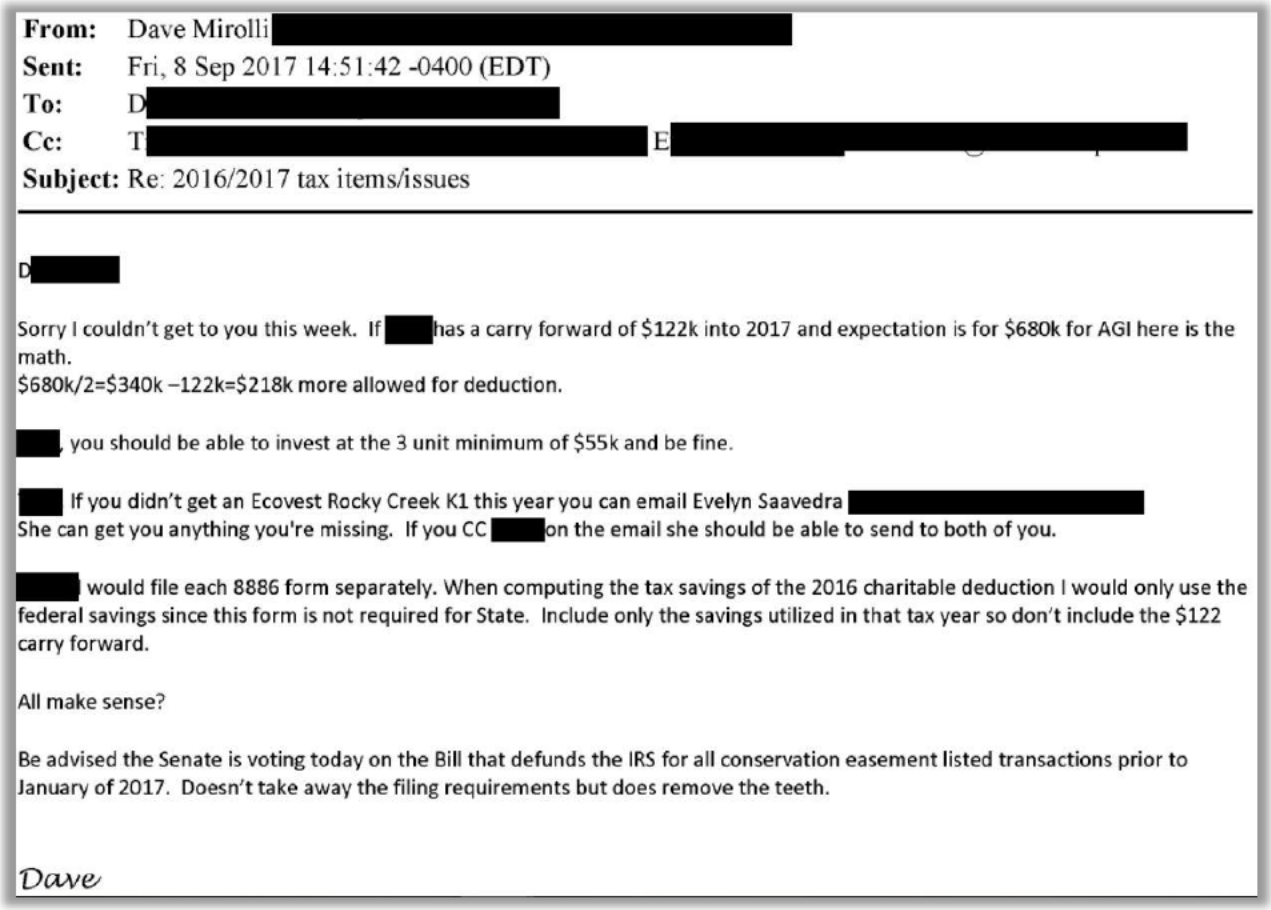
Earlier in 2017, Mr. Mirolli wrote to another EcoVest taxpayer-investor whose first initial was "T" (and his accountant whose first initial was "D") about the optimal amount of conservation easement T. should buy into if he expected to earn $680,000 in 2017. Again, this exchange shows the investor expressed interest in acquiring a tax deduction but nothing about developing land:

> [D.],
>
> Sorry I couldn't get to you this week. If [T.] has a carry forward of $122K into 2017 and expectation is for $680K for AGI here is the math.
>
> $680k/2=$340k-122k=$218k more allowed for deduction.
>
> [T.], you should be able to invest at the 3 unit minimum of $55k and be fine.

The email also closes with a pitch that the U.S. Senate was then voting on whether to defund the IRS' enforcement efforts against syndicated conservation-easement transactions: "Be advised the Senate is voting today on the Bill that defunds the IRS for all conservation easement

[65] Ex. 1 at ex. p. ECOVEST_SF-0308687.

listed transactions prior to January of 2017. Doesn't take away the filing requirements but does remove the teeth."[66]



From: Dave Mirolli [redacted]
Sent: Fri, 8 Sep 2017 14:51:42 -0400 (EDT)
To: D[redacted]
Cc: T[redacted] E[redacted]
Subject: Re: 2016/2017 tax items/issues

D[redacted]

Sorry I couldn't get to you this week. If [redacted] has a carry forward of $122k into 2017 and expectation is for $680k for AGI here is the math.
$680k/2=$340k –122k=$218k more allowed for deduction.

[redacted], you should be able to invest at the 3 unit minimum of $55k and be fine.

[redacted] If you didn't get an Ecovest Rocky Creek K1 this year you can email Evelyn Saavedra [redacted]
She can get you anything you're missing. If you CC [redacted] on the email she should be able to send to both of you.

[redacted] would file each 8886 form separately. When computing the tax savings of the 2016 charitable deduction I would only use the federal savings since this form is not required for State. Include only the savings utilized in that tax year so don't include the $122 carry forward.

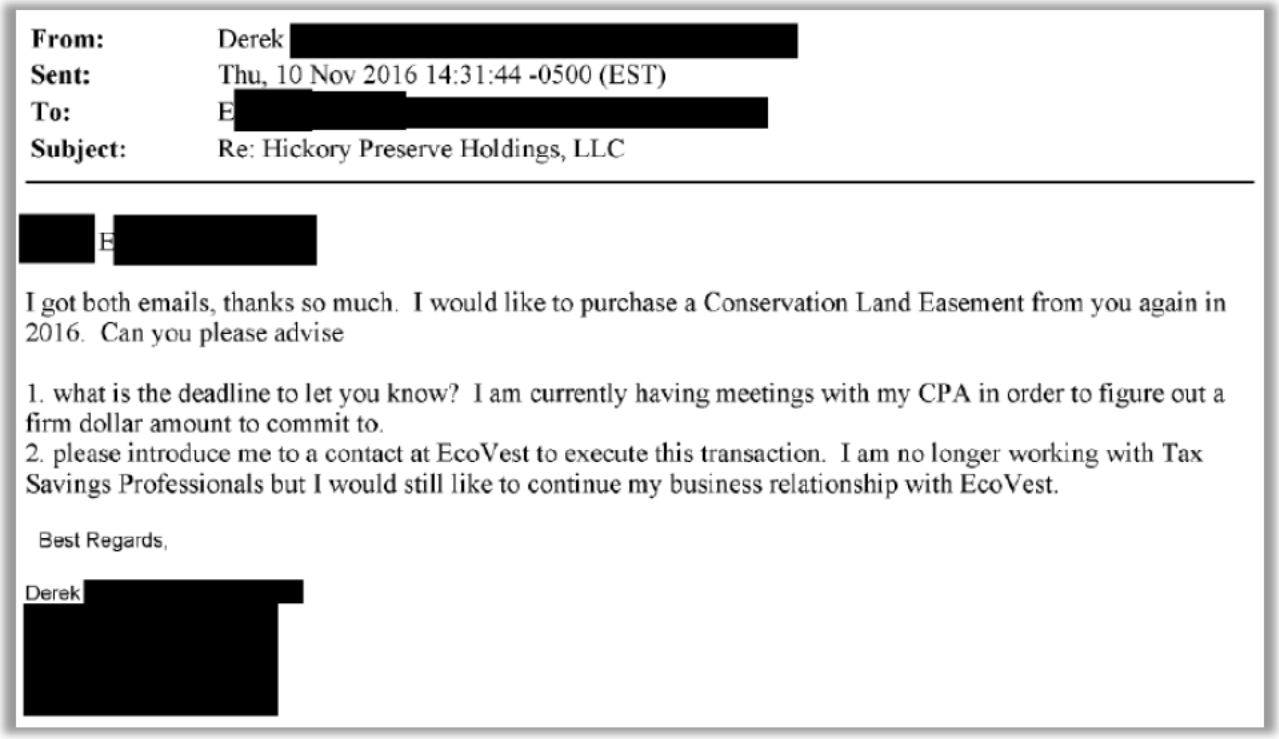
All make sense?

Be advised the Senate is voting today on the Bill that defunds the IRS for all conservation easement listed transactions prior to January of 2017. Doesn't take away the filing requirements but does remove the teeth.

Dave

[66] Ex. 16 – Email from David Mirolli, Managing Partner, Catalyst Wealth Management, to D. [REDACTED] and T. [REDACTED] and E. [REDACTED] (Sept. 8, 2017, 14:51:42), at ex. p. ECOVEST-SF_0213012. The statement in this email, "[T]he Senate is voting on the Bill that defund the IRS for all conservation easement listed transactions prior to January of 2017," was erroneous, as the Senate was not even in session on Friday, September 8, 2017. *See* Congressional Calendars, *at* https://www.govinfo.gov/app/collection/ccal/115/scal/2017-09 (last visited July 30, 2020).

A year earlier, in November 2016, a taxpayer-investor named Derek wrote to E. at EcoVest:



From: Derek [redacted]
Sent: Thu, 10 Nov 2016 14:31:44 -0500 (EST)
To: E[redacted]
Subject: Re: Hickory Preserve Holdings, LLC

[redacted] E[redacted]

I got both emails, thanks so much. I would like to purchase a Conservation Land Easement from you again in 2016. Can you please advise

1. what is the deadline to let you know? I am currently having meetings with my CPA in order to figure out a firm dollar amount to commit to.
2. please introduce me to a contact at EcoVest to execute this transaction. I am no longer working with Tax Savings Professionals but I would still like to continue my business relationship with EcoVest.

Best Regards,

Derek [redacted]

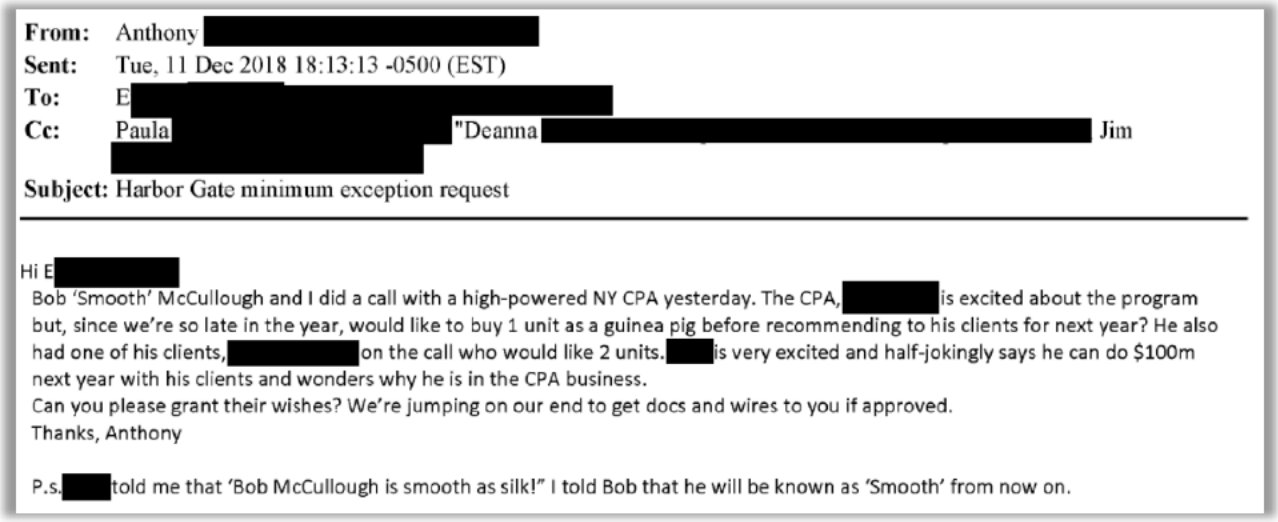
[redacted]

[67]

Again, this email exchange had nothing to do with developing land and was exclusively about buying into a conservation easement to create a tax deduction.

[67] Ex. 17 – Email from Derek [REDACTED] to E. [REDACTED], EcoVest Capital (Nov. 10, 2016, 14:31:44), at ex. p. ECOVEST-SF_0213766.

In late 2018, a financial advisor named Anthony wrote the following to E. at EcoVest:



From: Anthony [redacted]
Sent: Tue, 11 Dec 2018 18:13:13 -0500 (EST)
To: E [redacted]
Cc: Paula [redacted] "Deanna [redacted] Jim [redacted]
Subject: Harbor Gate minimum exception request

Hi E [redacted]
Bob 'Smooth' McCullough and I did a call with a high-powered NY CPA yesterday. The CPA, [redacted] is excited about the program but, since we're so late in the year, would like to buy 1 unit as a guinea pig before recommending to his clients for next year? He also had one of his clients, [redacted] on the call who would like 2 units. [redacted] is very excited and half-jokingly says he can do $100m next year with his clients and wonders why he is in the CPA business.
Can you please grant their wishes? We're jumping on our end to get docs and wires to you if approved.
Thanks, Anthony

P.s. [redacted] told me that 'Bob McCullough is smooth as silk!" I told Bob that he will be known as 'Smooth' from now on.

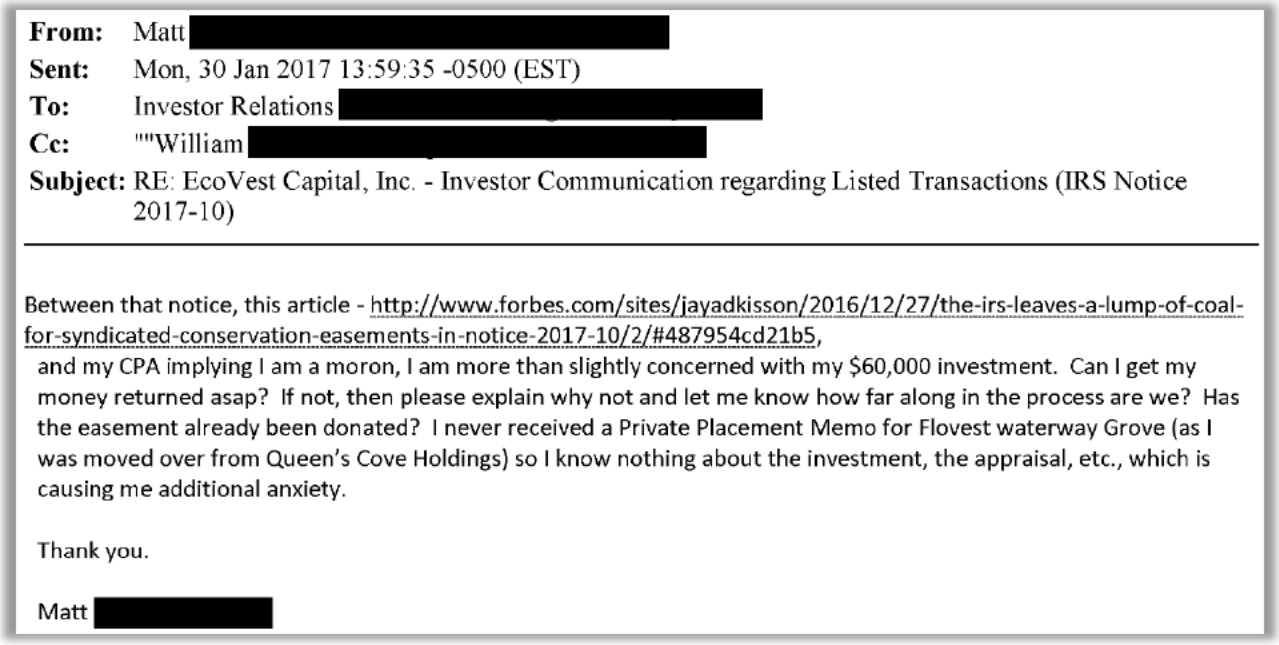
[68]

This email, reflecting an interest in growing the customer base for EcoVest transactions, would make no sense if the transactions actually involved the possibility of developing land for long-term non-tax, economic reasons. Developing residential land, EcoVest's purported non-tax business purpose as discussed below, takes significantly longer than just one year's worth of investment to be profitable.[69] Therefore, incrementally investing one year at a time would make no sense if land development were a real possibility in the transactions. However, a tax shelter created by a conservation easement is profitable from a tax perspective as soon as a tax return is filed or a refund is paid.

[68] Ex. 18 – Email from Anthony [REDACTED] to E. [REDACTED], EcoVest Capital, Inc. (Dec. 11, 2018, 18:13:13), at ex. p. ECOVEST-SF_0214396.

[69] *See* Ex. 11 – Azalea Bay Resort Holdings LLC, Manager's Analysis, EcoVest Capital, Inc. (Sept. 4, 2015), at ex. p. ECOVEST-SF_0001092.

Finally for EcoVest, on Friday, January 27, 2017, EcoVest sent its taxpayer-investors a mass email notifying them of IRS Notice 2017-10 issued a month earlier, which made certain syndicated conservation easements "listed transactions" that the IRS was following closely. On the following Monday, a concerned taxpayer-investor named Matt wrote back to EcoVest the following:



From: Matt [redacted]
Sent: Mon, 30 Jan 2017 13:59:35 -0500 (EST)
To: Investor Relations [redacted]
Cc: ""William [redacted]
Subject: RE: EcoVest Capital, Inc. - Investor Communication regarding Listed Transactions (IRS Notice 2017-10)

Between that notice, this article - http://www.forbes.com/sites/jayadkisson/2016/12/27/the-irs-leaves-a-lump-of-coal-for-syndicated-conservation-easements-in-notice-2017-10/2/#487954cd21b5,
and my CPA implying I am a moron, I am more than slightly concerned with my $60,000 investment. Can I get my money returned asap? If not, then please explain why not and let me know how far along in the process are we? Has the easement already been donated? I never received a Private Placement Memo for Flovest waterway Grove (as I was moved over from Queen's Cove Holdings) so I know nothing about the investment, the appraisal, etc., which is causing me additional anxiety.

Thank you.

Matt [redacted]

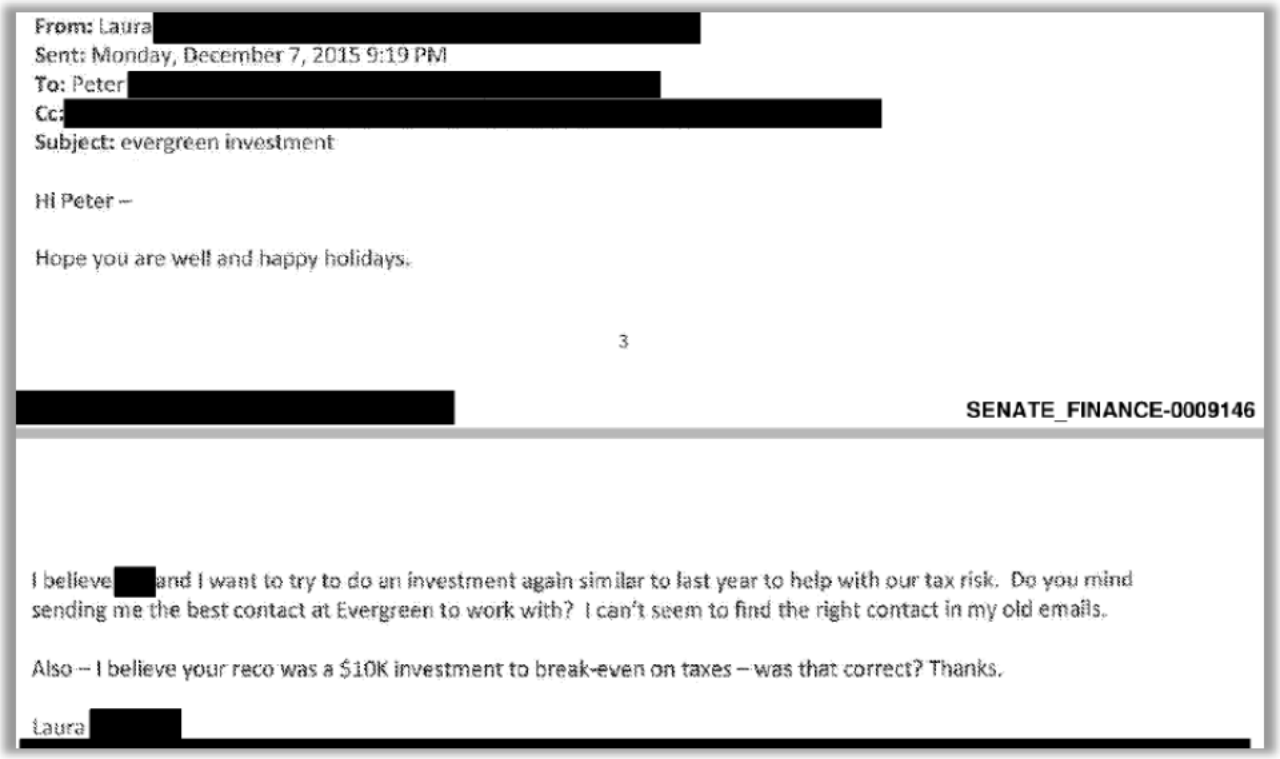
[70]

This email shows that EcoVest treated its various transactions as if they were fungible. Far from being investments in land that might lead to residential development, they were simply interchangeable pieces that all served the same function of generating a tax deduction for the taxpayer-investor. The investor states his investment was moved from "Queen's Cove Holdings" to "Flovest Waterway Grove" although he admitted he had no knowledge about the latter investment.

[70] Ex. 19 – Email from Matt [REDACTED] to Investor Relations, EcoVest Capital, Inc. (Jan. 30, 2017, 13:59:35), at ex. p. ECOVEST-SF_0209502.

b. EvrSource Capital Emails

On December 7, 2015, a taxpayer named Laura wrote to her financial advisor named Peter to say she would like to participate again in 2015 in a syndicated conservation-easement transaction being promoted by EvrSource Capital, formerly the EvrGreen Group. She wrote:



From: Laura [redacted]
Sent: Monday, December 7, 2015 9:19 PM
To: Peter [redacted]
Cc: [redacted]
Subject: evergreen investment

Hi Peter –

Hope you are well and happy holidays.

3

[redacted] SENATE_FINANCE-0009146

I believe [redacted] and I want to try to do an investment again similar to last year to help with our tax risk. Do you mind sending me the best contact at Evergreen to work with? I can't seem to find the right contact in my old emails.

Also – I believe your reco was a $10K investment to break-even on taxes – was that correct? Thanks.

Laura [redacted]

[71]

[71] Ex. 20 – Email from Laura [REDACTED] to Peter [REDACTED] (Dec. 7, 2015, 9:19 PM), at 3-4 (ex. p. SENATE_FINANCE-0009146-7).

Peter wrote back:

From: Peter [redacted]
Sent: Tuesday, December 08, 2015 2:10 PM
To: Laura [redacted]
Cc: [redacted]
Subject: RE: evergreen investment

Hi Laura,

I'll actually need to revisit end of year numbers to give you an update on a recommended amount. But, easy math is that at the highest tax brackets, every dollar of investment equals two dollars of tax savings.

If you want to send me your latest pay stubs and any input on year end bonuses, that would help me.

My contact at Evrgreen is Matt Campbell,
[redacted]

Thanks,
Peter

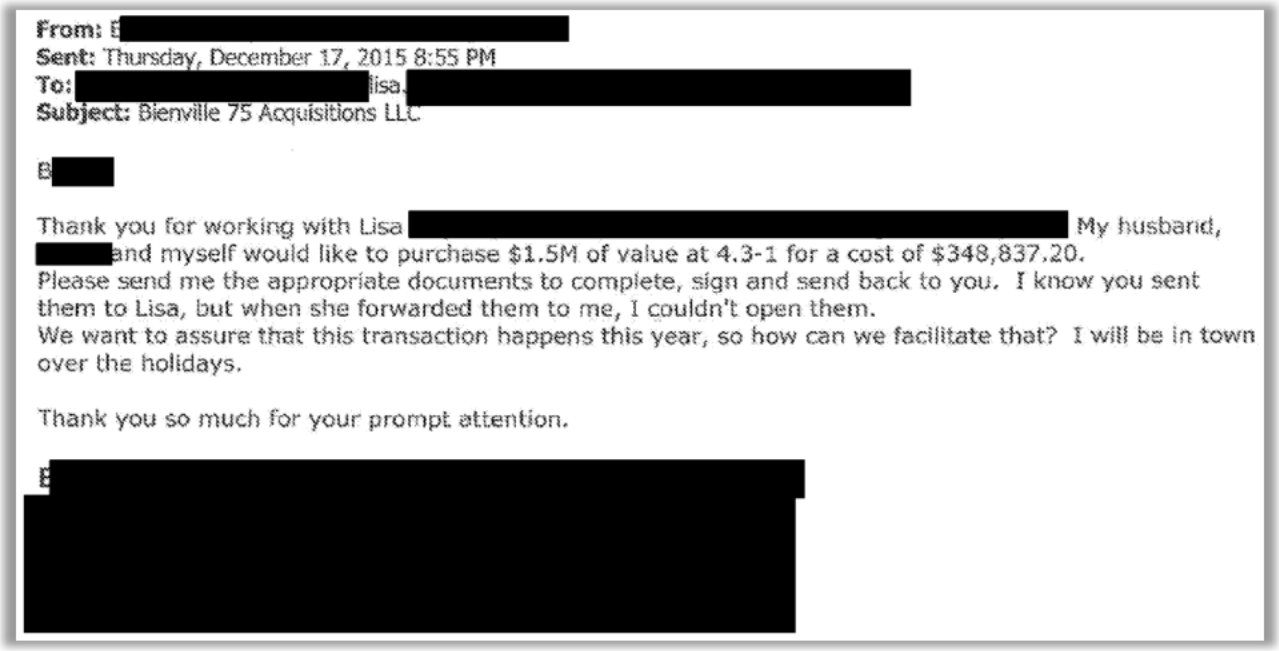
[72]

EvrSource Capital failed to produce the second page of this email thread, which concludes with EvrGreen personnel offering to Laura participation in the Bienville 75 Acquisitions transaction, a transaction discussed below in Section 9.[73] This email solely related to the company's syndicated conservation-easement transactions, which helped taxpayer-investors reduce their tax obligations. It also discusses "end of year numbers," as these transactions are frequently executed at the end of the year, when taxpayer-investors would know how much taxable income they would be able to offset. Again the math was simple: for every dollar paid to the promoter, the taxpayer-investor saved two dollars in taxes.

[72] *Id.* at 3 (ex. p. SENATE_FINANCE-0009146).

[73] *Id.* at 1 (ex. p. SENATE_FINANCE-0009145).

On December 17, 2015, a taxpayer whose first initial is "E" wrote to "B" at EvrGreen the following email:



From: E[redacted]
Sent: Thursday, December 17, 2015 8:55 PM
To: [redacted]lisa[redacted]
Subject: Bienville 75 Acquisitions LLC

B[redacted]

Thank you for working with Lisa [redacted] My husband, [redacted]and myself would like to purchase $1.5M of value at 4.3-1 for a cost of $348,837.20.
Please send me the appropriate documents to complete, sign and send back to you. I know you sent them to Lisa, but when she forwarded them to me, I couldn't open them.
We want to assure that this transaction happens this year, so how can we facilitate that? I will be in town over the holidays.

Thank you so much for your prompt attention.

E[redacted]

[74]

This email again relates only to the company's transactions helping taxpayer-investors reduce their tax bills. It had nothing to do with a multi-option land investment. Specifically, the email shows the transaction's math applied in a real-life circumstance by a real taxpayer. In this case, E. was looking to "invest" a very peculiar non-round amount of $348,837.20 and she knew exactly why that amount mattered. If the EvrGreen transaction was offering taxpayer-investors a 4.3:1 ratio of tax deductions for every invested dollar, that means E. was buying a $1.5 million tax deduction ($348,837.20 * 4.3 = $1,499,999.96) for this non-round amount. At the then-existing Federal tax rate of 39.6 percent, that means E. was looking to reduce her and her husband's Federal tax bill for 2015 by exactly $594,000 ($1.5 million * 39.6 percent = $594,000) in addition to whatever her "investment" saved her on State income taxes, if applicable. If E. and her husband ended up buying into a 2015 EvrGreen transaction in this way, it means she gained $245,162.80, plus whatever she may have saved in State taxes, by not paying $594,000 in Federal income taxes ($594,000 - $348,837.20 investment = $245,162.80).

[74] Ex. 21 – Email from E. [REDACTED] to B. [REDACTED], EvrGreen Group (Dec. 17, 2015, 8:55 PM), at 3 (ex. p. SENATE_FINANCE-0009169).

About a month earlier, a taxpayer-investor named John exchanged emails with EvrSource's Chip Pearson asking how much John should pay into a syndicated conservation-easement transaction in order to reduce his tax bill as much as possible, keeping in mind that under then-existing law a taxpayer could only deduct 30 percent of his or her adjusted gross income (referred to as "AGI" in the emails). At the time, there was the possibility of Congress increasing that limit to 50 percent, which eventually did happen at the end of 2015.[75] This is how that discussion unfolded.

John to Chip Pearson:

I hope all is well. I should know my AGI in about 2-3 weeks. What is the multiplier you guys are using for this one?[76]

Chip Pearson to John:

Thanks John – let me know asap so I reserve you a spot – 4.4 multiple. Thanks. cp[77]

John to Chip Pearson:

So I should divide my projected AGI by 4.4 to get investment amount? Thanks[78]

Chip Person to John:

The eligible amount currently is 30% og [sic] AGI. It may go to 50% before year end (like last year) but for now only 30. So example would be $300' AGI, 30 percent would be $100, divided by 4.4 equals $22,730.00.[79]

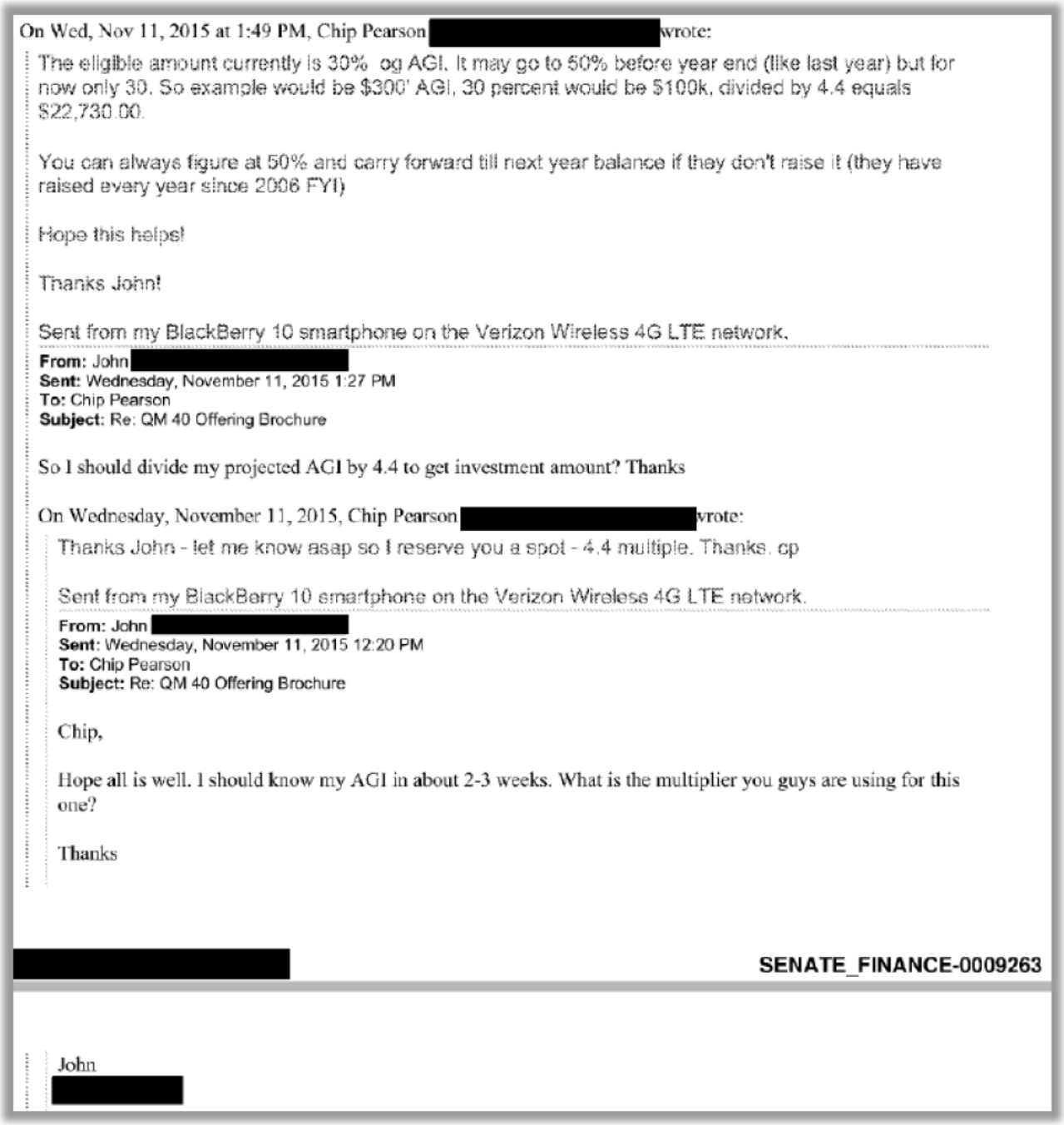
[75] At the time, the temporary increased limit of 50 percent of adjusted gross income for qualified contributions (100 percent in the case of contributions of farm property) had lapsed, although Congress retroactively made the enhanced deduction permanent at the end of 2015.

[76] Ex. 22 – Email from John [REDACTED] to Chip Pearson, EvrSource Capital (Nov. 11, 2015, 12:20 PM), at ex. p. SENATE_FINANCE-0009263.

[77] *Id.*, Email from Chip Pearson, EvrSource Capital to John [REDACTED] (Nov. 11, 2015), at ex. p. SENATE_FINANCE-0009263.

[78] *Id.*, Email from John [REDACTED] to Chip Pearson, EvrSource Capital (Nov. 11, 2015, 1:27 PM), at ex. p. SENATE_FINANCE-0009263.

[79] *Id.*, Email from Chip Pearson, EvrSource Capital to John [REDACTED] (Nov. 11, 2015, 1:49 PM), at ex. p. SENATE_FINANCE-0009263.



On Wed, Nov 11, 2015 at 1:49 PM, Chip Pearson [redacted] wrote:

The eligible amount currently is 30% og AGI. It may go to 50% before year end (like last year) but for now only 30. So example would be $300' AGI, 30 percent would be $100k, divided by 4.4 equals $22,730.00.

You can always figure at 50% and carry forward till next year balance if they don't raise it (they have raised every year since 2006 FYI)

Hope this helps!

Thanks John!

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: John [redacted]
Sent: Wednesday, November 11, 2015 1:27 PM
To: Chip Pearson
Subject: Re: QM 40 Offering Brochure

So I should divide my projected AGI by 4.4 to get investment amount? Thanks

On Wednesday, November 11, 2015, Chip Pearson [redacted] vrote:

Thanks John - let me know asap so I reserve you a spot - 4.4 multiple. Thanks. cp

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: John [redacted]
Sent: Wednesday, November 11, 2015 12:20 PM
To: Chip Pearson
Subject: Re: QM 40 Offering Brochure

Chip,

Hope all is well. I should know my AGI in about 2-3 weeks. What is the multiplier you guys are using for this one?

Thanks

[redacted] SENATE_FINANCE-0009263

John
[redacted]

This email shows how taxpayer-investors determined exactly how much to "invest" in syndicated conservation-easement transactions. Knowing that they would save about two dollars in taxes for every dollar they gave to the transactions' promoters, they tried to save as much on their taxes as possible. But that was necessarily limited by how much the law allowed taxpayers to deduct for conservation easements, which was 30 percent of a taxpayer's adjusted gross income at that point (eventually becoming 50 percent before the end of 2015). In this email, Chip Pearson is helping John do the math, however incorrectly. John starts out with a simple question, which is, should he deduct his adjusted gross income by 4.4 to get the "investment"

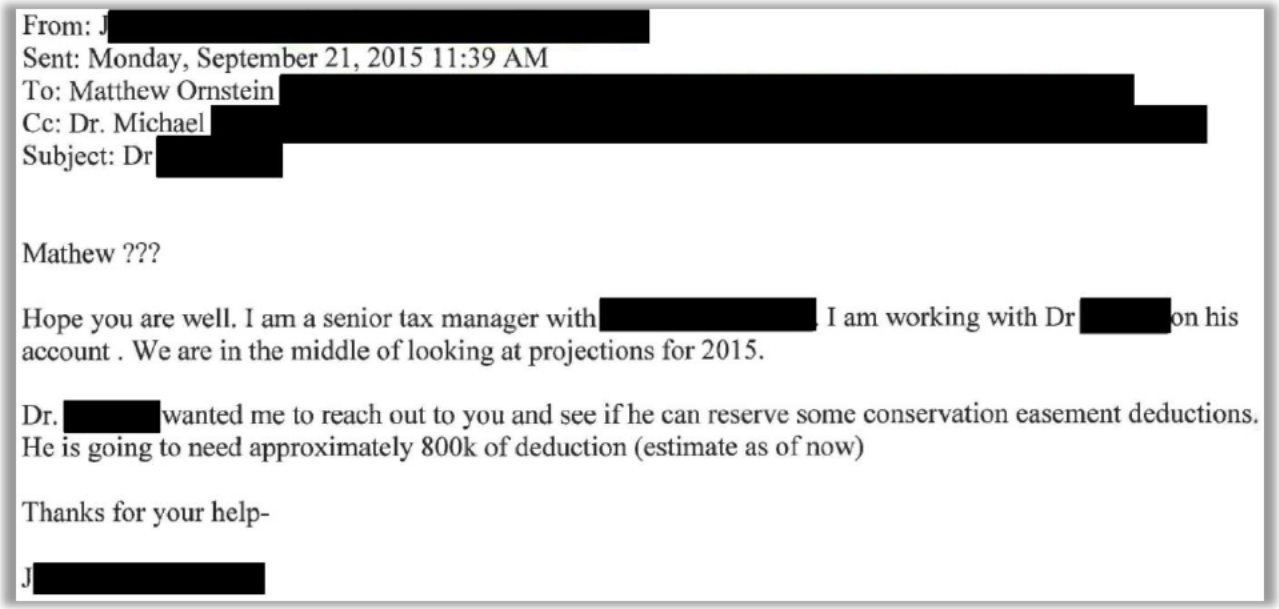
amount needed to deduct all of that income ("should divide my projected AGI by 4.4 to get investment amount"), which would theoretically eliminate his taxes owed if there were no limit on charitable deductions. Chip Pearson then tells him he can only deduct 30 percent of his income, and perhaps 50 percent. The math is this with a hypothetical $300,000 adjusted gross income: $300,000 * 30 percent / 4.4 = $20,454.55 (while on his BlackBerry, Chip Pearson incorrectly writes to John that 30 percent of $300,000 is $100,000, thus leading to his incorrect hypothetical investment amount of $22,730).

This email fails to show discussion of any non-tax business purposes. If an investor were really considering investing in a partnership that sought a profit by developing homes and selling them to the general public, the investor's decision on how much to invest would be tempered by a simple risk-adjusted return analysis. How much does the investor think the investment might pay off, and how does that compare to what the investor is afraid of losing if the development fails? In syndicated conservation-easement transactions, there is no need for that analysis because there is no economic or market risk, just risk of a tax audit. Assuming the taxpayer does not fear the IRS disallowing the transaction, the only limits then for "investing" in syndicated conservation-easement transactions are the limits on how much adjusted gross income taxpayers could deduct in any given year.

c. Ornstein-Schuler Emails

Emails produced by Ornstein-Schuler in response to committee subpoenas also show their syndicated conservation-easement transactions were quick ways for upper-income taxpayers to shelter income from tax. Those emails, however, involved language from the promoters to the taxpayer-investors that tried to drive home to the taxpayer-investors that simply buying a deduction, which is what they were doing, would have been a sham. Whenever taxpayer-investors contacted Ornstein-Schuler to request participation in a syndicated conservation-easement transaction, always for tax-deduction purposes, Matt Ornstein reminded them with stock language that deductions could not actually be purchased, even though that was exactly what Ornstein-Schuler was selling to them.

For example, on September 21, 2015, a tax advisor with the first initial "J" wrote to Matt Ornstein of Ornstein-Schuler on behalf of a client of his, a doctor named Michael. J. wrote:



From: J[redacted]
Sent: Monday, September 21, 2015 11:39 AM
To: Matthew Ornstein[redacted]
Cc: Dr. Michael[redacted]
Subject: Dr[redacted]

Mathew ???

Hope you are well. I am a senior tax manager with[redacted]. I am working with Dr[redacted]on his account . We are in the middle of looking at projections for 2015.

Dr.[redacted]wanted me to reach out to you and see if he can reserve some conservation easement deductions. He is going to need approximately 800k of deduction (estimate as of now)

Thanks for your help-

J[redacted]

[80]

Matt Ornstein wrote back with what would become stock language for him,

> "I want to make sure that you and your clients clearly understand that they are not investing in, buying, or contributing to a conservation easement. Nor are they buying deductions. None of these things are allowed and it is very important that everyone understands that they are investing in a real estate investment partnership that owns a real estate asset that has the potential to be placed into conservation via the conservation easement program. Members are required to consider several different options for the property that is owned by the partnership (including an option for placing the property into conservation) and a majority vote for any action taken by the Manager of the LLC is required from the members. No particular outcome is guaranteed. Please write back and let me know that you understand this and that you communicate this to your clients so everyone understands this important distinction."[81]

[80] Ex. 23 – Email from J. [REDACTED] to Matthew Ornstein, copying Dr. Michael [REDACTED] (Sept. 21, 2015, 11:39 AM), at 2 (ex. p. HK_SFCSubpoena_000202586).

[81] *Id.*, Email from Matthew Ornstein to J. [REDACTED] (Sept. 21, 2015, 8:25 PM), at 1 (ex. p. HK_SFCSubpoena_000202585).

On Sep 21, 2015, at 8:25 PM, Matt Ornstein [redacted] wrote:

J[redacted]
Good morning and thank you for the email.
I just got off the phone with Dr. [redacted] (he is a personal friend of mine).

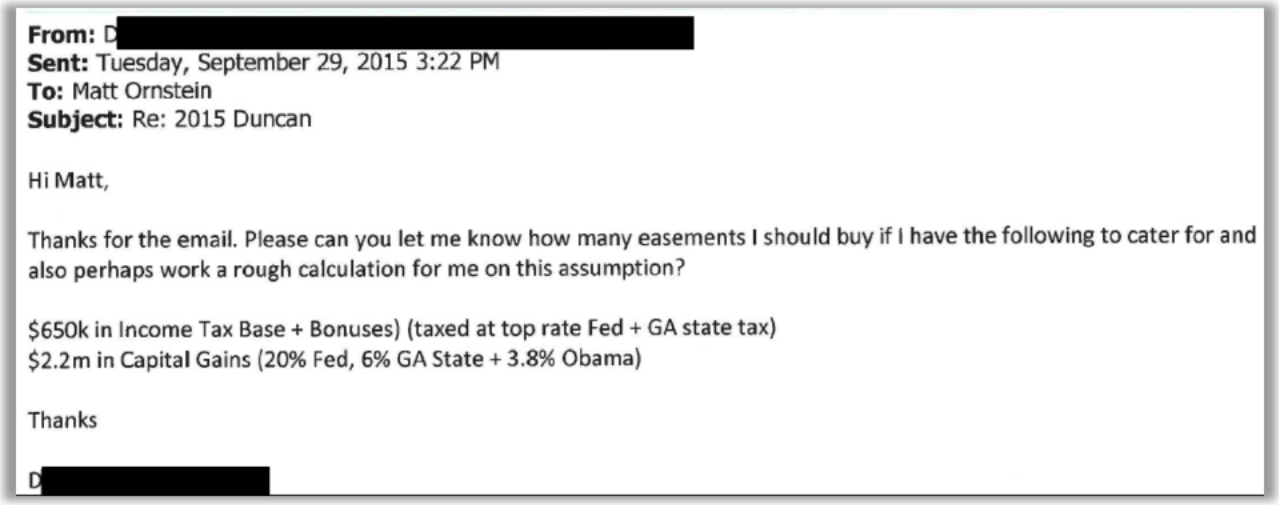
I want to make sure that you and your clients clearly understand that they are not investing in, buying, or contributing to a conservation easement. Nor are they buying deductions. None of these things are allowed and it is very important that everyone understands that they are investing in a real estate investment partnership that owns a real estate asset that has the potential to be placed into conservation via the conservation easement program. Members are required to consider several different options for the property that is owned by the partnership (including an option for placing the property into conservation) and a majority vote for any action taken by the Manager of the LLC is required from the members. No particular outcome is guaranteed.
Please write back and let me know that you understand this and that you will communicate this to your clients so everyone understands this important distinction.

Thanks again for your email.
I???ll be back in touch soon.
Have a great day.

This email thread shows two important points. First, it shows again that the taxpayers engaged the transaction simply to create a certain amount of tax deductions. Second, the response from Matt Ornstein shows that, in order for the transactions to possibly survive under the sham-entity doctrine for tax purposes, they had to maintain the veneer that they were more than vehicles for buying deductions.

Technically, Mr. Ornstein's statements above are correct. To meet legal requirements, the transactions at least had to appear to be bona fide "invest[ments] in a real estate investment partnership that owns real estate" and that might involve a *variety* of options for the land. After all, the investors could not be "investing in, buying, or contributing to a conservation easement" and they could not be "buying deductions" because "[n]one of these things are allowed." That would make the partnership vehicles sham entities, and the transactions would not work as tax shelters. These apparent warnings, however, appear to have had little to no effect on taxpayer-investor behavior. Despite such warnings, the transactions' taxpayer-investors *always* voted overwhelmingly to grant conservation easements on the land. Mr. Ornstein's language to the contrary appears to have been an effort to maintain the illusion otherwise, and he copied it multiple times into other emails to taxpayer-investors.

A week after Matt Ornstein's email exchange with J., a taxpayer-investor with the first initial D. wrote to Mr. Ornstein:



From: D[redacted]
Sent: Tuesday, September 29, 2015 3:22 PM
To: Matt Ornstein
Subject: Re: 2015 Duncan

Hi Matt,

Thanks for the email. Please can you let me know how many easements I should buy if I have the following to cater for and also perhaps work a rough calculation for me on this assumption?

$650k in Income Tax Base + Bonuses) (taxed at top rate Fed + GA state tax)
$2.2m in Capital Gains (20% Fed, 6% GA State + 3.8% Obama)

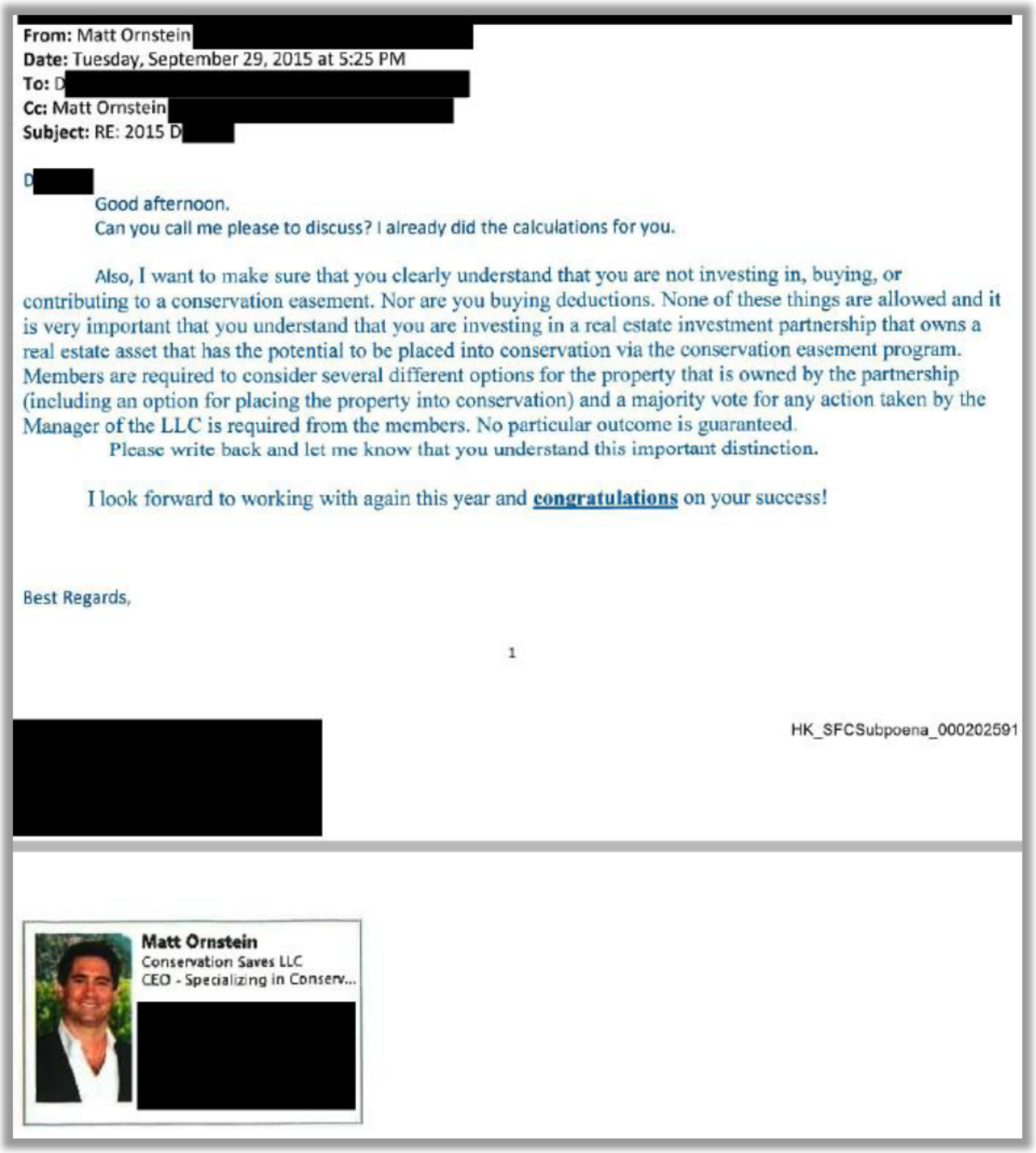
Thanks

D[redacted]

[82]

Matt Ornstein wrote back to D. two hours later to affirm that he could provide D. with this calculation on D.'s optimal tax-shelter amount as well as to provide D. with his stock language listed above:

[82] Ex. 24 – Email from D. [REDACTED] to Matt Ornstein (Sept. 29, 2015, 3:22 PM), at 2 (ex. p. HK_SFCSubpoena_000202592).



From: Matt Ornstein [redacted]
Date: Tuesday, September 29, 2015 at 5:25 PM
To: D [redacted]
Cc: Matt Ornstein [redacted]
Subject: RE: 2015 D [redacted]

D [redacted]

Good afternoon.
Can you call me please to discuss? I already did the calculations for you.

Also, I want to make sure that you clearly understand that you are not investing in, buying, or contributing to a conservation easement. Nor are you buying deductions. None of these things are allowed and it is very important that you understand that you are investing in a real estate investment partnership that owns a real estate asset that has the potential to be placed into conservation via the conservation easement program. Members are required to consider several different options for the property that is owned by the partnership (including an option for placing the property into conservation) and a majority vote for any action taken by the Manager of the LLC is required from the members. No particular outcome is guaranteed.
Please write back and let me know that you understand this important distinction.

I look forward to working with again this year and **congratulations** on your success!

Best Regards,

1

[redacted]

HK_SFCSubpoena_000202591

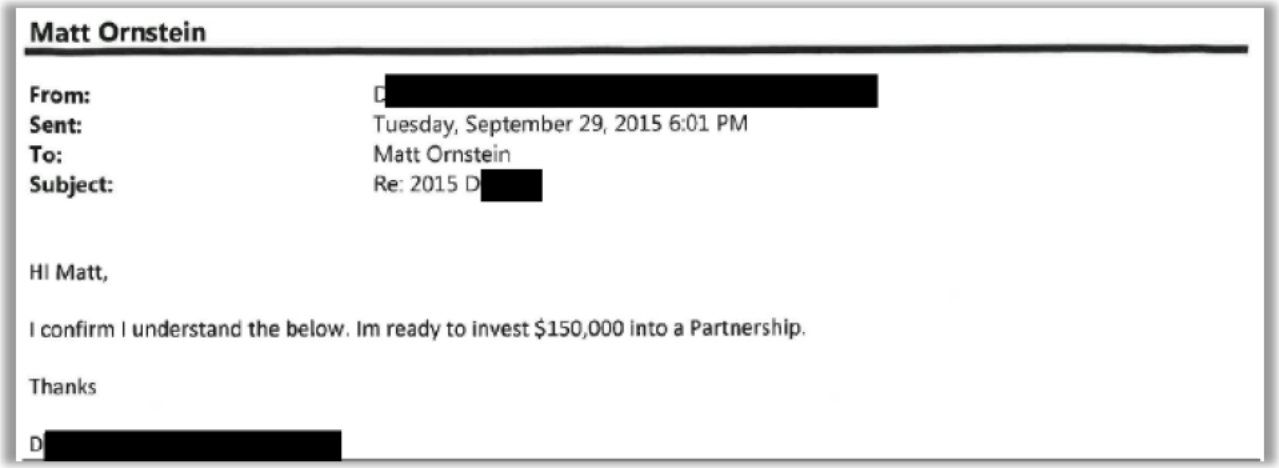
Matt Ornstein
Conservation Saves LLC
CEO - Specializing in Conserv...
[redacted]

[83]

Here Matt Ornstein is explaining to a repeat taxpayer-investor of his that the transaction he is promoting might not involve a conservation easement, while also clearly

[83] *Id.*, Email from Matt Ornstein to [D.] [REDACTED] (Sept. 29, 2015, 5:25 PM), at 1 (ex. p. HK_SFCSubpoena_000202591).

responding to his client's tax-driven inquiry with the calculations required to save on taxes owed. After all, Mr. Ornstein's company at the time was "Conservation Saves LLC." Less than an hour after Matt Ornstein sent to D. this stock language, D. wrote back to Matt Ornstein:



Matt Ornstein

From: D[redacted]
Sent: Tuesday, September 29, 2015 6:01 PM
To: Matt Ornstein
Subject: Re: 2015 D[redacted]

HI Matt,

I confirm I understand the below. Im ready to invest $150,000 into a Partnership.

Thanks

D[redacted]

[84]

This adoption of stock language by Matt Ornstein – oddly, having to explain to his *returning* investors what the purported nature of the transaction really was – appears to have happened at some point around June 2015. In May 2015, one of his taxpayer-investors, Shelly, wrote to him, "Hi Matt, [REDACTED] and I would definitely like to contribute this year so please let us know when an opportunity comes available."[85]

Mr. Ornstein wrote back that same day:

[84] *Id.*, Email from [D.] [REDACTED] to Matt Ornstein (Sept. 29, 2015, 6:01 PM), at 1 (ex. p. HK_SFCSubpoena_000202591).

[85] Ex. 25 – Email from Shelly [REDACTED] to Matt Ornstein (May 14, 2015, 3:31 PM), at 2 (ex. p. HK_SFCSubpoena_000202607).

On Thu, May 14, 2015 at 6:42 PM, Matt Ornstein [redacted] wrote:

Will do. Thanks Shelly. Hope you guys are having a great 2015!

Best Regards,

Matt Ornstein
Conservation Saves LLC
CEO - Conservation Easements
[redacted]

The material provided in this email communication regarding the potential purchase of state income tax credits or membership interests in a particular LLC is not an advertisement and is intended only to facilitate written communication between Conservation Saves LLC ("CS") and the prospective buyer or member. CS makes no representations or warranties with respect to the exact nature of the tax credits or membership interests or the expected return of any particular investments. No investment or return on any investment is guaranteed. Certain principals of CS own a real estate brokerage firm in the State of Georgia; however, within this email they are only facilitating written communication and performing ministerial and clerical work involved in effectuating the sale/purchase of tax credits or membership interests, and are not acting as a real estate broker nor are they acting as a broker or dealer in securities.

From: Shelly [redacted]
Sent: Thursday, May 14, 2015 3:31 PM
To: Matt Ornstein
Subject: 2015 Easement

Hi Matt,

[redacted] and I would definitely like to contribute this year so please let us know when an opportunity comes available.

[redacted]

Thanks so much,

Shelly [redacted]

[86]

Matt Ornstein made no mention here to Shelly that his investors cannot "contribute" to a conservation easement. Moreover, his signature block at the time made very clear what his transactions were all about: "Conservation Easements."

[86] *Id.*, Email from Matt Ornstein to Shelly [REDACTED] (May 14, 2015, 6:42 PM), at 2 (ex. p. HK_SFCSubpoena_000202607).

However, by July 7, 2015, less than two months later, when Shelly wrote back to Matt Ornstein, "Just checking in with you on timing for a 2015 Easement. Is there anything currently available for us to contribute this year?"[87]

Matt Ornstein wrote back with a slightly new signature block that no longer made it entirely clear that he was in the business of selling conservation-easement transactions:

[87] *Id.*, Email from Shelly [REDACTED] to Matt Ornstein (July 7, 2015, 7:53 AM), at 1 (ex. p. HK_SFCSubpoena_000202606).

Matt Ornstein

From: Matt Ornstein [redacted]
Sent: Tuesday, July 07, 2015 4:20 PM
To: 'Shelly [redacted]
Cc: [redacted]
Subject: RE: 2015 Investment Opportunities
Attachments: Matt Ornstein.vcf

Hi Shelly,

Thanks for touching base. I want to make sure that you understand that you are investing in a real estate partnership that owns property that can be placed into conservation upon approval from the members (just like last year). You can't "invest in an easement" or "contribute to an easement". I am just be technical here, but it is important that you do understand this difference because it is an important distinction.

We will have a few investment opportunities for 2015 and I will be in touch when we start releasing our deals later this summer ... probably sometime in August. We appreciate your business and I look forward to working with you again this year.

Thank you again for checking in. I hope you are having a great 2015 for far.

Best Regards,

Matt Ornstein
Conservation Saves LLC
CEO - Specializing in Conserv..
[redacted]

The material provided in this email communication regarding the potential purchase of state income tax credits or membership interests in a particular LLC is not an advertisement and is intended only to facilitate written communication between Conservation Saves LLC ("CS") and the prospective buyer or member. CS makes no representations or warranties with respect to the exact nature of the tax credits or membership interests or the expected return of any particular investments. No investment or return on any investment is guaranteed. Certain principals of CS own a real estate brokerage firm in the State of Georgia; however, within this email they are only facilitating written communication and performing ministerial and clerical work involved in effectuating the sale/purchase of tax credits or membership interests, and are not acting as a real estate broker nor are they acting as a broker or dealer in securities.

From: Shelly [redacted]
Sent: Tuesday, July 07, 2015 7:53 AM
To: Matt Ornstein
Subject: Re: 2015 Easement

Hi Matt,
Hope you had a great 4th of July weekend! Just checking in with you on timing for a 2015 Easement. Is there anything currently available for us to contribute this year?

1

[redacted]

HK_SFCSubpoena_000202606

Thanks,
Shelly [redacted]

[88]

[88] *Id.*, Email from Matt Ornstein to Shelly [REDACTED] (July 7, 2015, 4:20 PM), at 1 (ex. p. HK_SFCSubpoena_000202606).

Thereafter, Mr. Ornstein and his other colleagues offered this stock language in emails to their taxpayer-investors who made clear by their own email communications that they only wanted to buy tax deductions.

d. Other Promoters' Emails

This investigation involved reviewing hundreds of additional emails, which generally repeated the subjects discussed above. The transaction promoters were selling tax deductions, and their taxpayer-investors were buying them. The investigation did not uncover a single email from a single promoter, responding either voluntarily or to a subpoena, that reflects a taxpayer's primary interest being the development of land, and this investigation did not uncover a single email that a reflected a taxpayer's primary interest being the conservation of land.

8. Inflated Appraisals

At first glance, most tax shelters appear to involve an overwhelming level of financial detail with seemingly endless transaction documents and tremendous complexity. With syndicated conservation easements, there are draft appraisals, final appraisals, product placement memoranda, operating agreements, management agreements, baseline reports, and numerous other documents that create an air of serious financial dealing. But all tax shelters share a similar feature, which is that the seemingly complicated details are really ancillary to the true nature of the deal, and each tax shelter at its core is a simple transaction with no more than a couple simple elements that defy economic reality and make the deal profitable. The beneficiaries of those elements are always the promoters and their taxpayer-investors who symbiotically gain at the expense of the public fisc. With syndicated conservation easement transactions, that element is always the same: an inflated appraisal saying any given piece of land has substantial development or extraction potential, thus giving taxpayer-investors large charitable deductions after they grant conservation easements on the land and prevent it from actually being developed or extracted. In this investigation, the same appraisers often appeared again and again on appraisals used in the transactions. Based on analyses of transaction reports filed under IRS Notice 2017-10, the IRS identified approximately 25 appraisers who provided appraisals for all reported conservation easement transactions reported in 2016.[89] One name that arose frequently in this investigation was the star of the *Kiva Dunes* case, Claud Clark, III.

Since his work as the expert-witness appraiser for the taxpayer in *Kiva Dunes*, Claud Clark has continued to attract attention from government officials but not always in a positive way. In late 2018, the U.S. Department of Justice filed a lawsuit against Mr. Clark and others seeking to prevent him from issuing future appraisals involving syndicated conservation easements. DOJ's lawsuit alleged Mr. Clark "[c]ontinually and repeatedly … relied upon inappropriate assumptions, utilized inappropriate methodology and used various techniques to improperly inflate the value of … conservation easements."[90]

A couple weeks later, on January 11, 2019, Ms. Lisa Brooks, the Executive Director of the Alabama Real Estate Appraisers Board, executed a summons commanding Mr. Clark to appear at a hearing before that Board and answer to a four-count complaint against him.[91] The complaint alleged one of Mr. Clark's appraisals – a conservation easement on 579.79 acres of non-consecutive sections of land in Saraland, Alabama owned by an entity known as Black Bear Enterprises – violated Alabama law by willfully disregarding real-estate appraisal standards.[92]

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[89] Ex. 2 – Letter from David J. Kautter, Acting Commissioner, Internal Revenue Service, to Orrin G. Hatch, Chairman, U.S. Senate Committee on Finance, United States Senate (July 12, 2018).

[90] *United States v. Nancy Zak et. al*, 1:18-cv-05774-AT (N.D. Georgia), Doc. 1 at 55.

[91] Ex. 26 – In re Claud Clark, III, State of Alabama Real Estate Appraiser Board, AB 16-15, Summons and Notice of Hearing and Complaint (Jan. 11, 2019).

[92] *See generally id.*

Rather than challenge the Alabama Real Estate Appraisers Board complaint against him, Mr. Clark announced to the Board that he would surrender his appraisal license in Alabama. He did not admit to any of the violations the Board alleged against him and his work on this one appraisal.[93] With the help of an outside advisor that performed a review of Mr. Clark's Black Bear Enterprises appraisal, the Board alleged well over one hundred such violations. Some of the most prominent alleged violations included the following:

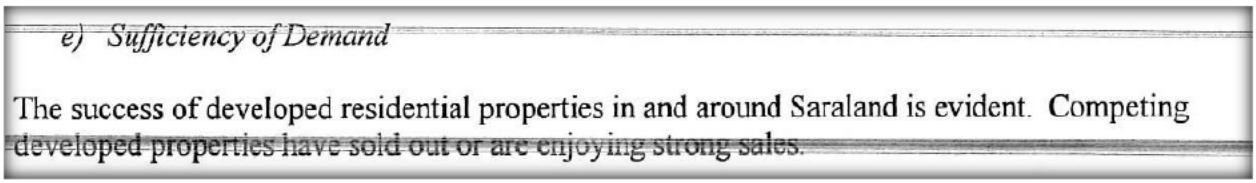
- Primarily relying on a Discounted Cash Flow Analysis (DCF) method – essentially, asking how much money can the property make for the developer once it is developed – for valuing the property before a conservation easement is granted, rather than primarily relying on comparable sales for determining this value using DCF merely as support for that valuation (Notice of Hearing and Complaint at 2-3, 13),
- Overstating value by not deducting costs associated with the time necessary to approve, construct, market, and sell developed homes (Notice of Hearing and Complaint at 3, 14),
- Failing to include evidence of market demand for developed homes (Notice of Hearing and Complaint at 3, 14),
- Failing to include data on economic, jobs, population, and household growth (Notice of Hearing and Complaint at 3, 13),
- Falsely stating that no comparable sales could be found to help value the property before granting easement but then incorporating comparable sales for valuing property after granting easement, including sales from other states (Notice of Hearing and Complaint at 3-4, 14),
- Assuming economic feasibility of building extensive access roads to support non-contiguous development while possibly crossing wetlands and floodlands (Notice of Hearing and Complaint at 3, 13),
- Failing to consider availability of and costs associated with extending sewers and public utilities to the property (Notice of Hearing and Complaint at 5, 14),
- Failing to consider wet-soil issues (Notice of Hearing and Complaint at 4),
- Failing to support claims that developments have necessary approvals (Notice of Hearing and Complaint at 4), and
- Falsely claiming property is accessible from multiple public roads (Notice of Hearing and Complaint at 4).[94]

In the Black Bear Enterprises appraisal, Mr. Clark valued the property as if it could accommodate a residential development, that is, before granting a conservation easement on the

[93] Ex. 27 – In re Claud Clark, III, State of Alabama Real Estate Appraiser Board, AB 16-15, Voluntary Revocation Consent Order (May 16, 2019).

[94] *See generally id.*

land.[95] This would be known as its "before" value, which he estimated to be **$1,602,637, or approximately $2,764 per acre**, as of May 5, 2014. However, the very same property sold, in three different sections between October 2012 and August 2013, for between $925 per acre and $1,073 per acre.[96] He also valued the land as if it were to have a conservation easement granted on it—its "after" value, which he estimated at **$289,895, or approximately $500 per acre**. The difference between the two amounts, $1,312,742, was the charitable deduction Mr. Clark estimated would be generated by granting a conservation easement on the property.[97] Mr. Clark arrived at the "before" value primarily by using a discounted cash flow analysis, stating that estimating the property's value based on comparable sales was not possible because of a lack of comparable sales. He wrote, "I performed a diligent search for comparable land sales that met the requirements for a successful land development such as the Subject Property, and did not find any."[98] The Board's outside advisor noted, however, Mr. Clark stated in a nearby portion of the appraisal that justified residential development of the land at its highest and best use, "Sufficiency of Demand – The success of developed residential properties in and around Saraland is evident. Competing developed properties have sold out or are enjoying strong sales."[99]



e) Sufficiency of Demand

The success of developed residential properties in and around Saraland is evident. Competing developed properties have sold out or are enjoying strong sales.

The Board's outside advisor was blunt about this rationale by Mr. Clark for using a discounted cash flow analysis in estimating the property's "before" value: "This shows the lack of new housing demand 'for development land'."[100] More specifically, the Board's outside advisor generally critiqued the Black Bear Enterprises appraisal by questioning the appropriateness of relying on a discounted cash flow analysis for estimating value:

> Discounted Cash Flow Analysis aka DCF method was used for "before" valuation, contrasted with the Sales Comparison method used for the "After" valuation. DCF is recommended to be a secondary method for land analysis to support a primary analysis based on verified and comparable sales transactions (evidence of demand) which in this case would be in the Before valuation. The

[95] Ex. 28 – Claud Clark, III, Clark-Davis, PC, Appraisal of Black Bear Enter., at 8 (exhibit p. 12).

[96] *Id.* at 8, 41 (exhibit p. 12, 45).

[97] *Id.* at 2 (exhibit p. 06).

[98] *Id.* at 38 (exhibit p. 42).

[99] *Id.* at 62 (exhibit p. 66).

[100] Ex. 29 – Letter from Susanne M. Curran, Managing Director, Curran Realty Advisors LLC, to Lisa Brooks, Executive Director, and Neva Conway, General Counsel at 8 (May 15, 2018).

> DCF presented appears to overstate value due to lack of deducting time to approve, construct, market and close lot sales. Minimal evidence of demand via absorption in comparable subdivisions and no specific economic, (jobs), population and household growth was presented. The report states that a search was undertaken for appropriate "before" land sales and "did not find any." This is inconsistent with the data presented on comparable residential subdivisions active in the local market which would indicate past sales of these properties.[101]

The outside advisor also critiqued Mr. Clark's optimistic language about the economic viability of developing homes on the land, questioning his quotations and data as follows:

> p. 65 says "Demand in the City of Saraland for the developed residential properties appears to be on the rise." This statement is not supported in the report by any clear jobs, population or household trends.
>
> p. 66 says "Competing developed properties have sold out or are enjoying strong sales." The subject is raw land where roads and public utilities don't exist. It is not comparable to "developed properties."
>
> P. 67 Presents statistics in a Market Profile which indicate that as of 2013, there is an excess supply of 390 dwelling units. Population 13,803 /2.51 persons per household = 5,500 households (demand). There are 5,890 housing units = 390 units market oversupply.
>
> p. 70 Has charts of sold units in four competing subdivisions. The total sales for all four have been 26 to 33 per year over the past three years (demand). The supply via expected new building permits is expected to double the 2013 building permits which were approximately 39. There is no demand increase.[102]

Similar patterns are common in appraisals reviewed as part of this investigation. Such appraisals are the engines of syndicated conservation-easement transactions, giving power to a deduction that otherwise would not be profitable for a participating taxpayer-investor. The next section goes into the details of some of the syndicated conservation-easement transactions reviewed in this investigation.

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[101] *Id.* at 7-8.

[102] *Id.* at 22.

9. Transaction Details

a. EcoVest and North Myrtle Beach

By June 2011, the city of North Myrtle Beach, South Carolina had agreed to annex into its city limits approximately 1,647 acres of undeveloped land owned by four different companies that were each partially owned by Ralph Teal, Jr. The city's interest in the annexation stemmed from the future tax revenue that development might generate, as Mr. Teal petitioned for the land to be zoned for residential and commercial development.[103] One city councilmember understood the point of the annexation and rezoning to be for "commercial and high-density residential…. It was a logical growth area for residential communities."[104] However, during this process, city officials developed a suspicion that Mr. Teal might not develop the property, but rather, might place conservation easements on the land, forever preventing its development. According to local news reports at the time, one city spokesperson stated, "If [Mr. Teal's company] Sandridge LLC is allowed to have the option to place its land under a conservation easement, there is the real risk that the land will never be developed, and its annexation into the city would be pointless."[105] Ultimately, Mr. Teal validated the concerns of the North Myrtle Beach officials, as the majority of this land is now encumbered by conservation easements.

Ralph Teal, Jr., is also one of the two directors of EcoVest Capital, which is one of the nation's most prominent syndicators of conservation-easement transactions. EcoVest describes itself on its website as "a next generation real estate company … [that] believe[s] that development opportunities should not be judged on economic viability alone, but that the responsible use and preservation of natural resources should be equally considered."[106] The EcoVest website lists Mr. Teal as having been a home seller and homebuilder generally in the southeast region since the 1980s,[107] but by the last decade his interest in North Myrtle Beach real estate focused on tax shelters rather than homes. In 2015 and 2016, Mr. Teal and EcoVest used approximately 1,300 acres of North Myrtle Beach land to generate over $919 million dollars of charitable tax deductions for taxpayer-investors by placing conservation easements on that land. They did this by claiming the 1,300 acres of land – once subdivided among 17 different pass-through entities for taxpayer-investors to invest in – was worth a collective **$950,976,576, or**

[103] David Weissman, Behind North Myrtle Beach's failed growth plan, and its link to $2 billion tax fraud case, Myrtle Beach Sun News (June 14, 2019), *at* https://www.myrtlebeachonline.com/news/local/article231401118.html; *see also*, North Myrtle Beach Planning Commission Meeting Agenda, May 17, 2011, *available at* http://www.nmb.us/files/pdf/uploads/agendaMinutes/306-17%20May%20Packet.pdf.

[104] David Weissman, Behind North Myrtle Beach's failed growth plan, and its link to $2 billion tax fraud case, Myrtle Beach Sun News (June 14, 2019), *at* https://www.myrtlebeachonline.com/news/local/article231401118.html.

[105] *Id.*

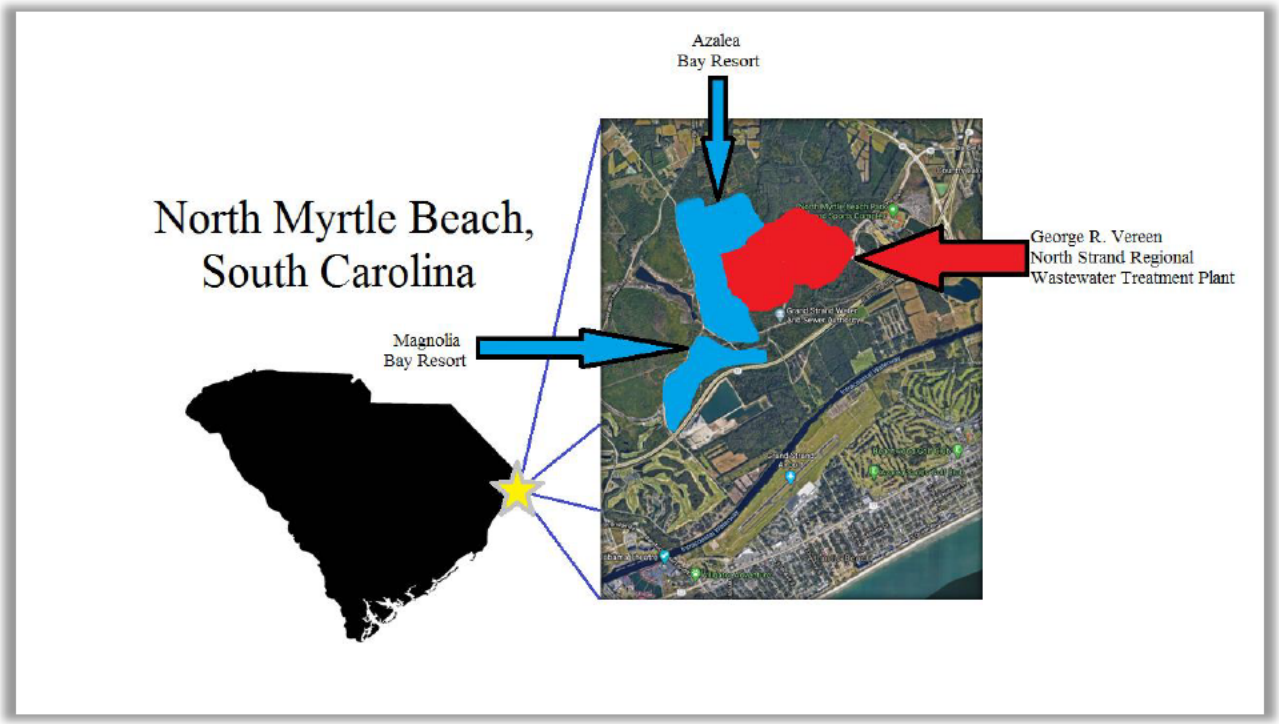
[106] EcoVest Capital, Our Purpose, *at* http://ecovest.com/our-purpose (last visited May 13, 2020).

[107] EcoVest Capital, http://ecovest.com/our-team/board-of-directors/ralph-teal/ (last visited May 13, 2020).

$731,200 per acre, and then granting conservation easements on all of it, with a collective after-easement value of $11,422,703, or $8,783 per acre.

Like all of the transactions discussed in this report, EcoVest achieved this tax result by claiming the lands they invested were worth substantial amounts, generally because of the potential for residential development, before granting conservations easements on them. Then, once EcoVested granted conservations easements on the land, and the land could no longer be developed, it was worth a fraction of what it used to be worth the second before granting the easement. That diminution in value would be the charitable deduction claimed by EcoVest's taxpayer-investors.

Of all the promoters of syndicated conservation-easement transactions reviewed in this investigation, EcoVest appears to have been the most diligent when it came to giving the appearance that it might actually develop the land it bought, whether that involved interfacing with local officials about developing the land or commissioning studies to determine the land's development potentials. Those studies often discussed in optimistic terms the growth potentials for EcoVest's various land holdings. EcoVest's purported plans for developing these lands – the basis for their investors' large tax deductions – were as follows:



i. Azalea Bay Resort, LLC

EcoVest told potential taxpayer-investors that it might develop this 269.41-acre piece of wooded land into 936 two-bedroom units, 936 three-bedroom units, and 284 four-bedroom units for a total of 117 four-story buildings, the closest of which would have been about a 5.5-mile,

11-minute drive to the beach.[108] This purported development made the property extremely valuable according to the appraiser hired by EcoVest – Claud Clark, III.

Just like he did with his Black Bear Enterprises appraisal (discussed above), Mr. Clark claimed that he looked for comparable properties to use in his appraisal but could not find any: "I made a search for development parcels similar to the Subject Property. I was not able to find any in the normal course of business."[109]

> I made a search for development parcels similar to the Subject Property. I was not able to find any in the normal course of business. I used databases, such as LoopNet; I interviewed developers; and I looked for new developments on the ground and on the internet and found none. The following is an excerpt from the case of *Trout Ranch, LLC; Michael D. Wilson, Tax Matters Partner v. Commissioner of Internal Revenue*, which justifies the use of the Land Residual Method (DCF) when comparable sales are not available. The entire judgment is included in the addenda.

Just like he did with his Black Bear Enterprises appraisal, Mr. Clark used a discounted cash flow analysis to estimate the value of the land, this time pegging the "before" value at **$47,954,567, or approximately $177,998 per acre**.[110]

And just like he stated in his Black Bear Enterprises appraisal, Mr. Clark described in this appraisal,

> Sufficiency of Demand – The success of developed residential lots in and around Azalea Bay Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop.[111]

> *e) Sufficiency of Demand*
>
> The success of developed residential lots in and around Azalea Bay Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop.

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[108] Ex. 30 – Azalea Bay Resort Holdings, LLC, Confidential Private Placement Memorandum (June 1, 2015), at 7 (ex. p. ECOVEST-SF_0000007); Ex. 31 – Claud Clark, III, Clark-Davis, PC, Appraisal of Azalea Bay Resort (Mar. 3, 2015), at 42 (ex. p. ECOVEST-SF_0002356); driving distance according to Google Maps, *at* maps.google.com.

[109] Ex. 31 – Claud Clark, III, Clark-Davis, PC, Appraisal of Azalea Bay Resort (Mar. 3, 2015), at 26 (ex. p. ECOVEST-SF_0002340).

[110] *Id.* at 2-3, 91 (ex. p. ECOVEST-SF_0002316-17, ECOVEST-SF_0002405).

[111] *Id.* at 48 (ex. p. ECOVEST-SF_0002362).

The first two sentences of this quote are identical to the phrasing used in the Black Bear Enterprises appraisal, the only difference being the name of the land.

After granting a conservation easement on the Azalea Bay Resort land, the property would only be worth **$2,816,950, or $10,456 per acre**, according to Mr. Clark.[112] The difference between the "before" value of the land and its "after" value would create over $43 million worth of tax deductions for its taxpayer-investors, based on what appears to be boilerplate language copied from an appraisal of a different piece of property.

Those investors, 80 in total,[113] did not pay anywhere near the $48 million for that land that Claud Clark said it was worth, pre-easement. Instead, they collectively paid $3,749,678.02 for a 94.5-percent ownership in the company that owned the land, meaning the investors essentially valued the land as being worth **$3,967,913.25, or $14,728 per acre.**[114] The facts surrounding the transaction make clear that no taxpayer-investors expressed interest in developing or investing in real estate. The transaction closed to taxpayer-investors on August 21, 2015.[115] Those 80 taxpayer-investors voted 706 in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 0 votes in favor of holding the property for future investment.[116] EcoVest provided taxpayer-investors with a spreadsheet that let them calculate how much they would save in taxes by granting the conservation easement.[117] Less than two weeks before a charitable deduction could no longer be claimed on taxpayer-investors' 2015 tax returns, the company granted on December 22, 2015, a conservation easement on the land, allocating $42,987,100 worth of tax deductions to taxpayer-investors.[118] EcoVest earned nearly $1.5 million in fees for executing the transaction.[119]

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[112] *Id.* at 2-3 (ex. p. ECOVEST-SF_0002316-17).

[113] Ex. 15 – Letter from Sean M. Akins, Partner, Covington & Burling LLP, to John L. Schoenecker, Senior Investigative Counsel, United States Senate Committee on Finance (June 21, 2019), at 16.

[114] Ex. 32 – Assignment and Assumption of Membership Interest of Azalea Bay Resort (ex. p. ECOVEST-SF_0000787-89); Ex. 15 – Letter from Sean M. Akins, Partner, Covington & Burling LLP, to John L. Schoenecker, Senior Investigative Counsel, United States Senate Committee on Finance (June 21, 2019), at 23.

[115] Ex. 15 at 12.

[116] *Id.* at 21. Each taxpayer-investor could purchase up to 945 units per EcoVest transaction, with each purchased unit getting one vote on what to do with the land. *See* Ex. 30, at ex. p. ECOVEST-SF_0000009.

[117] Ex. 33 – Azalea Bay Resort Holdings, LLC spreadsheet calculator.

[118] Ex. 15 at 13.

[119] Ex. 30 at 12 (ex. p. ECOVEST-SF_0000027). This amount, $1,483,491 to be exact, is calculated by adding "Arrangement Fee," "Annual Management Fee," and the "Disposition Management Fee" for the "Conservation Option" having been chosen. Reimbursements to EcoVest for its out-of-pocket expenses are not included in this amount.

According to EcoVest, that $43 million worth of tax deductions would have saved Azalea Bay Resort's 80 different taxpayer-investors $16,086,633 in federal taxes.[120]

Azalea Bay Resort				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
269.41	$47,954,567	$177,998	$2,816,950	$10,456
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
80	$3,967,913.25	$14,728	August 21, 2015	Residential
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EcoVest**
100%	December 22, 2015	$42,987,100	$16,086,633	$1,483,491

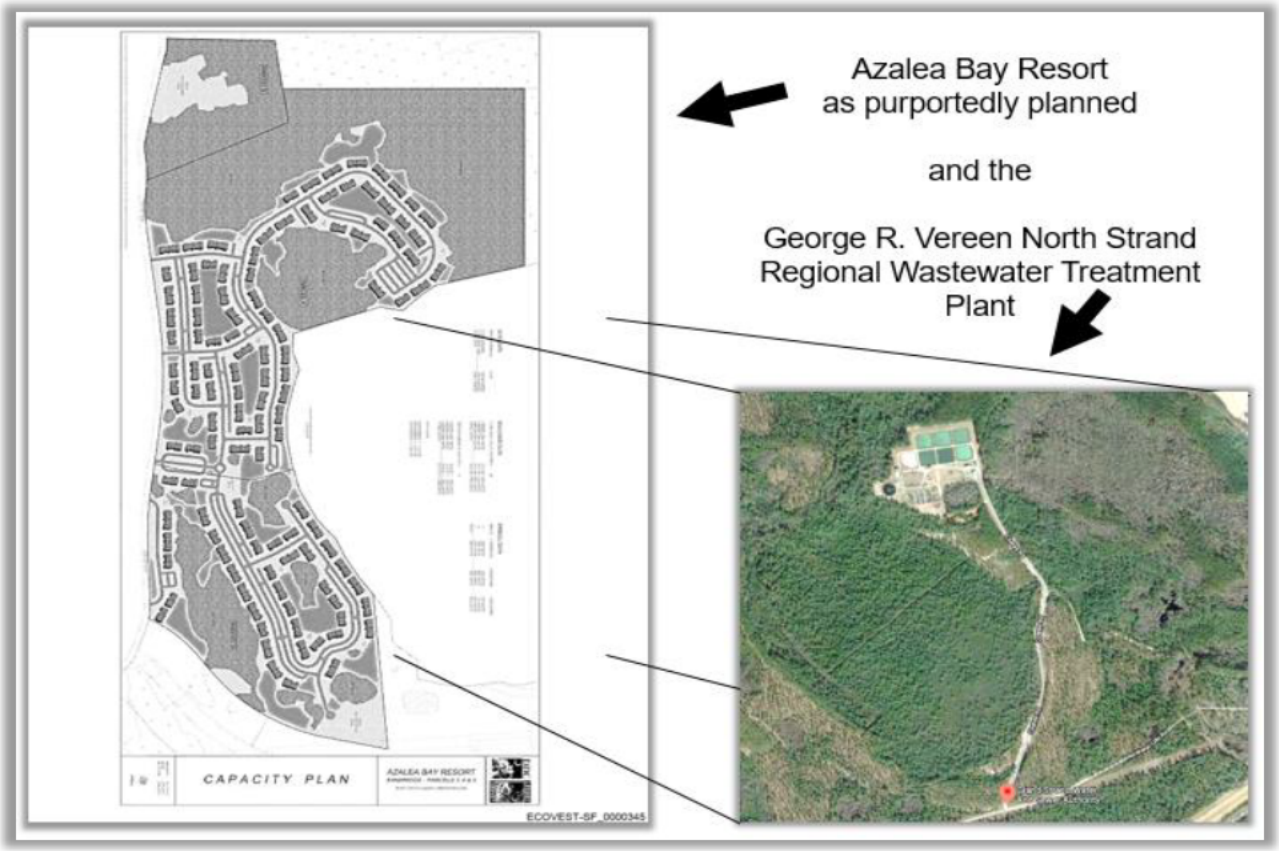
EcoVest repeated several times over this pattern of inflated appraisals of undeveloped North Myrtle Beach land, thus leading to large tax deductions for taxpayer-investors, as discussed below. But the Azalea Bay Resort property had a unique neighbor directly to its east, one that makes the prospect of a large residential development on the site more dubious: the George R. Vereen North Strand Regional Wastewater Treatment Plant. According to its website, this wastewater treatment plant processes seven million gallons of wastewater per day and creates crop fertilizer from "biological solids that are generated during the treatment process…."[121] When comparing documents showing EcoVest's purportedly planned buildings for the property to satellite images of the wastewater treatment plant, it appears some of the supposed residential buildings EcoVest told investors they might have built would have been in close proximity to the treatment plant.[122] The graphic immediately below shows an EcoVest

[120] Ex. 15 at 23.

[121] Grand Strand Water & Sewer Authority, Wastewater Plant Information, George R. Vereen North Strand Regional, *at* https://www.gswsa.com/Products_and_Services.cfm?page=51 (last visited May 13, 2020).

[122] Ex. 30 at ECOVEST-SF_0000153, and at Exhibit J, Potential Yield Plan for Development of Property (June 1, 2015) at ECOVEST-SF_0000345; *see also* Google Maps, *at* maps.google.com (searching for "Vereen Waste Water Treatment Plant, North Myrtle Beach, South Carolina" and examining structures at the end of Coates Road on such property, last visited on May 14, 2020) s*ee also*, Horry County Government – Land Records, https://www.horrycounty.org/apps/landrecords (PINs 3480000002 and 34800000021) (last visited May 14, 2020).

diagram of this purported development and its approximate location to the wastewater treatment plan shown in the satellite image.



The satellite image to the right shows these two areas in the same image, as taken from the Horry County, South Carolina land-records website. The Azalea Bay Resort property is highlighted in green, and the George R. Vereen North Strand Regional Wastewater Treatment Plant is located to the east of that property.[123]

Based on a review of the documents provided, EcoVest does not appear to have informed its taxpayer-investors of the proximity of this wastewater treatment plant, but documents show EcoVest was aware of its location and potential impact on purported development plans. In a 2018 presentation discussing low-level development options for the property after granting the conservation easement,[124] some of the "Challenges" listed for such development were, "Adjacent to Grand Strand water and sewer facility," and, "Not a traditional resort location."[125]

ii. Magnolia Bay Resort, LLC

In its boilerplate transaction-document language for Azalea Bay Resort, EcoVest told its potential investors,

> *The Manager's Involvement in Other Business Activities.* Neither the Manager [EcoVest] nor the controlling person of the Manager will devote all of their time to the business and affairs of the Company, and the controlling persons of the Manager are involved in other business activities, including activities which may be competitive with the Company and the Property Entity. The controlling persons of the Manager currently own and/or are the manager of other entities that

[123] Horry County Government – Land Records, https://www.horrycounty.org/apps/landrecords (search "Azalea Bay Resort LLC") (last visited June 18, 2020).

[124] Despite granting a conservation easement on the land, EcoVest generally maintained "reserve rights" within those conservation easements, which purportedly allowed some development on the land despite the easement. *See*, Ex. 34 – Letter from Alan N. Solon, Chairman & CEO, EcoVest Capital, Inc., to Azalea Bay Holdings, LLC members (July 27, 2018), at 5 (ex. p. ECOVEST-SF_0001274).

[125] Ex. 35 – Strategic Solutions Alliance, EcoVest Capital, Inc., Sandridge Recommendations (Dec. 4, 2018), at 5 (ex. p. ECOVEST-SF_0001391).

also own or expect to own, directly or indirectly, real estate in the vicinity of the Property and elsewhere.[126]

This disclaimer appears to have been more than just boilerplate. In addition to its substantial would-be development of the Azalea Bay Resort property, EcoVest copied that transaction several times over in 2015 and would do the same in 2016. Had EcoVest ever developed 2,156 residential units across 117 buildings on the Azalea Bay Resort property, this increased supply of residential units would have competed with the other would-be developments the company told investors it planned for North Myrtle Beach, potentially affecting the feasibility of those other developments.

Slightly south of the Azalea Bay Resort property and still about a 5.5-mile, 11-minute drive to the beach,[127] EcoVest told other potential taxpayer-investors that it might develop a 150.55-acre piece of land known as Magnolia Bay Resort into 808 two-bedroom units, 808 three-bedroom units, and 292 four-bedroom units for a total of 101 four-story buildings.[128] Again working as the appraiser for EcoVest, Claud Clark claimed that he looked for comparable properties to use in his appraisal but could not find any: "I made a search for development parcels similar to the Subject Property. I was not able to find any in the normal course of business."[129]

I made a search for development parcels similar to the Subject Property. I was not able to find any in the normal course of business. I used databases, such as LoopNet; I interviewed developers; and I looked for new developments on the ground and on the internet and found none. The following is an excerpt from the case of *Trout Ranch, LLC; Michael D. Wilson, Tax Matters Partner v. Commissioner of Internal Revenue*, which justifies the use of the Land Residual Method (DCF) when comparable sales are not available. The entire judgment is included in the addenda.

Again, Mr. Clark continued his optimism about the development potential for Magnolia Bay Resort and produced an appraisal with language nearly identical to the exclusivity claims in the Azalea Bay Resort report:

Sufficiency of Demand – The success of developed residential lots in and around Magnolia Bay Resort, as well as other similar developments is evident.

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[126] Ex. 30 at 20 (ex. p. ECOVEST-SF_0000035).

[127] S*ee*, Horry County Government – Land Records, https://www horrycounty.org/apps/landrecords (PIN 3580000007) (last visited May 14, 2020); *see also*, Google Maps, *at* maps.google.com.

[128] Ex. 36 – Magnolia Bay Resort Holdings, LLC, Confidential Private Placement Memorandum (June 11, 2015), at ex. p. ECOVEST-SF_0004100.

[129] Ex. 37 – Claud Clark, III, Clark-Davis, PC, Appraisal of Magnolia Bay Resort (Dec. 15, 2015), at 26 (ex. p. ECOVEST-SF_0006091).

> Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop.[130]

> *e) Sufficiency of Demand*
>
> The success of developed residential lots in and around Magnolia Bay Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop.

Mr. Clark again employed a discounted cash flow analysis to estimate the value of the land, giving it a "before" value of **$51,275,850, or approximately $340,590 per acre**.[131] But after granting a conservation easement on the Magnolia Bay Resort land, the property would only be worth $962,500, or $6,393 per acre, according to Claud Clark.[132] EcoVest sold interests in Magnolia Bay Resort to 138 different investors who collectively paid $3,250,321.98 for a 94.5-percent ownership in the company that owned the land, meaning the investors essentially valued the land as being worth approximately **$3,439,494.16, or approximately $22,846 per acre**.[133] (The non-round investor buy-in amounts for Azalea Bay Resort, $3,749,678.02, and for Magnolia Bay Resort, $3,250,321.98, add up to a very round $7 million amount, which is strong evidence that EcoVest planned to sell $7 million of ownership interest in the Azalea Bay and Magnolia Bay transactions, and all the other figures in those transactions flowed from that.) These 138 taxpayer-investors then voted their various shares in the company, with 682 votes in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 5 votes in favor of holding the property for future investment.[134] Its taxpayer-investors split $47,827,350 worth of tax deductions, with EcoVest collecting over $1.3 million in fees for the transaction.[135]

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[130] *Id.* at 49 (ex. p. ECOVEST-SF_0006114).

[131] *Id.* at 2-3, 50 (ex. p. ECOVEST-SF_0006066-68, ECOVEST-SF_0006115).

[132] *Id.* at 2-3 (ex. p. ECOVEST-SF_0006066-68).

[133] Ex. 38 – Assignment and Assumption of Membership Interest of Magnolia Bay Resort (Oct. 9. 2015), ex. p. ECOVEST-SF_0005078-80; Ex. 15, at 23.

[134] Ex. 15 at 21.

[135] *Id.* at 16; Ex. 36 at 12 (ex. p. ECOVEST-SF_0004120).

Magnolia Bay Resort				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
150.55	$51,275,850	$340,590	$962,500	$6,393
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
138	$3,439,494.16	$22,846	October 9, 2015	Residential
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EcoVest**
99.27%	December 22, 2015	$47,827,350	$17,897,951	$1,323,310

According to EcoVest, that approximately $48 million worth of tax deductions saved Magnolia Bay Resort's 138 different taxpayer-investors $17,897,951 in federal taxes.

iii. EcoVest's Other "Resort" Investments in North Myrtle Beach

EcoVest repeated this process for taxpayer-investors six more times in 2015 and nine more times in 2016, for a total of 17 different transactions involving North Myrtle Beach land. Even EcoVest' lawyers in an ongoing civil suit with the U.S. Department of Justice described EcoVest's various transactions as being more alike to one another than different, stating in a January 2020 filing in that case, "the similarities between the Defendants' respective projects far outweigh their differences. The transactions are structured similarly and are all subject to the same rigorous due diligence by lawyers and other accredited professionals."[136] The appendix lists EcoVest's other North Myrtle Beach transactions, all of which involved land within the immediate vicinities of Azalea Bay Resort and Magnolia Bay Resort.

These substantial residential-development options, and their associated estimated cash flows, were the bases for EcoVest's pre-easement valuations. But the purported increase in residential housing supply associated with these would-be developments raise questions about their feasibility. Had EcoVest and its taxpayer-investors actually chosen to develop all of these projects, none of which were on a beach or even within walking distance of it, they would have

[136] Joint Proposed Amended Scheduling Order at 9-10, *United States v. Zak, et al.*, No. 1:18-cv-05774-AT (N.D. Ga. Jan. 6, 2020).

added roughly an additional 40,000 bedrooms to North Myrtle Beach. The city, however, only has 16,573 residents as of July 2018, according to the U.S. Census Bureau.[137]

Occasionally EcoVest sold land intended for residential development, rather than syndicating conservation-easement transactions. In those instances, the land valuations appear much lower than those involved in tax-driven transactions.

For example, another EcoVest taxpayer-investor entity known as Long Bay Marina Holdings, LLC, generated significant tax deductions (similar to those discussed above), creating a $39 million charitable deduction for taxpayer-investors by granting a conservation easement on 61 acres of undeveloped land in North Myrtle Beach.[138] It did so by claiming this 61 acres of land was worth **$43,517,980, or approximately $713,410 per acre**, before granting a conservation easement on it, but only **$2,094,550, or approximately $34,337 per acre**, after the easement.[139] However, when Long Bay Marina Holdings, LLC, dealt in Myrtle Beach-area land in order to actually develop it, rather than just syndicate tax deductions, the valuations were significantly lower. In 2015, the year after generating its $39 million tax deduction with this 61-acre plot of land, Long Bay Marina Holdings purchased a different, 41-acre plot of undeveloped land in the Carolina Forest area known as Providence Forest, inland of Myrtle Beach and approximately 20 miles south of North Myrtle Beach, for **$1.39 million, or approximately $33,902 per acre**. A year later, EcoVest and Long Bay Marina Holdings, LLC turned around and sold this 41-acre plot of land to a third-party developer for **$2 million, or approximately $48,780 per acre**.[140]

[137] U.S. Census Bureau, QuickFacts, North Myrtle Beach, South Carolina, *available at* https://www.census.gov/quickfacts/fact/table/northmyrtlebeachcitysouthcarolina/PST045219.

[138] Ex. 39 – Letter from Robert M. McCullough, Senior Vice President and CFO, EcoVest Capital, Inc., to financial advisors (Jan. 6, 2016), at ECOVEST-SF_0120564.

[139] Ex. 40 – Claud Clark, III, Clark-Davis, PC, Appraisal of Long Bay Marina (Dec. 30, 2014), at 2 (ex. p. ECOVEST-SF_0120628).

[140] Ex. 39 at ECOVEST-SF_0120564.

EcoVest/Long Bay Marina Holdings LLC dealing in Carolina Forest				
Carolina Forest Acreage	**2015 Purchase of Carolina Forest**	**2015 Purchase of Carolina Forest/Acre**	**2016 Purchase of Carolina Forest**	**2016 Purchase of Carolina Forest /Acre**
41	$1.39 million	$33,902	$2 million	$48,780

In December 2016, EcoVest and Long Bay Marina Holdings, LLC purchased (by way of a wholly-owned subsidiary) another 90.2 acres of land from Sandridge LLC – essentially a transaction among different entities controlled by EcoVest Director Ralph Teal, Jr. – for **$875,000, or approximately $9,700 per acre**.[141] Ten months later, in October 2017, they valued this land at no more than $1.3 million and contributed it to a partnership known as Park Pointe Development, LLC in exchange for a 65 percent interest in that partnership, valuing the land at no more than **$14,412 per acre**. The purpose of these transactions was to actually build up to 168 single-family homes in a new neighborhood known as Park Pointe that would be in the vicinity of the relatively new North Myrtle Beach Sports Complex and sold by yet another Ralph Teal-controlled entity known as Realstar Homes, LLC.[142] These per-acre values for projects that were ultimately developed are a fraction of the valuations EcoVest estimated for apparently similar land used in syndicated conservation-easement transactions valued far higher.

EcoVest/Long Bay Marina Holdings LLC dealing in Park Pointe				
Carolina Forest Acreage	**2016 Purchase of Parke Pointe**	**2016 Purchase of Parke Pointe /Acre**	**Value of Contribution to of Property to Partnership**	**Value of Contribution to of Property to Partnership /Acre**
90.2	$875,000	$9,700	$1.3 million	$14,412

[141] *Id.* at ECOVEST-SF_0120564.

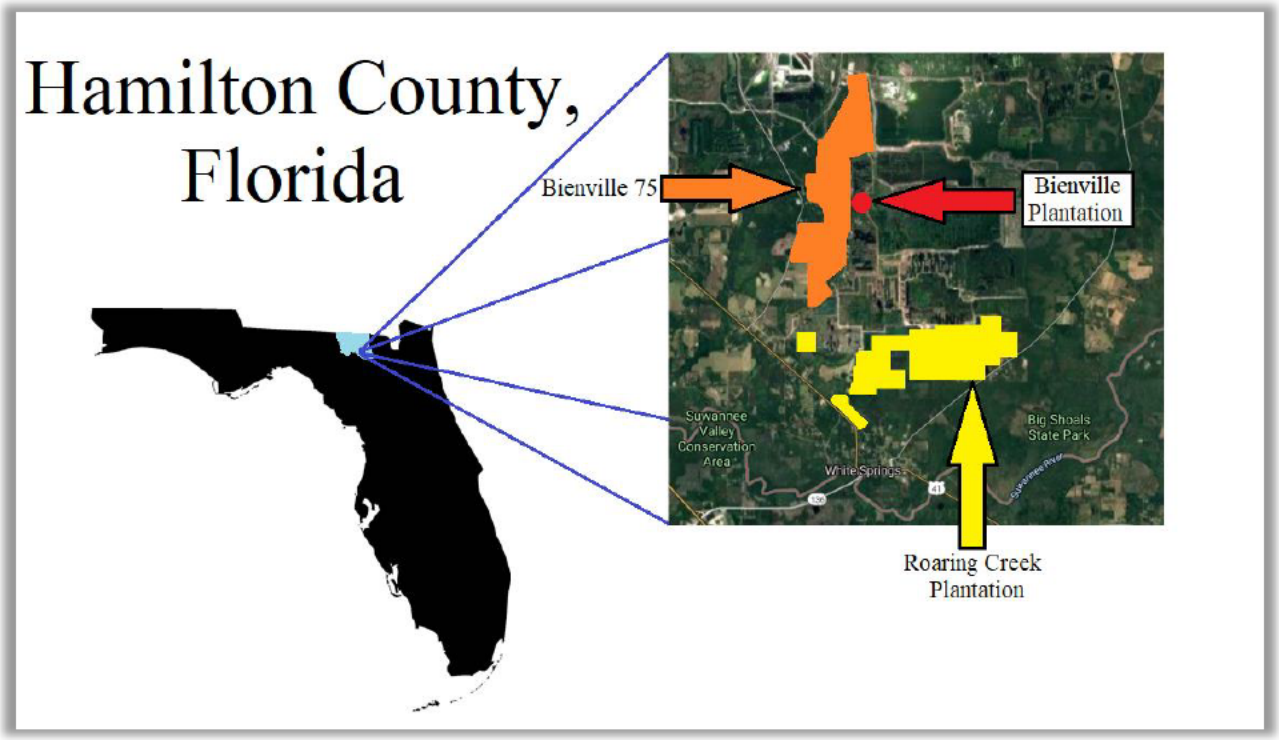
[142] Ex. 41 – Letter from Alan N. Solon, Chairman and Chief Executive Office, EcoVest Capital, Inc., to members of Long Bay Marina Holdings, LLC (Apr. 13, 2018), at ECOVEST-SF_0120538. This letter describes the contribution of the land to the Park Pointe partnership in exchange for the 65-percent interest in that partnership as "a $1,300,000 capital contribution consisting of the Park Pointe property equity and cash…." If the this unspecified contribution of cash were more than a nominal amount, it would mean that EcoVest and Long Bay Marina Holdings, LLC valued this 90.2 acres of land at something less than $1.3 million, or something less than $14,412 per acre; s*ee also*, Horry County Government – Land Records, https://www.horrycounty.org/apps/landrecords (PIN 34900000043 and its subsequent splits and merge) (last visited May 14, 2020); s*ee also*, Realstar Homes, https://gorealstar.com/our-communities/park-pointe (last visited May 14, 2020); *see also*, South Carolina Secretary of State – Business Entities Online, https://businessfilings.sc.gov/BusinessFiling/Entity/Search (search "Realstar Homes, LLC") (listing Ralph Teal, Jr. as the registered agent for Realstar Homes, LLC).

By all accounts, North Myrtle Beach is a growing community,[143] and the Park Pointe homes appear to be selling to homebuyers,[144] but no EcoVest-related company is selling homes in the Myrtle Beach area at anywhere near the quantity that EcoVest estimated in its syndicated conservation-easement promotional materials.

[143] *See*, Chloe Johnson and David Slade, *Myrtle Beach Still Leading East Coast Population Growth, But Can Local Governments Keep Up?*, THE POST AND COURIER, March 25, 2018, *available at* https://www.postandcourier.com/news/myrtle-beach-still-leading-east-coast-population-growth-but-can-local-governments-keep-up/article_8a9bfc44-2c7d-11e8-8627-effb3224b9e7 html.

[144] *See*, Real Realstar Homes Reviews, *at* https://www.gorealstar.com/reviews.

b. EvrSource Capital and Hamilton County, Florida



i. Bienville 75, LLC and Bienville 75 Acquisitions, LLC

In the last few days of 2015, Robert Morey and John Bauer bought the bass-fishing and hunting destination known as Bienville Plantation in Florida's Hamilton County, south of the Georgia border and halfway between Tallahassee and Jacksonville. The purchase involved approximately 10,037 acres at a cost of **$2,754,900, or approximately $274 per acre**.[145] According to its website, "Bienville Plantation is one of America's most renowned Bass fishing operations! … provid[ing] a mixed bag of activities such as guided bass fishing, kayak fishing, alligator hunting, skeet, fine dining and well-appointed lodging. We cater to individual sportsmen, as well as families and corporations. Our pristine accommodations will afford you the opportunity to relax while never compromising your standards."[146] Much of the surrounding area, including the prime fishing lakes, sit on reclaimed phosphate mines.[147]

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[145] Outdoors360, Bienville Plantation Improving and Expanding Legendary Bass Fishing to Much More, *at* https://www.outdoors360.com/fishing/bienville-plantation-improving-expanding-legendary-bass-fishing1/; *see also* Clembone Outdoors, Writing on Golf, Food, Travel and the Outdoors, *at* https://clembone.wordpress.com/2017/03/05/bienville-plantation-under-new-ownership-upgrades-shooting-sports-complex-and-adds-bass-fishing-lakes. According to Hamilton County property records, Messrs. Morey and Bauer made this purchase by way of their holding company, known as Westport Capital Partners LLC, which purchased 28 different tracts of land. *See* Hamilton County, Florida Property Search, *at* https://qpublic.schneidercorp.com/ (search by owner name, Westport Capital Partners LLC).

[146] Bienville Plantation, The Big Bass Factory, *at* https://bienville.com/.

[147] *See* BassOnline.com, *at* https://bassonline.com/florida-lakes/hamilton-county-phosphate/.

At the same time, a company called EvrSource Capital, a promoter of syndicated conservation-easement transactions, was telling its taxpayer-investors that nearby land known as Bienville 75 (the name of the land's holding company) was worth about 259 times the amount paid by Messrs. Morey and Bauer – **$71,013 per acre** – because Bienville 75 could be turned into "mixed use residential and recreational subdivision from its current use as vacant land."[148] Like with the other syndicated conservation-easement transactions, however, this valuation simply served the purpose of generating large tax deductions for EvrSource Capital's taxpayer-investors.

According to the 2010 Census, 14,799 people lived in Hamilton County, a population that dipped slightly to 14,428 by 2019. The county's median household income between 2014 and 2018 was $34,583, or $15,097 per person, and 28 percent of the county's population then lived below the poverty line.[149] Yet according to EvrSource Capital, its development potential was substantial in 2015, promoting to taxpayer-investors that the land could accommodate the following developments:

- 144 motor coach lots
- 161 lakefront homes sites
- 222 smaller lakefront homes
- 1,330 interior single family homes
- 742 duplexes
- 1 hotel
- 1 transient RV site
- 24 commercial sites
- 20 boat and RV storage sites
- 24 utility sites
- 1 golf course[150]

According to an appraiser named Raymond E. Veal, this development potential made the 1,267.37-acre property worth **$90,000,000, or $71,013 per acre**.[151] As was the case with Claud Clark's appraisals for EcoVest, Mr. Veal used a discounted cash flow method, which he referred to as an "income capitalization approach" as well as a "discounted sellout analysis," to get to this estimate.[152] Mr. Veal said in his appraisal he would have also used a sales-comparison approach

[148] Ex. 42 – Raymond E. Veal, Market Value Appraisal Bienville 75 (Oct. 20, 2015) at 86 (ex. p. SENATE_FINANCE-0002792).

[149] U.S. Census Bureau, QuickFacts, Hamilton County, Florida, *available at* https://www.census.gov/quickfacts/hamiltoncountyflorida.

[150] Ex. 42 at 80 (ex. p. SENATE_FINANCE-0002786).

[151] *Id.* at 2, 86 (ex. p. SENATE_FINANCE-0002703, -0002792).

[152] *Id.* at 78-81 (ex. p. SENATE_FINANCE-002784-2787).

and "searched the state of Florida for sales of land adjacent to a large recreational fishing lake" but was "not able to find any sales that have occurred within a reasonable period before the valuation date."[153] Nevertheless, his appraisal was optimistic about the potential for developing the land:

> Previously, no efforts have been made to attract mixed use development to the area. As a result there are few nearby residents, and little market activity, because of a lack of product. The northern portion of Florida has a long history of demand for residential real estate, which is documented in the Norton Consulting Report provided. There is ample market evidence that a mixed use development geared toward a nationally known fishing and hunting plantation would be feasible." [154]

However, if EvrSource Capital's investors in this land were to grant a conservation easement on it, it would then only be worth **$1,267,370, or $1,000 per acre**, according to Mr. Veal's appraisal.[155]

By December 23, 2015, EvrSource Capital had gathered 174 different taxpayer-investors to participate in the Bienville 75 transaction.[156] Those investors collectively paid EvrSource a combined total of $19,334,299 to buy into another holding company called Bienville 75 Acquisitions.[157] That holding company in turn paid $12.2 million to buy a 98 percent interest of Bienville 75 (for clarity's sake, Bienville 75 Acquisitions acquired Bienville 75), which is the entity that actually owned the land.[158] That essentially means those investors valued the land at **$12,448,979.60, or $9,823 per acre**. Within days of investing in the transaction, all surrounding Christmas 2015, the Bienville 75 Acquisition taxpayer-investors then voted 98.84 percent (12,057,500 shares) in favor of granting a conservation easement, 0.71 percent (86,000 shares) in favor of developing the land, and 0.45 percent (55,000 shares) in favor of holding it for further investment.[159]

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[153] *Id.* at 77 (ex. p. SENATE_FINANCE-0002783).

[154] *Id.* at 75 (ex. p. SENATE_FINANCE-0002781).

[155] *Id.* at 124 (ex. p. SENATE_FINANCE-0002830).

[156] Ex. 43 – Senate Committee on Finance Supplemental Response Written Answer – Bienville 75 Acquisitions, LLC at p. 2 of 8

[157] *Id.* at p. 8 of 8

[158] Ex. 44 – Bienville 75, LLC, Private Placement Memorandum (Oct. 30, 2015) at 3 (ex. p. SENATE_FINANCE-0002637); Ex. 43 at p. 8 of 8.

[159] Based on the documents provided in this investigation, the results of this vote are not entirely clear. EvrSource Capital affirmatively answered that 55,000 votes out of up to 19,334,299 were in favor of holding the land for long-term investment, and 86,000 votes were in favor of developing the land. These answers did not answer how many votes favored granting a conservation easement on the land. *See* Ex. 43 at p. 1 and 6 of 8. However, the vote totals listed above for the conservation-easement option are necessarily too low. Of the 125 taxpayer-investor ballots provided in this investigation, 119 were in favor of granting a conservation easement, 2 were in favor of further developing the land, 1 was in favor of holding the land for investment, and 3 could not be

EvrSource then granted a conservation easement on the land in time for its taxpayer-investors to claim deductions for the 2015 tax year, by granting it on December 29, 2015.[160] Documents related to the transactions do not show any serious consideration of developing thousands of homes on reclaimed phosphate mines in north-central Florida. The taxpayer-investors' combined tax deduction from the transaction was $88,530,000,[161] thus saving them approximately $35,057,880 in taxes for 2015.[162] EvrSource Capital collected $1,157,000 in fees for executing the transaction.[163]

Bienville 75				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
1,267.37	$90,000,000	$71,013	$1,267,370	$1,000
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
174	$12,448,979.60	$9,823	December 23, 2015	Residential and Tourism
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EvrSource**
98.84%	December 29, 2015	$88,530,000	$35,057,880	$1,157,000

determined based on the information provided. Of the 119 ballots affirmatively in favor of granting the conservation easement, 30 such ballots failed to list the number of votes in favor of that option. Because the average number of votes per ballot with known vote totals was 131,060, it is very likely that the vote total for granting the conservation easement was over 99 percent in favor of it. *See* Ex. 45 – Bienville 75 Acquisitions, LLC ballots at ex. p. SENATE_FINANCE-0008467-8778.

[160] Ex. 43 at p. 2 of 8.

[161] Ex. 43 at p. 7 of 8.

[162] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[163] Ex. 44 at 15 (ex. p. SENATE_FINANCE-0002649). This amount is derived by adding the $500,000 "EvrSource Capital, LLC" fee listed therein to the "additional consulting fees" upon the condition of Bienville 75 Acquisitions' investors choosing the "Conservation Proposal" listed in footnote 9 therein. According to EvrSource Capital's answers to the Finance Committee, this additional consulting fee was $657,000. Ex. 43 at p. 8 of 8.

ii. Roaring Creek Plantation, LLC and Roaring Florida Acquisitions, LLC

In 2016, EvrSource Capital replicated its 2015 effort in Hamilton County with another property in the same neighborhood as the Bienville 75 property, known as Roaring Creek Plantation. According to EvrSource Capital, they could have built and sold the following developments on the property:

- 1,291 lots for single family homes in the "Active Adult Community"
- 466 lots planned for "Active Adult" duplex, triplex, and quadruplex homes, including 200 of such units for assisted living
- 258 lots for "lake access" or "direct lake frontage" second home community
- 144-lot motor coach community
- One 150-unit lodge style hotel
- 192 transient recreational vehicle lots[164]

Just like in 2015, Raymond Veal was the appraiser, and this development potential made the 1,518.44-acre property worth **$69,050,000, or $45,474 per acre** according to his appraisal.[165] Again Mr. Veal used a discounted cash flow method for this estimate.[166] And again Mr. Veal said in his appraisal he would have used a sales-comparison approach and "searched the state of Florida for sales of land adjacent to a large recreational fishing lake" but was "not able to find any sales that have occurred within a reasonable period before the valuation date."[167] His assessment of the property's development prospect was nearly identical to the Bienville 75 deal:

> Previously, no efforts have been made to attract mixed use development to the area. As a result there are few nearby residents, and little market activity, because of a lack of product. The northern portion of Florida has a long history of demand for residential real estate, which is documented in the Norton Consulting Report provided. There is ample market evidence that a mixed use development geared toward a nationally known fishing and hunting plantation would be feasible." [168]

However, post-conservation easement, the Roaring Creek Plantation would only be worth **$1,520,000, or about $1,000 per acre**, according to Mr. Veal's appraisal.[169]

EvrSource Capital also employed a reviewing appraiser to confirm the quality of Mr. Veal's appraisal as that of a "qualified appraisal" for IRS purposes, but that

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[164] Ex. 46 at 14 (ex. p. SENATE_FINANCE-0001101).

[165] Ex. 47 at 2, 92 (ex. p. SENATE_FINANCE-0001993, -0002079).

[166] *Id.* at 79-90 (ex. p. SENATE_FINANCE-0002070-81).

[167] *Id.* at 80 (ex. p. SENATE_FINANCE-0002071).

[168] *Id.* at 78 (ex. p. SENATE_FINANCE-0002069).

[169] *Id.* at 121 (ex. p. SENATE_FINANCE-0002112).

reviewing appraiser was Claud Clark. Mr. Clark determined that Mr. Veal's appraisal was a qualifying one for IRS purposes.[170]

EvrSource Capital closed the transaction to new investors on December 22, 2016 after 136 different taxpayer-investors bought into it.[171] Those investors collectively paid EvrSource $15,303,567 to buy into a holding company called Roaring Florida Acquisitions. That holding company in turn paid $9,513,393.16 to buy a 96.564 percent interest of Roaring Creek Plantation, which is the company that actually owned the land.[172] Essentially, those investors valued the land at **$9,851,904.60, or $6,488 per acre**. Days later, once again surrounding the Christmas holiday, the Roaring Florida Acquisition taxpayer-investors voted 98 percent in favor of granting the conservation on the land, while only about two percent of those taxpayer-investors voted to develop the land or hold it for further investment.[173] Once again, the record does not show that any investor expressed interest in building thousands of homes and a hotel over reclaimed phosphate mines. On December 28, 2016, EvrSource Capital granted the conservation easement on the Roaring Creek Plantation land in time for its taxpayer-investors to claim the deductions on their 2016 tax returns.[174] The combined tax deduction from the transaction was $67,530,000,[175] saving the taxpayer-investors about $26,741,880 in taxes

[170] *See generally* Ex. 48 – Claud Clark, III, Clark-Davis, PC, Conservation Easement Review Appraisal of Roaring Creek Plantation (Nov. 3, 2016).

[171] Ex. 49 – Senate Committee on Finance Supplemental Response Written Answer – Roaring Florida Acquisitions, LLC at p. 2 of 9.

[172] Ex. 46 at 4 (ex. p. SENATE_FINANCE-0001091); Ex. 49 at p. 2 of 9.

[173] Based on the documents provided in this investigation, the results of this vote are not entirely clear. EvrSource Capital affirmatively answered that 280,000 votes out of up to 15,303,567 were in favor of holding the land for long-term investment (1.83 percent), and 50,000 votes were in favor of developing the land (0.33 percent). These answers did not say exactly how many votes favored granting a conservation easement on the land nor the total number of ballots cast. *See* Ex. 49 at p. 1, 6, and 7 of 9. However, a draft email turned over in the investigation indicates that EvrSource Capital personnel contemplated telling its Roaring Florida Acquisition taxpayer-investors that, in light of the IRS having issued Notice 2017-10 on December 23, 2016, which was around the time of that vote, they could change their vote if they wanted to, as EvrSource Capital "only received votes representing 36.66% of the shares" during the initial vote days earlier. In that initial vote, "The Conservation easement received the most votes representing 36.18% of the 36.66% received," which means the conservation-easement option received 98.69 percent of the vote. Ex. 50 – Draft email to Roaring Florida Acquisition members, ex. p. SENATE_FINANCE-0009436.

[174] Ex. 49 at p. 2 of 9.

[175] Ex. 49 at p. 7 of 9.

for 2016.[176] EvrSource Capital collected $1,460,000 in total fees for executing the transaction.[177]

A little over a year later, on April 23, 2018, what appears to be a married couple bought 23 total acres on Highway 41 right next to the Roaring Creek Plantation land, according to Hamilton County land records. They paid **$91,600, or $3,982.61 per acre**.[178] This is about 1/18 of what EvrSource Capital said the Bienville 75 land was worth and less than a tenth of what they said the Roaring Creek Plantation land was worth.

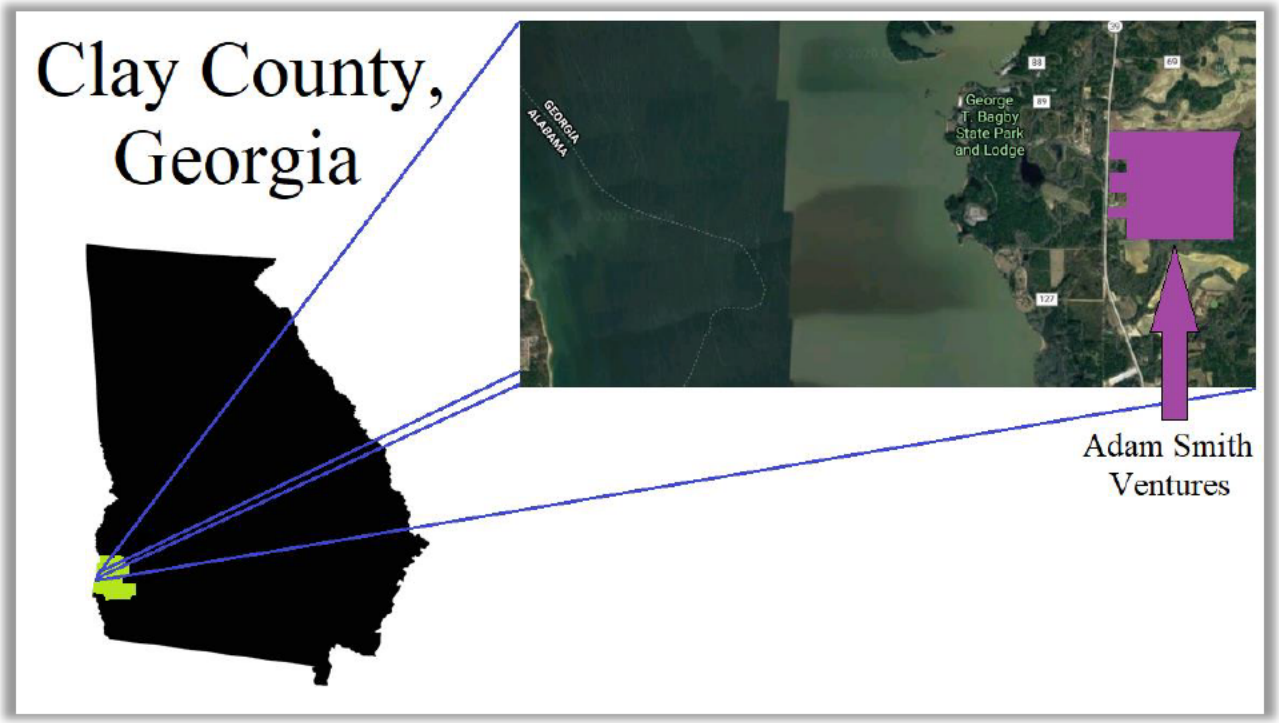
Roaring Creek Plantation/Roaring Florida Acquisitions				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
1,518.44	$69,050,000	$45,474	$1,520,100	$1,000
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
136	$9,851,904.60	$6,488	December 22, 2015	Residential and Tourism
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EvrSource**
≈98%	December 29, 2015	$67,530,000	$26,741,880	$1,460,000

[176] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[177] Ex. 46 at 24 (ex. p. SENATE_FINANCE-0001111). This amount is derived by adding the $500,000 "EvrSource Capital, LLC" fee listed therein to the $960,000 listed for "additional consulting fees to EvrSource" upon the condition of Roaring Florida Acquisitions' investors choosing the "Conservation Proposal" listed in footnote 14 therein.

[178] Hamilton County, Florida Property Search, *at* https://qpublic.schneidercorp.com/ (search by parcel IDs: 1773-030 and 1773-035).

c. Webb Creek and Clay County, Georgia



Clay County, Georgia lies on the southeast bank of the Walter F. George Lake[179] along the border of Georgia and Alabama, and it continues south along the Chattahoochee River. The county seat, Fort Gaines, is about 50 miles north of where Alabama, Florida, and Georgia meet. The 2010 Census counted 3,186 people living in Clay County, and the Census Bureau estimates that number to have fallen to 2,834 as of 2019. The county's median household income between 2013 and 2017 was $23,315, and about a third of its residents live below the poverty line.[180] In 2017, the Atlanta Journal-Constitution profiled Dr. Karen Kinsell as the only practicing doctor in Clay County over the previous decade. When her patients have to go to the hospital, they have to cross state lines, as the last hospital in the county shuttered in 1983. Clay County has no traffic lights and no high school.[181]

According to the syndicated conservation-easement promoters at Webb Creek, however, in 2013 Clay County was prime real estate for a senior living facility. The county's Board of Assessors website lists Adam Smith Ventures as having purchased 227 acres of undeveloped

[179] Walter F. George Lake is known as Lake Eufaula in Alabama. *See* Clay County Board of Commissioners *at* http:// https://www.claycountyga.net/local-lakes.

[180] U.S. Census Bureau, QuickFacts, Clay County, Georgia, *available at* https://www.census.gov/quickfacts/fact/table/claycountygeorgia#.

[181] Haisten Willis, *The Last Doctor in Clay County*, Atlanta Journal-Constitution (Nov. 12, 2017), http://specials.myajc.com/Kinsell/.

land along the Clay County's Eufaula Highway (parcel number 013 067) on June 21, 2006 for **$609,246, or $2,683 per acre**.[182] This is the land Webb Creek told its investors it might use to develop such a senior living facility, making the land valuable for tax purposes. It lies southwest of the Meadow Links golf course, which is part of the George T. Bagby State Park & Lodge, and most of which is across the street from the property that is next to Walter F. George Lake.

Bryan Kelley is the manager and 50-percent owner of the Webb Creek Management Group, which managed Adam Smith Ventures.[183] By December 26, 2013, Bryan Kelley and Webb Creek had sold slightly more than 91 percent of Adam Smith Ventures, including the 227 acres of property it owned, to taxpayer-investors for a combined total of $2,347,640**,** thus valuing it at **$2,571,854.25, or $11,330 per acre.**[184] But according to an appraisal commissioned by Webb Creek and performed by Jim R. Clower, Sr., from November 2013, that property had a highest and best use as "an adult seniors facility for '55 and over,'"[185] and was really worth **$12,400,000, or $54,626 per acre**,[186] a five-fold increase from what Adam Smith Ventures' investors then paid for it—and a 20-fold increase from what Adam Smith Ventures paid for that land seven years earlier.

Mr. Clower arrived at this figure by comparing it to sales of then-undeveloped land that was in the north Georgia city of Suwanee (sold for $44,979 per acre), and the counties of Gwinett (sold for $80,846 per acre) and Towns (sold for $94,306 per acre),[187] the first two of which are Atlanta suburbs and the latter of which is further north nearing Georgia's border with North Carolina. Mr. Clower also arrived at this $54,626/acre figure for the Adam Smith Ventures property by comparing it to sales of undeveloped land that would eventually be built into senior-living facilities. But instead of comparing these properties on a per-acre basis, he compared them on a per-housing-unit basis. For example, in the first such comparison to another property in Towns County, Mr. Clower found that the comparable property was worth $24,138 per would-be housing unit because the land sold for $2.1 million and would eventually contain 87 houses.[188] In the second per-unit comparison, this time to a land sale in Hall County to the

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[182] Board of Tax Assessors, Clay County, Georgia, *at* http://qpublic.net/ga/clay/.

[183] Ex. 51 – Brian W. Kelley's responses regarding Adam Smith Ventures, LLC to questions in letter from Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance, to Brian Kelley, Webb Creek Management Group (Mar. 27, 2019) at ex. p. WCP000537.

[184] Ex. 52 – Letter from Bryan W. Kelley, CEO, Webb Creek Management Group, LLC, to Adam Smith Ventures, LLC members (Sept. 1, 2017), containing draft sample Form 8886 – Reportable Transaction Disclosure Statement at ex. p. WCP000520.

[185] Ex. 53 – Jim R. Clower, Sr., A Self-Contained Appraisal Report for a Proposed Conservation Easement on an Approximate 227 +/- Acre Tract of Vacant Land (Nov. 12, 2013) at ex. p. WCP000838.

[186] *Id.* at ex. p. WCP000852.

[187] *Id.* at ex. p. WCP000842-45.

[188] *Id.* at ex. p. WCP000848.

northeast of Atlanta, the land sold for $1.6 million and would eventually contain 94 houses, making that land worth about $17,000 per would-be house.[189] Finally, in the third per-unit comparison, to a land sale in Cartersville to the northwest of Atlanta, the land sold for $943,524 and would eventually contain 72 houses, making that land worth about $13,104 per would-be house.[190] Despite all of these properties being in north Georgia, Mr. Clower relied on these estimates to determine that the Adam Smith Ventures property could house 800 housing units across its 227 acres, units that would sell out in two years. From these comparisons, Mr. Clower estimated the property to be worth **$12,400,000, or $54,626/acre**.[191]

But after granting a conservation easement on the Adam Smith Ventures property, it would only be worth **$295,100, or $1,300/acre,** according to that same November 2013 appraisal.[192] Mr. Clower arrived at this figure by comparing it to a May 2007 sale of 371.5 acres of land near the Lavender Trail in Floyd County, Georgia, which is about 200 miles north of Clay County. He also compared the property, post-easement, to an October 2007 sale of 126 acres of land in Hickman County, Tennessee, as well as an October 2009 sale of 423 acres of land in Hardeman County, Tennessee.[193]

Later on in his appraisal, Mr. Clower provides qualitative support for his valuation of the land as if it were prime real estate for a senior living facility. The "Market Summary" in this appraisal generally offers optimistic language about the property's prospects as such but does not substantiate its optimism with hard data, and he begins this supporting language with a seeming contradiction:

> Our housing market, in general, is in a slump with its end not yet in sight. There is, however, one segment of this market experiencing **only a minor decline**. That segment is construction for the "Boomers", the name we seem to have adopted for the 50+/Retiree housing market. **This market appears to be blossoming**, and will continue to do so for many years to come before reaching its peak.
>
> …
>
> The proposed development is an ideal location for an active community due to the amenities and natural landscape.[194]

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[189] *Id.* at ex. p. WCP000849.

[190] *Id.* at ex. p. WCP000850.

[191] *Id.* at ex. p. WCP000852.

[192] *Id.* at ex. p. WCP000860.

[193] *Id.* at ex. p. WCP000856-57.

[194] *Id.* at ex. p. WCP000902 (emphases added).

Mr. Clower then goes on to cite to "a recent market survey completed by Mature Market Consultants from September 2006 through May 2007," described as the following:

> The market survey consisted of a test ad being placed in the Georgia edition of Mature Living Choices, a new homes/communities real estate guide published specifically for the 50+ market. This is a national publication with editions in many states and published by Network Communications, Inc., the largest publisher of real estate, lifestyle and housing guides. The purpose of the ad was to gauge interest in an active adult community in Southwest Georgia. The response to the survey by far exceeded the norm in producing over 2100+ written responses with an interest in Southwest Georgia during the nine month test period. Mature Market Consultants maintains a database of these individuals and regular communication is maintain via newsletter.[195]

The "Neighborhood Analysis" in this appraisal includes language that gives pause to the idea that Clay County was then primed for expansion:

> Walter F. George Lake and Bagby State Park are across county road Hwy 39 from the subject property, forming the boundary on the West. Dothan, Al. is South and Albany, Ga. is to the East and North. The surrounding land and municipalities are mostly agricultural and less industrialized and populated than the larger towns such as Dothan, and Eufaula, Al. and Columbus, and Albany, Ga. Blakley, Ga. Is about 18 miles south, end Eufaula, Al. is approximately 21 miles to the North West. Albany Is East about 40 miles. Dothan is South West about 45 miles. Both have excellent hospitals and medical outlets. **The location of the subject, more inland and off the major highway system, there are fewer employment opportunities. This has caused the small town populations to decrease. In that sense, there are fewer businesses and some travel is necessary for major retail shopping.** Cultural events, however, are available in the smaller towns such as the Arts Festival and Pilgrimage of Homes in Eufaula, the Swamp Gravy Playhouse In Colquill, and the Peanut Festival in Dothan, to name a few. **For the retired resident, employment is not a factor of major importance.** The Lake and Golf Course is a well-kept secret which will be the main attraction to the retired individuals. [196]

This appraisal compared land in an area of southwest Georgia where there are few employment opportunities, a decreasing population, and little in the way of shopping compared to senior-living developments in suburban Atlanta. According to Bryan Kelley's responses to questions posed to him in this investigation, a total of 56 taxpayer-investors contributed

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[195] *Id.* at ex. p. WCP000903.

[196] *Id.* at ex. p. WCP000899 (emphasis added).

$2,347,640 to the company.[197] The facts surrounding those investments show that few investors expressed interest in developing the land. The sale of ownership interests in the company closed on December 26, 2013.[198] Immediately thereafter 96 percent of the company's shares voted in favor of granting a conversation easement, and four percent voted for development.[199] On December 28, 2013, the company granted the conservation easement on the land.[200]

Adam Smith Ventures				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
227	$12,400,000	$55,000	$295,100	$1,300
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
56	$2,571,854.25	$11,330	December 26, 2013	Senior Residential
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EvrSource**
96%	December 28, 2013	$12,000,000	$4,752,000	$200,000

It seems unlikely that those investors had the time to make an informed decision on the property's development prospects within the three days after Christmas 2013, given the scale of the purported 800-unit senior living facility. Webb Creek Manager Brian Kelley admitted in his answers to the Finance Committee that Adam Smith Ventures "did not offer a monetary projection for its investment proposal" to its investors about building a senior living facility.[201]

Just like with EcoVest and its properties in North Myrtle Beach, the record shows that few Webb Creek investors expressed interest in building a seniors living facility in Clay County, Georgia. Webb Creek's taxpayer-investors in Adam Smith Ventures split $12,000,000 worth of

[197] Ex. 51 at ex. p. WCP000537-38.

[198] *Id.* at ex. p. 538.

[199] *See id.* at ex. p. 541-42.

[200] *Id.* at ex. p. 538.

[201] *Id.* at ex. p. 542.

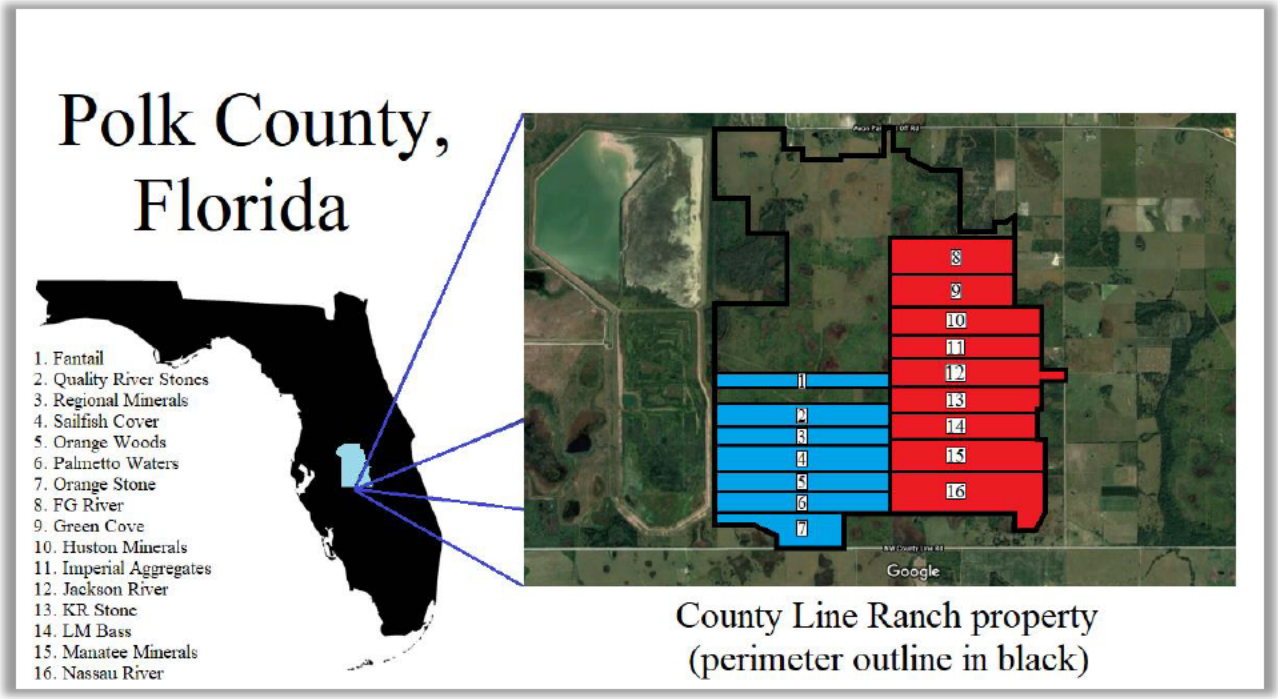
charitable deductions between them,[202] the Webb Creek Management Group claimed $200,000 in fees for the transaction, and Jim Clower made $12,500 for his appraisal.[203] On May 24, 2018, Adam Smith Ventures then appears to have sold the land to an unrelated party for $100,000.[204]

[202] *Id.* at ex. p. 538.

[203] Ex. 54 at 19 (ex. p. WCP000129).

[204] *See* Board of Tax Assessors – Clay County, Georgia, *at* http://www.qpublic net/ga/clay (search records for parcel 013 067).

d. Ornstein-Schuler and Polk County, Florida



The "Bone Valley" consists of approximately 1.3 million acres located in Polk, Hillsborough, Manatee, and Hardee counties in central Florida, between the Tampa Bay area and Orlando. The nickname derives from the prevalence of phosphate mining in the area, which first began in Florida in 1883.[205]

In November 2005, a company called AHP #2 LLC purchased approximately 3,500 acres of undeveloped land known as County Line Ranch in southern Polk County, bordering Hardee County, in the heart of the Bone Valley. The purchase price was **$19,237,800, or approximately $5,500 per acre**.[206] Three years later, that company tried to sell County Line Ranch for **$35 million, or $10,000 per acre**, advertising it as containing "150 million tons of

[205] Phosphate, Florida Department of Environmental Protection, *at* https://floridadep.gov/water/mining-mitigation/content/phosphate (last visited July 2, 2020).

[206] *See* Polk County Property Appraiser, *at* https://map.polkpa.org/ for Parcel IDs 263222000000011010, 263222000000012010, 263222000000011030, 263222000000021010, 263223000000022020, 263226000000012030, 263226000000021030, 263226000000021040, 263226000000022010, 263226000000022020, 263234000000011010, 263234000000012010, 263234000000012020, 263234000000021010, 263234000000021020, 263224000000023010, 263223000000022010, 263224000000022010, 263226000000011030, 263225000000013010, 263226000000011020, 263225000000013020, 263226000000012010, 263225000000012050, 263226000000012020, 263225000000012010, 263226000000021010, 263225000000021050, 263226000000021020, 263225000000021060, 263225000000011030, 263226000000011040, 263235000000011040, 263236000000011050, 263235000000011020, 263236000000011020, 263235000000012010, and 263236000000012070.

mineable lime rock" and that "[o]wner is pursuing permitting for lime rock."[207] But County Line Ranch did not sell.[208] In the fall 2015, AHP #2 LLC was still trying to sell County Line Ranch, this time branding it as a cattle ranch with "pastureland with dry prairie" and "[c]entrally located between Orlando and Tampa," and an asking price of **$12,232,500, or $3,495 per acre**.[209] But by the end of 2015, instead of selling the property outright, AHP LLC #2 ultimately partnered with various entities managed by syndicated conservation-easement promoters Ornstein-Schuler to place conservation easements on adjoining parcels of land within County Line Ranch.[210] Collectively, Ornstein-Schuler valued the land far higher for conservation-easement purposes than the unsuccessful asking price from just a couple months earlier. According to the company, nine different investment entities each holding between 120 and 200 acres of land – 1,241.7 acres in total, a little more than a third of the County Line Ranch property – collectively held land worth more than **$160 million, or $129,017 per acre** before granting conservation easements on all of the plots. This was roughly a 3,600 percent increase from County Line Ranch's unsuccessful asking price just months earlier. Specifically, the valuations of those property-holding entities broke down in the following way, which the promoters named in alphabetical order:

2015 Entity	Acreage	Before-Easement Valuation	Before-Easement Valuation/Acre	After-Easement Valuation	After-Easement Valuation/Acre
FG River Partners LLC[211]	122.5	$17.8 million	$145,306	$440,000	$3,592
Green Cove Group LLC[212]	128.2	$17.8 million	$138,846	$450,000	$3,510
Huston Minerals Partners LLC[213]	126.4	$17.8 million	$140,823	$440,000	$3,481

[207] Ex. 55 – County Line Ranch, Bowling Green, FL, Coldwell Banker Commercial, Saunders Real Estate (2008).

[208] *See* Polk County Property Appraiser, *at* https://map.polkpa.org/ for Parcel IDs listed above at note 206.

[209] Ex. 56 – Land Listings Catalog, Coldwell Banker Commercial Saunders Real Estate (Fall 2015), *available at* https://www.saundersrealestate.com/wp-content/uploads/2015/02/SRE-Listing-Catalog-Fall-2015-website.pdf

[210] Ex. 57 – Clayton M. Weibel, MAI, Appraisal Report for FG River Resources LLC (as of Dec. 29, 2015), Exhibit VII, 4 of 7, (ex. p. HK_SFCSubpoena_000030139).

[211] *Id.* at HK_SFCSubpoena_000029885.

[212] Ex. 58 – Clayton M. Weibel, MAI, Appraisal Report for Green Cove Rock LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000037585.

[213] Ex. 59 – Clayton M. Weibel, MAI, Appraisal Report for Huston Minerals LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000053018.

Imperial Aggregates Group LLC[214]	123.3	$17.8 million	$144,363	$450,000	$3,650
Jackson River Partners LLC[215]	134.1	$17.8 million	$132,737	$460,000	$3,430
KR Stone Group LLC[216]	126.8	$17.8 million	$140,379	$450,000	$3,549
LM Bass Partners LLC[217]	130.1	$17.8 million	$136,818	$450,000	$3,459
Manatee Minerals Group LLC[218]	157.2	$17.8 million	$113,232	$500,000	$3,181
Nassau River Partners LLC[219]	193.1	$17.8 million	$92,180	$530,000	$2,745
TOTAL	**1,241.7**	**$160.2 million**	**$129,017**	**$4.17 million**	**$3,358**

On an individual basis, these transactions had very similar, short lives designed to manufacture quickly large tax deductions for their taxpayer-investors. The details of some of the transactions are as follows:

i. FG River Resources LLC

Ornstein-Schuler told its taxpayer-investors this 122.5-acre[220] rectangular tract of land was worth **$17.8 million, or $145,306 per acre**, before granting a conservation easement on it.[221] The company based that number on an appraisal written by Clayton M. Weibel, who used

[214] Ex. 60 – Clayton M. Weibel, MAI, Appraisal Report for Imperial Aggregates LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000058264.

[215] Ex. 61 – Clayton M. Weibel, MAI, Appraisal Report for Jackson River Minerals LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000062586.

[216] Ex. 62 – Clayton M. Weibel, MAI, Appraisal Report for KR Stone Resources LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000071112.

[217] Ex. 63 – Clayton M. Weibel, MAI, Appraisal Report for LM Bass Aggregates LLC (as of Dec. 29, 2015), at HK_SFCSubpoena_000075442.

[218] Ex. 64 – Clayton M. Weibel, MAI, Appraisal Report for Manatee Minerals LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000083208.

[219] Ex. 65 – Clayton M. Weibel, MAI, Appraisal Report for Nassau River Stone LLC (as of Dec. 29, 2015), at HK_SFCSubpoena_000088860.

[220] Ex. 57 at HK_SFCSubpoena_000029885.

[221] *Id.* at 1 (ex. p. HK_SFCSubpoena_000029889).

both a discounted cash flow method as well as comparable sales to come to that estimate.[222] The comparable sales he used were in Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia.[223] Mr. Weibel's discounted cash flow analysis relied on a reserve analysis commissioned by Ornstein-Schuler, and dated November 24, 2015, stating the property contained proven reserves of 6.775 million tons of limerock.[224] Specifically, the appraisal found:

> The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit.[225]

This reserve analysis, however, was based on drilling samples conducted nine years earlier, in 2006, when a geologist analyzed the County Line Ranch property by drilling 90 different holes in the property and sampling the materials extracted from them.[226] That analysis showed a 21-foot layer of limerock covered by 39 feet of "dark brown, high organic sandy soil, then a variety of layers of sand, clayey sand, sandy clay and clay."[227] Since the time of that 2006 analysis, the owners of the County Line Ranch tried to sell it for $10,000 per acre, advertising it as containing "150 million tons of mineable lime rock,"[228] but it did not sell. Nine years later, Ornstein-Schuler told its taxpayer-investors the property was worth $145,306 per acre because of its mineable limerock.

Clayton Weibel estimated that the property would only be worth **$440,000, or $3,592 per acre**, after a conservation easement would be granted on it.[229] The transaction closed to new investors on November 28, 2015.[230] By December 10, 2015, investors had collectively paid $3,558,000 to purchase a 95.99 percent interest in the holding company that owned the 122.5-

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[222] *Id.* at 69 (ex. p. HK_SFCSubpoena_000029957).

[223] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000029958-77).

[224] *Id.* at 94, Exhibit IV, page 10 of 21 (ex. p. HK_SFCSubpoena_000029982, 30107).

[225] *Id.* at 94, Exhibit IV, page 10 of 21 (ex. p. HK_SFCSubpoena_000029982, 30107).

[226] *Id.* at Exhibit VI (ex. p. HK_SFCSubpoena_000030124).

[227] *Id.* at Exhibit IV, Appendix B, p. 4 (ex. p. HK_SFCSubpoena_000030127).

[228] Ex. 55.

[229] Ex. 57 at HK_SFCSubpoena_000029885.

[230] Ex. 66 – Letter from Christopher DeLacy, Partner, Holland & Knight LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Apr. 30, 2019), Attachment – OSI Response Chart 2(b) and 2(d).

acre tract of land, thus valuing it at **$3,706,636.11, or $30,258 per acre**.[231] They then voted overwhelmingly to grant a conservation easement on the land, with 91.02 percent of votes in favor of granting a conservation easement, 0 percent in favor of mining it, 3.85 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment.[232] On December 22, 2015, the company granted that conservation easement[233] and then split $17,360,000 worth of charitable deductions between the taxpayer-investors.[234] At a 39.6 percent tax rate, this would have saved these taxpayer-investors $6,874,560 in federal income taxes.

FG River				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
122.5	$17,800,000	$145,306	$440,000	$3,592
Land Value Based on Investor Buy-In	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**	**Investor Vote in Favor of Easement**
$3,706,636.11	$30,258	November 28, 2015	Mining	91.02%
Date Easement Granted	**Deductions Allocated**		**Total Tax Benefit to Investors**	
December 22, 2015	$17,360,000		$6,874,560	

ii. Green Cove Group LLC

Ornstein-Schuler sold taxpayer-investors on the Green Cove Group tax shelter at the same time they were promoting FG Resources. The two properties were virtually identical, and the tracts of land were next to each other, with the FG Resources tract directly to the north of the Green Cove Group tract. The latter involved slightly more land, 128.2 acres,[235] which Clayton Weibel estimated to have a "before"-easement value of **$17.8 million, or $138,846 per acre**.[236]

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[231] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); [231] Ex. 9 – The 2015 Information Package for FG River Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000029444).

[232] Ex. 67 – Request10VotingData, at SFCHK00116379.

[233] Ex. 57 at 1 (ex. p. HK_SFCSubpoena_000029889).

[234] *Id.*, at HK_SFCSubpoena_000029885.

[235] Ex. 58 at HK_SFCSubpoena_000037585; Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[236] Ex. 58 at 1 (ex. p. HK_SFCSubpoena_000037585).

Mr. Weibel again used both a discounted cash flow method as well as comparable sales to come to that estimate,[237] and he used the same comparable sales that he used in his FG Resources appraisal. [238] His discounted cash flow analysis relied on the very same reserve analysis commissioned by Ornstein-Schuler, and dated November 24, 2015, stating the property contained proven reserves of 6.775 million tons of limerock. [239]

Mr. Weibel estimated the Green Cove property would only be worth **$450,000, or $3,510 per acre**, after a conservation easement was granted on it.[240] The transaction closed to new investors on November 5, 2015.[241] By December 10, 2015, the taxpayer-investors had collectively paid $3,645,000 to purchase a 95.99 percent interest in the holding company that owned the 128.2-acre tract of land, thus valuing it at **$3,797,270.55, or $29,620 per acre**.[242] They voted 77.82 percent in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment.[243] On December 22, 2015, the company granted that conservation easement[244] and split $17,350,000 worth of charitable deductions between the taxpayer-investors.[245] At a 39.6 percent tax rate, this would have saved these taxpayer-investors $6,870,600 in federal income taxes.

[237] *Id.* at 69 (ex. p. HK_SFCSubpoena_000037657).

[238] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000037658-77).

[239] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000037682, 37807).

[240] *Id.* at 1 (ex. p. HK_SFCSubpoena_000037585).

[241] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[242] Ex. 58 at HK_SFCSubpoena_000037585

[243] Ex. 67.

[244] Ex. 58 at 1 (ex. p. HK_SFCSubpoena_000037589).

[245] *Id.* at HK_SFCSubpoena_000037585.

Green Cove				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
128.2	$17,800,000	$138,846	$450,000	$3,510
Land Value Based on Investor Buy-In	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**	**Investor Vote in Favor of Easement**
$3,797,270.55	$29,620	December 10, 2015	Mining	77.82%
Date Easement Granted	**Deductions Allocated**		**Total Tax Benefit to Investors**	
December 22, 2015	$17,350,000		$6,870,600	

iii. Ornstein-Schuler's Other County Line Ranch Transactions

Ornstein-Schuler sold seven other transactions in 2015 from the County Line Ranch Property to taxpayer-investors. Each was largely similar in structure to FG River Resources and Green Cove Group. These nine entities combined to create over $156 million worth of charitable deductions for Ornstein-Schuler's taxpayer-investors in 2015, all by placing conservation easements on approximately 1,242 acres of land.

In 2016, Ornstein-Schuler moved on to the western half of the County Line Ranch property for promoting more syndicated conservation-easement transactions, this time with even larger dollar amounts. Those investment entities broke down in the following ways:

2016 Entity	Acreage	Before-Easement Valuation	Before-Easement Valuation/Acre	After-Easement Valuation	After-Easement Valuation/Acre
Orange Woods Partners LLC[246]	125.31	$17.8 million	$142,048	$375,000	$2,993
Palmetto Waters Group LLC[247]	121.99	$17.8 million	$145,914	$375,000	$3,074

[246] Ex. 68 – Clayton M. Weibel, MAI, Appraisal Report for Orange Woods Capital LLC (as of Oct. 5, 2016), at HK_SFCSubpoena_000090711.

[247] Ex. 69 – Clayton M. Weibel, MAI, Appraisal Report for Palmetto Waters LLC (as of Oct. 5, 2016), at HK_SFCSubpoena_000092755.

Quality Stones Group LLC[248]	111.0	$17.86 million	$160,901	$360,000	$3,243
Regional Minerals Partners LLC[249]	121.04	$17.8 million	$147,059	$375,000	$3,098
Sailfish Cove Group LLC[250]	122.95	$17.79 million	$144,693	$360,000	$2,928
TOTAL	**602.29**	**$89.05 million**	**$147,852**	**$1.85 million**	**$3,063**

These entities combined to create $87 million worth of charitable deductions for Ornstein-Schuler's investors in 2016, all by placing conservation easements on approximately 602 acres of land.

In 2017, Ornstein-Schuler finished granting conservation easements on two more parcels within the County Line Ranch property, with pre-easement values averaging $215,694 per acre – nearly 50 percent higher than the per-acre values of the firm's previous deals. Those property entities – Fantail Holdings LLC and Orange Stone LLC – broke down in the following ways:

2017 Entity	Acreage	Before-Easement Valuation	Before-Easement Valuation/Acre	After-Easement Valuation	After-Easement Valuation/Acre
Fantail Holdings LLC[251]	100.56	$19.23 million	$191,229	$220,000	$2,188
Orange Stone Group LLC[252]	109.46	$26.07 million	$238,169	$240,000	$2,193
TOTAL	**210.02**	**$45.3 million**	**$215,694**	**$460,000**	**$2,190**

[248] Ex. 70 – Clayton M. Weibel, MAI, Appraisal Report for Quality River Stones LLC (as of Dec. 22, 2016), at HK_SFCSubpoena_000096550.

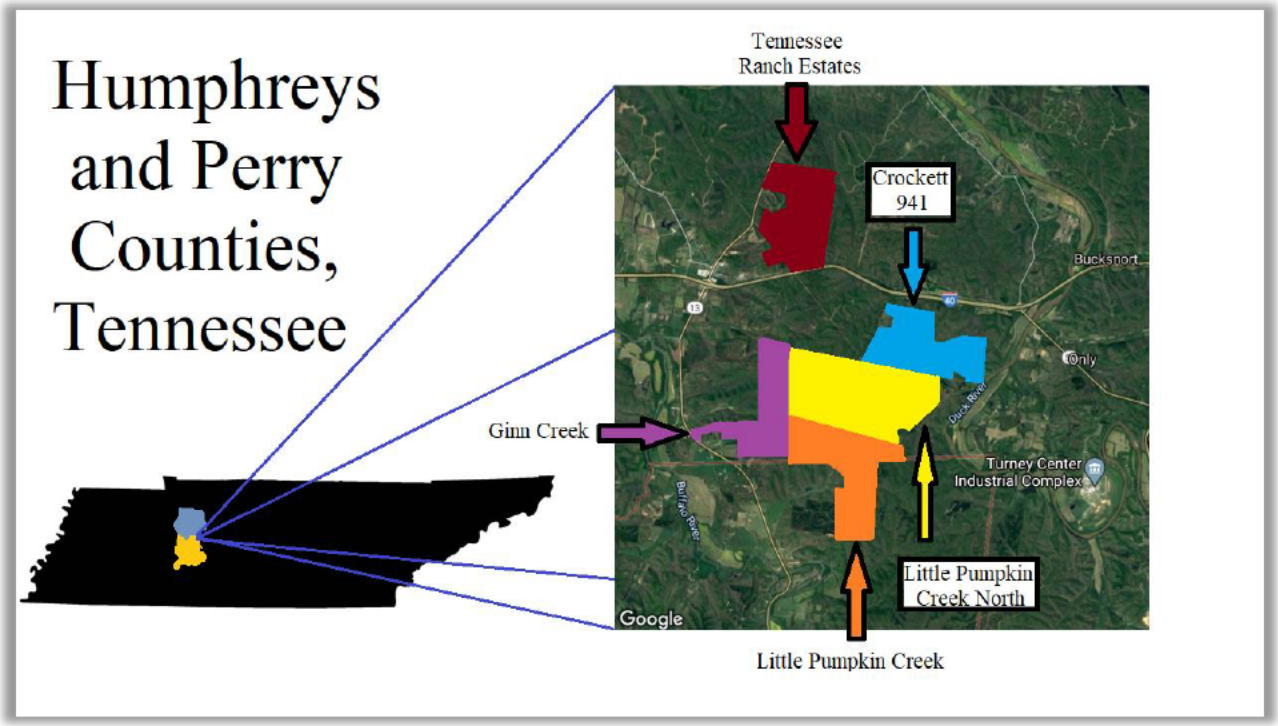
[249] Ex. 71 – Clayton M. Weibel, MAI, Appraisal Report for Regional Minerals LLC (as of Dec. 27, 2016), at HK_SFCSubpoena_000098602.

[250] Ex. 72 – Clayton M. Weibel, MAI, Appraisal Report for Sailfish Cove LLC (as of Dec. 5, 2016), at HK_SFCSubpoena_000102382.

[251] Ex. 73 – Clayton M. Weibel, MAI, and Lucas Mason, Inc., Appraisal Report for Fantail Holdings LLC (as of Nov. 30, 2017), at HK_SFCSubpoena_000161168.

[252] Ex. 74 – Clayton M. Weibel, MAI, and Lucas Mason, Inc., Appraisal Report for Orange Stone LLC (as of Nov. 20, 2017), at HK_SFCSubpoena_000188212.

e. Dr. Kyle Carney, Thomas Jason Free, and Humphreys and Perry County, Tennessee



Humphreys County, Tennessee is about an hour's drive west of Nashville along Interstate 40 and about two hours east of Memphis. The interstate passes through its southern end, and the Tennessee River and Kentucky Lake form the county's western boundary.[253] A rural county, it had a population of 18,535 in 2010, which increased slightly, by 47 people, through the middle of 2019, according to the U.S. Census.[254] The county's median household income between 2014 and 2018 was $41,510, or $23,636 per person, and 13.6 percent of the county's population then lived below the poverty line.[255] Music fans might know Humphreys County best as the home of Wooten Woods, a 150-acre setting for Victor Wooten's Center for Music and Nature, a music camp run by the five-time Grammy Award-winning jazz bassist. The camp "blend[s] in a unique mix of nature studies to help each student realize and reclaim their 'naturalness,' not only in music, but also in life."[256]

[253] *See* Google Maps, *at* maps.google.com.

[254] U.S. Census Bureau, QuickFacts, Humphreys County, Tennessee, *available at* https://www.census.gov/quickfacts/humphreyscountytennessee.

[255] U.S. Census Bureau, QuickFacts, Humphreys County, Tennessee, *available at* https://www.census.gov/quickfacts/humphreyscountytennessee.

[256] Victor Wooten Center for Music and Nature, *at* https://www.vixcamps.com/about.

Not far to the west of the Center for Music and Nature, promoters of syndicated conservation-easement transaction held a total of 6,818 acres of land they told the IRS was worth $78 million, and all of which appear to have been used for tax shelters. One of those promoters, Dr. Kyle Carney, discussed above, simultaneously pitched taxpayer-investors on three different transactions that granted conservation easements on land all within this same secluded, wooded area. Another promoter, Thomas Jason Free (who goes by his middle name), promoted two other transactions in same general area.

Dr. Carney's transactions were known as Little Pumpkin Creek Investments, Little Pumpkin Creek North Investments, and Ginn Creek Investments. Mr. Free's transactions were known as Tennessee Ranch Estates Investments and Crockett 941 Investments.

i. Little Pumpkin Creek Investments

On October 21, 2015, a holding company managed by Dr. Carney known as Little Pumpkin Creek purchased 2,497.25 wooded acres in Humphreys County (and Perry County, immediately south of Humphreys County) for **$3,121,562.50, or $1,250 per acre**.[257] A year later, at the end of 2016, 47 different taxpayer-investors in another holding company known as Little Pumpkin Creek Investments claimed that about half of that land, 1,209.38 acres,[258] had a pre-conservation easement value of **$18,470,000, or approximately $15,272 per acre**, which is more than 12 times what the land sold for in October 2015.[259] (The other half of the land was used in the transaction discussed next, Little Pumpkin Creek *North* Investments.) In December 2016, those 47 different taxpayer-investors collectively paid $3,047,000 for a 96-percent interest in the company owning the underlying land (Little Pumpkin Creek), thus valuing the land as being worth **$3,173,958.33, or $2,624 per acre**.[260]

The basis for the land's $18.47 million valuation was an appraisal written by Ronald S. Foster. According to that appraisal, the land could accommodate low-density residential development, specifically "49 large view lots averaging 24± acres."[261] Mr. Foster used both

[257] Ex. 75 – Ronald S. Foster, Ronald S. Foster & Company, Inc., Appraisal Report for Little Pumpkin Creek North, LLC (Dec. 2, 2016), at 38 (ex. p. CARNEY-SFC_00005437).

[258] Ex. 76 – Letter from Daniel J. Donovan, Partner, King & Spalding LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Apr. 30, 2019), Appendix A, Attachment A at SFC-Carney_00000001 (first spreadsheet).

[259] Ex. 77 – Ronald S. Foster, Ronald S. Foster & Company, Inc., Appraisal Report for Little Pumpkin Creek, LLC (Dec. 2, 2016), at 3 (ex. p. CARNEY-SFC_00005072).

[260] Ex. 78 – Little Pumpkin Creek, LLC, Confidential Private Placement Memorandum, at 6, 17 (ex. p. SFC-Carney_00002194, 2205).

[261] Ex. 13 – Investment Summary for Little Pumpkin Creek Investments, LLC, at SFC-Carney_00002181; Ex. 77 – Ronald S. Foster, Ronald S. Foster & Company, Inc., Appraisal Report for Little Pumpkin Creek, LLC (Dec. 2, 2016), at 61 (ex. p. CARNEY-SFC_00005130).

discounted cash flow and sales-comparison methods.[262] However, the lands he picked as comparisons were not in Humphreys County. Instead, he compared the subject property to properties in the Tennessee counties of Robertson, Madison, and Shelby.[263] Robertson County's estimated 2019 population was 71,813 (Humphreys: 18,582) and its median household income between 2014 and 2018 was $61,774 (Humphreys: $41,510).[264] Madison County's estimated 2019 population was 97,984 (Humphreys: 18,582), and its median household income was $46,223 (Humphreys: $41,510).[265] Shelby County's estimated 2019 population was 937,166 (Humphreys: 18,582) and its median household income was $49,782 (Humphreys: $41,510).[266] Shelby County is the largest county in Tennessee, and Memphis is its seat.[267]

One of Mr. Foster's reasons for looking outside of Humphreys County for comparable sales was because of a limited number of sales in the subject market. Specifically, he stated:

> The subject market area yielded very limited sales data that was comparable to the subject. A large portion of the sales data consisted of small commercial or residential sites that were not considered comparable to the size of the subject. Another portion of the sales data consisted of condemnation transfers and REO/bank owned sales. My opinion is that arm's length sales may be outside of the subject market area but in similar locations would be comparable to the subject. [268]

Despite this seemingly illiquid land market in Humphrey's County, Mr. Foster wrote in his appraisal,

> The residential market in the immediate neighborhood has experienced moderate growth. Research indicates that demand for residential properties is average in the subject area. Many buyers are looking for an adequate sized parcel with adequate available utilities and natural scenic views. The subject tract's large size gives it the ability to subdivide into numerous single-family lots fitting market

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[262] *See* Ex. 77 at 57-89 (ex. p. CARNEY-SFC_00005126-5158).

[263] Ex. 77 at 65-70 (ex. p. CARNEY-SFC_00005134-5139).

[264] U.S. Census Bureau, QuickFacts, Robertson County, Tennessee, *available at* https://www.census.gov/quickfacts/robertsoncountytennessee.

[265] U.S. Census Bureau, QuickFacts, Madison County, Tennessee, *available at* https://www.census.gov/quickfacts/madisoncountytennessee.

[266] U.S. Census Bureau, QuickFacts, Shelby County, Tennessee, *available at* https://www.census.gov/quickfacts/shelbycountytennessee.

[267] Shelby County, Tennessee – About Our Government, *at* https://shelbycountytn.gov/67/About-Our-Government.

[268] Ex. 77 at 78 (ex. p. CARNEY-SFC_00005147).

demand. For these reasons, it is my opinion that the subject property development with residential lots is financially feasible.[269]

Mr. Foster also stated as such in his appraisal: "The subject property has no specific road frontage and access to the property is via a 60-foot-wide ingress egress easement from Lost Creek Road."[270] The Little Pumpkin Creed Investments partnership closed to new investors on September 2, 2016.[271] Thereafter, those taxpayer-investors voted on what to do with the property: 46 out of the 47 taxpayer-investors voted to grant a conservation easement on the land, and one of them failed to properly vote. None of them actually voted to develop the land.[272] Three months later, on December 2, 2016, they granted a conservation easement on the Little Pumpkin Creek land[273] and claimed combined charitable deductions worth $17,260,000.[274] At the top income tax rate of 39.6 percent in 2016, this would have saved these 47 taxpayer-investors $6,834,960 in federal income taxes.[275] Dr. Carney pocketed $500,000 in fees from the transaction.[276]

Little Pumpkin Creek				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
1,209.38	$18,470,000	$15,272	$1,209,360	$1,000
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
47	$3,173,958.33	$2,624	September 2, 2016	Residential

[269] *Id.*, at 61 (ex. p. CARNEY-SFC_00005130).

[270] *Id.*, at 40 (ex. p. CARNEY-SFC_00005109).

[271] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[272] Ex. 79 – Letter from Daniel J. Donovan, Partner, King & Spalding LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Sept. 10, 2019), Appendix A, Attachment A, at SFC-Carney_00043654.

[273] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[274] *Id.*

[275] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[276] Ex. 80 – Letter from Daniel J. Donovan, Partner, King & Spalding LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (July 31, 2019), Appendix A, Attachment A at SFC-Carney_00012643 (second spreadsheet).

Investor Vote in Favor of Easement	Date Easement Granted	Deductions Allocated	Total Tax Benefit to Investors	Fees Claimed by EvrSource
97.87%	December 2, 2016	$17,260,000	$6,834,960	$500,000

ii. Little Pumpkin Creek North Investments

At the same time in 2016, Dr. Carney used the other half of the land purchased by Little Pumpkin Creek in October 2015 for $1,250 per acre to sell another conservation-easement tax shelter, this time known as Little Pumpkin Creek *North* Investments. It involved the northern half of the land, which covered 1,287.13 acres.[277] This time only four different taxpayer-investors bought into the holding company,[278] which was closed off to investors on November 28, 2016.[279] The taxpayer-investors collectively paid $3,329,150 for a 95-percent interest in the holding company owning the underlying land, thus valuing that land as being worth **$3,504,368.42, or $2,723 per acre**.[280]

Ronald S. Foster was still the appraiser, and his "before"-easement value of the property was **$20,000,000, or approximately $15,538 per acre**.[281] Again, he used both a discounted cash flow method as well as sales comparisons for estimating value.[282] His comparison sales were the same ones used for Little Pumpkin Creek: one in Robertson County, Tennessee; one in Madison County, Tennessee; and one in Shelby County, Tennessee.[283] He used the same explanation for not using nearby comparison sales,[284] and he also used the same language to discuss the market potential.[285]

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[277] Ex. 12 – Investment Summary for Little Pumpkin Creek North Investments, LLC, at SFC-Carney_00002331); Ex. 76 – Letter from Daniel J. Donovan, Partner, King & Spalding LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Apr. 30, 2019), Appendix A, Attachment A at SFC-Carney_00000001 (first spreadsheet).

[278] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[279] *Id.*

[280] Ex. 81 – Little Pumpkin Creek North, LLC, Confidential Private Placement Memorandum, at 6, 17 (ex. p. SFC-Carney_00002345, 2356).

[281] Ex. 75 at 3 (ex. p. CARNEY-SFC_00005402).

[282] *See* Ex. 75 at 52-84 (ex. p. CARNEY-SFC_00005451-5483).

[283] *Compare* Ex. 75 at 60-67 (ex. p. CARNEY-SFC_00005459-5466) *with* Ex. 77 at 65-70 (ex. p. CARNEY-SFC_00005134-5139) (listings of comparison sales are virtually identical in the two different appraisals).

[284] Ex. 75 at 73 (ex. p. CARNEY-SFC_00005472).

[285] *Id.* at 56 (ex. p. CARNEY-SFC_00005455).

And the Little Pumpkin Creek *North* property suffered from the same impediment to development as did the Little Pumpkin Creek property, having no access road, as well as the added difficulty of a power-line easement running across it. According to Mr. Foster's appraisal,

> "The subject property has no specific road frontage and access to the property is via a 60-foot-wide ingress egress easement from Lost Creek Road. The subject is considered to have adequate access. The property is irregular in shape, is wooded and has gently rolling to rolling topography throughout. There is a power line easement that runs northwest to south east along the eastern portion of the subject property."[286]

All four Little Pumpkin Creek North investors voted to grant a conservation easement on the land.[287] On December 2, 2016, they granted that easement on the land[288] and claimed charitable deductions collectively worth $18,711,000.[289] At the top income tax rate of 39.6 percent in 2016, this would have saved these four taxpayer-investors $7,409,556 in federal income taxes.[290] Dr. Carney pocketed another $500,000 in fees from the transaction.[291]

Little Pumpkin Creek North				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
1,287.13	$20,000,000	$15,538	$1,287,130	$1,000
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
4	$3,504,368.42	$2,723	November 28, 2016	Residential
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EvrSource**
100%	December 2, 2016	$18,711,000	$7,409,556	$500,000

[286] *Id.* at 38 (ex. p. CARNEY-SFC_00005437).

[287] Ex. 79, Appendix A, Attachment A, at SFC-Carney_00043654.

[288] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[289] *Id.*

[290] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[291] Ex. 80, Appendix A, Attachment A at SFC-Carney_00012643 (second spreadsheet).

iii. Ginn Creek Investments

Additionally, Dr. Carney promoted a third conservation-easement tax shelter for 2016 in Humphreys County, this time calling it Ginn Creek. It involved 1,081.06 acres of land,[292] again with a purported development potential for low-density residential.[293]

The appraiser was different from the Little Pumpkin Creek transactions. David R. Roberts estimated the wooded property's "before" value at **$14,054,000, or approximately $13,000 per acre**.[294] Unlike the other appraisers discussed in this report, Mr. Roberts used only comparison sales in coming to his "before" estimate and did not use a discounted cash flow method, the method that helped get Claud Clark in trouble with the Alabama Real Estate Appraisers Board.[295] However, the properties Mr. Roberts used as comparison sales were not in Humphreys County. Rather, three were in Williamson County, Tennessee; one was in Rutherford County, Tennessee; and another was in Walker County, Georgia, specifically on Lookout Mountain. Williamson County's estimated 2019 population was 238,412 (Humphreys: 18,582) and its median household income between 2014 and 2018 was $109,026 (Humphreys: $41,510).[296] In 2017, Forbes listed Williamson County as the wealthiest county in Tennessee and the seventh wealthiest county in the United States.[297] Rutherford County's estimated 2019 population was 332,285 (Humphreys: 18,582), and its median household income was $63,846 (Humphreys: $41,510).[298] Walker County, Georgia's estimated 2019 population was 69,761 (Humphreys: 18,582) and its median household income was $43,650 (Humphreys: $41,510).[299] The median household income for Lookout Mountain, specifically, was $106,908 in 2017.[300] Lookout Mountain was the site of the 1863 "Battle Above the Clouds" during the Civil War and

[292] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (first spreadsheet).

[293] Ex. 14 – Investment Summary for Ginn Creek Investments, LLC, at SFC-Carney_00001954; Ex. 82 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Ginn Creek, LLC (Dec. 8, 2016), at 7 (ex. p. CARNEY-SFC_00004361).

[294] Ex. 82 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Ginn Creek, LLC (Dec. 8, 2016), at 3 (ex. p. CARNEY-SFC_00004358).

[295] *See* Ex. 82 at 50-65 (ex. p. CARNEY-SFC_00004404-4419).

[296] U.S. Census Bureau, QuickFacts, Williamson County, Tennessee, *available at* https://www.census.gov/quickfacts/williamsoncountytennessee.

[297] Rebecca Lerner, The 10 Richest Counties In America 2017, Forbes (July 13, 2017), *at* https://www.forbes.com/sites/rebeccalerner/2017/07/13/top-10-richest-counties-in-america-2017/#59e7a6bf2ef3.

[298] U.S. Census Bureau, QuickFacts, Rutherford County, Tennessee, *available at* https://www.census.gov/quickfacts/rutherfordcountytennessee.

[299] U.S. Census Bureau, QuickFacts, Walker County, Georgia, *available at* https://www.census.gov/quickfacts/walkercountygeorgia.

[300] Data USA, Lookout Mountain, Georgia, *at* https://datausa.io/profile/geo/lookout-mountain-ga.

is now perhaps the most popular tourist attraction in the Chattanooga, Tennessee area, with over 30 miles of hiking trails.[301]

However, once the taxpayer-investors would grant a conservation easement on the property, it would only be worth **$704,000, or $651 per acre**, according to Mr. Roberts.[302] Those taxpayer-investors, 50 in all,[303] collectively paid $2,007,500 for a 95-percent interest of the partnership holding the land, thus valuing the land as being worth **$2,113,157.89, or $1,955 per acre**.[304] They all bought their interests by July 13, 2016.[305] Thereafter, 49 voted to grant a conservation easement on the land, and one voted to hold the land for future investment.[306] On December 2, 2016, they granted that easement on the land[307] and claimed combined charitable deductions worth $13,350,000.[308] At the top income tax rate of 39.6 percent in 2016, this would have saved these four taxpayer-investors $5,286,600 in federal income taxes.[309] Once again, Dr. Carney pocketed $500,000 in fees from the transaction,[310] bringing his fees for selling syndicated conservation-easement transactions associated with the Humphreys County, Tennessee area in 2016 to $1.5 million.

Ginn Creek				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
1,081.06	$14,054,000	$13,000	$704,000	$651

[301] National Park Service, Chickamauga & Chattanooga, *at* https://www.nps.gov/chch/learn/lookout-mountain htm.

[302] Ex. 82 at 3 (ex. p. CARNEY-SFC_00004358).

[303] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[304] Ex. 83 – Ginn Creek Investments, LLC, Confidential Private Placement Memorandum, at 6, 17 (ex. p. SFC-Carney_00001967, 1978).

[305] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[306] Ex. 79, Appendix A, Attachment A, at SFC-Carney_00043654.

[307] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[308] *Id.*

[309] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[310] Ex. 80, Appendix A, Attachment A at SFC-Carney_00012643 (second spreadsheet).

Number of Investors	Land Value Based on Investor Buy-In	Land Value/ Acre Based on Investor Buy-In	Transaction Close Date	Purported Development Potential
50	$2,113,157.89	$1,955	July 13, 2016	Residential
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EvrSource**
98%	December 2, 2016	$13,350,000	$5,286,600	$500,000

iv. Tennessee Ranch Estates

Thomas Jason Free is a commercial real estate broker licensed in six states throughout the southeast.[311] In 2014, he and his partners Lane Lawler and Deborah Powers purchased, through a holding company, 1,010.43 acres of land just north of I-40 and the Little Pumpkin Creek properties.[312] They bought the land for **$1,432,601, or $1,418 per acre**, from a company called 1st American Land Holdings, Inc., which originally acquired the property in February 2006. First American Land Holdings originally planned on subdividing that land into 190 residential home sites. However, the financial crisis of the late 2000s put an end to those plans, and the land remained otherwise undeveloped beyond the construction of gravel roads.[313]

By late 2015, Mr. Free was advertising to taxpayer-investors looking for a tax deduction that the land was worth **$14,146,000, or approximately $14,000 per acre**,[314] because of its potential for low-density residential development.[315] David Roberts, the same appraiser used by Dr. Carney for the Ginn Creek transaction, provided this appraisal to Mr. Free, using a sales-comparison method, again looking to comparison properties in the wealthier and more populated Williamson and Rutherford counties in Tennessee.[316]

[311] Ex. 84 – Letter from Mark D. Allison, Partner, Caplan & Drysdale, Chartered, to John L. Schoenecker, Senior Investigative Counsel, and Christopher Arneson, Senior Tax Policy Advisor, United States Senate Committee on Finance (July 31, 2019), at 1.

[312] Ex. 8 – Tennessee Ranch Estates Investors, Confidential Private Placement Memorandum, LLC (Oct. 16, 2015), at 5-6 (ex. p. FREE00000421-22); Ex. 85 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Tennessee Ranch Estates, LLC (Dec. 3, 2015), at ex. p. FREE00002538.

[313] Ex. 8 at 6 (ex. p. FREE00000422).

[314] Ex. 85 at 3, 93 (ex. p. FREE00002541, 2630).

[315] *Id.* at 7 (ex. p. FREE00002544).

[316] *Id.* at 45, 55 (ex. p. FREE00002582, 2592).

In his appraisal, Mr. Roberts's offered this opinion about the development potential of the property, essentially saying that smaller sites would not sell, but a few larger ones would:

> The subject property was opened in 2007 as a 109 site residential subdivision, Tennessee Ranch Estates. In 2008 the economic downturn that effected the entire United States stopped the sales of the property. The property has not been marketed for many years by the previous owners. Also information gathered from the immediate subject neighborhood, including an adjoining subdivision, indicate that the lack of sales in the immediate subject market area currently would not indicate the demand for 190 residential homesites. However, numerous developments with larger homesites ranging from 5 to 10-acres, located on the Cumberland Plateau, have experienced growth and development in this market. These include the Jasper Highlands neighborhood west of Chattanooga, Tennessee, and Long Branch Lakes. Combining the 190 residential homesites that average 5-acres in size to larger homesites would be best use of the property, adding to the privacy and appeal of the homesites. Considering the prime access to the site off I-40, and the attraction of the rolling Tennessee Hills in the subject neighborhood, the most financially feasible use of the subject property would be for larger residential homesites, adding to the privacy and appeal, utilizing the roads in place, to homesites of 10 to 20-acres in size.[317]

Elsewhere in his appraisal, Mr. Roberts stated how the land was a prime location for residential development.

> Although the existing residential subdivision, which was opened in 2007, was not successful and was sold to the current owners, one of the major factors of this failure was the economic downturn that began in 2008 nationwide. This downturn has stabilized and Nashville, Tennessee is one of the strongest residential markets in the United States. This growth and development has spread north, south, and west of Nashville, as noted in the discussion of Humphreys County. Several adjoining counties have begun to experience residential growth and development. The neighborhood has excellent access off I-40, public roads, public water available, and gently rolling topography. It is prime location for residential development.[318]

According to Mr. Roberts, if the owners were to grant a conservation easement on most of the property (leaving ten acres unencumbered so that five homes could still be built there) then it would only be worth **$1,094,000, or $1,083 per acre**.[319]

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[317] *Id.* at 42 (ex. p. FREE00002579).

[318] *Id.* at 20 (ex. p. FREE00002557).

[319] *Id.* at 3, 93 (ex. p. FREE000002541, 2630).

By December 17, 2015, 26 investors[320] paid $2,618,330 for a 98-percent interest in the holding company that owned the land, [321] essentially valuing it at **$2,671,765.31, or $2,644 per acre**. They did not even vote on what to do with the property, whether to develop it or grant a conservation easement on the property. [322] The conservation easement was simply a foregone conclusion, and on December 29, 2015, Mr. Free granted that conservation easement on the property, [323] just in time for his investors to get the charitable deduction in tax year 2015. That deduction, split among the 26 taxpayer investors, was $12,790,960, [324] collectively saving them an estimated $5,065,220 in federal taxes.[325] Mr. Free and his associates collected a fee of $121,378 for the transaction.[326]

Tennessee Ranch Estates				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
1,010.43	$14,146,000	$14,000	$1,094,000	$1,094
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
26	$2,671,765.31	$2,644	December 15, 2015	Residential
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EvrSource**
No vote	December 29, 2015	$12,790,960	$5,065,220	$121,378

[320] Ex. 84 at 9.

[321] Ex. 8 at 9.

[322] Ex. 84 at 17.

[323] *Id.* at 7.

[324] *See* Ex. 84 at 8.

[325] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[326] Ex. 84 at 21.

v. Crockett Investors, LLC

In 2016, Mr. Free promoted a similar transaction in the same Humphreys County neighborhood, this one with a 941.76-acre property he called Crockett 941,[327] which directly borders Victor Wooten's Center for Music and Nature to the west.[328] Again, the purported development potential was "low-density residential,"[329] and appraiser David Roberts estimated the property's "before"-easement value at **$11,301,000, or approximately $12,000 per acre**.[330] He arrived at this estimate by using sales comparisons[331] in Williamson County, Tennessee; Lookout Mountain, Georgia; Rutherford County, Tennessee; and Sullivan County, Tennessee.[332]

Mr. Roberts's opinion about development potential of the property was virtually identical to his opinion about the development of Ginn Creek, discussed above.[333]

Mr. Roberts also stated the following about the property, which is identical to the same language in his Ginn Creek appraisal, listed above:

> The neighborhood is rural, and no public water or sewer is offered by Humphreys County, and there is no countywide zoning. Neighborhood land is rolling to sloping with good ridgetop views, and the land along the Duck River is rolling. I-40 runs east to west through the county and the neighborhood is approximately 25% developed. Some of the neighborhood land has been utilized for timber tracts over the past few years, and there has been some residential growth and development along the Duck River. There is also extensive hunting done in the subject county, and many of these tracts are utilized by owners or leased by hunting clubs for deer and turkey.
>
> The subject property is located west of Nashville, Tennessee which is one the [sic] growing urban areas in the United States. This growth and development has spread west along I-40, and although not reaching Humphreys County, Tennessee just yet for fulltime residents, this growth is headed in this direction. Many of the

[327] Ex. 86 – Crockett Investors, LLC, Confidential Private Placement Memorandum (Oct. 25, 2016), at 2 (ex. p. FREE00000002); Ex. 87 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Crockett 941, LLC (Dec. 6, 2016), at 1 (ex. p. FREE00000673).

[328] *See* State of Tennessee Comptroller of the Treasury, *at* https://assessment.cot.tn.gov/RE_Assessment (search for Humphreys County, Parcel IDs 152 003.00 and 152 007.00).

[329] Ex. 87 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Crockett 941, LLC (Dec. 6, 2016), at 7 (ex. p. FREE00000678).

[330] *Id.* at 8 (ex. p. FREE00000679).

[331] *Id.* at 43 (ex. p. FREE00000714).

[332] *Id.* at 56 (ex. p. FREE00000727).

[333] *Id.* at 40 (ex. p. FREE00000711).

> properties built are weekend residents due to the nearby activities along the Tennessee River, Duck River, and Kentucky Lake. Considering the good access to the property off I-40, public roads, and the gently rolling topography of the land, and the nearby access to recreational areas, it is a prime location for low-density residential development around recreational areas.[334]

In fact, not only is the last paragraph directly above identical to the same corresponding paragraph in Mr. Roberts' appraisal for Ginn Creek, but it is clear he simply cut and pasted that language from one to the other, as the same typographical error of "which is one the" appears in both appraisals.

Mr. Roberts estimated that, once encumbered by a conservation easement, the property would be worth **$615,000, or $656 per acre** for 937.76 conserved acres (four of the property's acres would be excluded from easement in order to build two homesites).[335] This estimated post-conservation easement value was not much different from what Mr. Free originally purchased the unencumbered land for. The company that actually owned the land by the time it would have conservation easement granted on it – Crocket 941 LLC – paid $752,800 for a 98-percent interest of that land on July 22, 2016, essentially valuing the land at $768,163.27, or $760 per acre.[336] Thereafter, by December 16, 2016,[337] the four taxpayer-investors collectively paid $2,100,000 to Mr. Free for that 98-percent interest, thus valuing it at **$2,142,857.14, or $2,275 per acre**.[338]

The taxpayer-investors all voted to grant a conservation easement on the land instead of developing it,[339] and the easement was granted on December 22, 2016,[340] just in time for the four taxpayer-investors to claim deductions for the 2016 tax year. They shared $10,501,680 worth of federal tax deductions,[341] saving them an estimated

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[334] *Id.* at 19 (ex. p. FREE00000690).

[335] Ex. 87 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Crockett 941, LLC (Dec. 6, 2016), at 8 (ex. p. FREE00000679).

[336] Ex. 86 at 7 (ex. p. FREE00000007).

[337] Ex. 84 at 6.

[338] *Id.* at 9.

[339] *Id.* at 17.

[340] *Id.* at 7.

[341] *See* Ex. 84 at 8.

$4,158,665 in federal tax liabilities.[342] Mr. Free's claimed $736,780 in fees on the transaction.[343]

Crockett				
Acreage	**Before-Easement Valuation**	**Before - Easement Valuation/Acre**	**After-Easement Valuation**	**After-Easement Valuation/Acre**
941.76	$11,301,000	$12,000	$615,000	$656
Number of Investors	**Land Value Based on Investor Buy-In**	**Land Value/ Acre Based on Investor Buy-In**	**Transaction Close Date**	**Purported Development Potential**
4	$2,142,857.14	$2,275	December 16, 2016	Residential
Investor Vote in Favor of Easement	**Date Easement Granted**	**Deductions Allocated**	**Total Tax Benefit to Investors**	**Fees Claimed by EvrSource**
100%	December 22, 2016	$10,501,680	$4,158,665	$736,780

[342] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[343] Ex. 84 at 21.

10. Conclusion

This Committee is made up of Members with a diversity of views on the role of taxation in our Nation. There is no disagreement among the Members, however, when it comes to taxpayers employing abusive methods to reduce their taxes.

Judge Learned Hand famously stated, "Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes."[344] There is, however, a duty for taxpayers to be honest in reporting their income and claiming deductions on their tax returns. The transactions discussed in this report involve land valuations that appear so inflated above their original purchase prices that they cannot reasonably be characterized as anything other than abusive tax shelters. Despite the formal documentation developed by the promoters and nominal votes by investors, documents obtained in this investigation clearly show that both the promoters and the taxpayer-investors in these deals understood them simply as tax shelters. At their core, they are transactions in which taxpayers can save two dollars in taxes for every one dollar they give to transaction promoters – with promoters pocketing millions of dollars in fees for organizing the deals.

These types of abusive tax shelters erode the Nation's tax base and sow pessimism among all Americans about the fairness of our tax laws. Our tax system is a self-reporting one, meaning individual taxpayers are required to honestly report their income and pay taxes on it. The burden is not on the government to determine those amounts, as it would be impossible for the government to do so for hundreds of millions of taxpayers. In order for this self-reporting system to work and not devolve into a culture of duplicity as the norm, it is critical for taxpayers to generally believe the system is fair – even if a taxpayer does not like paying over his or her hard-earned money to the government, he or she knows his or her neighbors must do so as well. If this understanding breaks down, so too could a culture of compliance in our self-reporting system. If syndicated conservation-easement transactions continue to exist in the form they have over the past decade, they risk not only depriving the government of billions of dollars of revenue but also degrading the general understanding that our Nation's tax laws apply equally to us all.

* * *

[344] *Helvering v. Gregory*, 69 F.2d 809, 810 (2d Cir. 1934) (Hand, J.), *aff'd*, 293 U.S. 465 (1935).

The Senate Committee on Finance thanks the staff of the Joint Committee on Taxation for its technical assistance in developing this report.

We also thank our clerks for their assistance.

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11. Appendix

a. Transaction Details
    i. EcoVest Capital
        1. Azalea Bay Resort (2015)
            a. Acres: 269.41[345]
            b. Purported units to be developed: 936 two-bedroom units (1,300 square-feet each), 936 three-bedroom units (1,600 square-feet each), and 284 four-bedroom units (2,200 square-feet each) for a total of 117 four-story buildings[346]
            c. Claud Clark's **"before"**-easement value of the property: **$47,954,567, or approximately $177,998 per acre**[347]
            d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[348]
            e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Azalea Bay Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[349]
            f. Claud Clark's **"after"**-easement value of the property: **$2,816,950, or $10,456 per acre**[350]
            g. Number of taxpayer-investors involved in the transaction: 80[351]
            h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,749,678.02, thus

[345] Ex. 30 – Azalea Bay Resort Holdings, LLC, Confidential Private Placement Memorandum (June 1, 2015), at 7 (ex. p. ECOVEST-SF_0000007); Ex. 31 – Claud Clark, III, Clark-Davis, PC, Appraisal of Azalea Bay Resort (Mar. 3, 2015), at 42 (ex. p. ECOVEST-SF_0002356).

[346] Ex. 30 at 42 (ex. p. ECOVEST-SF_0002356).

[347] Ex. 31 – Claud Clark, III, Clark-Davis, PC, Appraisal of Azalea Bay Resort (Mar. 3, 2015), at 2-3 (ex. p. ECOVEST-SF_0002316-17).

[348] Ex. 31 at 49 (ex. p. ECOVEST-SF_0002363).

[349] *Id.* at 48 (ex. p. ECOVEST-SF_0002362).

[350] *Id.* at 2-3 (ex. p. ECOVEST-SF_0002316-17).

[351] Ex. 15 – Letter from Sean M. Akins, Partner, Covington & Burling LLP, to John L. Schoenecker, Senior Investigative Counsel, United States Senate Committee on Finance (June 21, 2019), at 16.

valuing the land as being worth **$3,967,913.25, or $14,728 per acre**[352]

i. Close date for investing in the transaction: August 21, 2015[353]
j. Taxpayer-investor vote on disposition of property: 706 votes in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 0 votes in favor of holding the property for future investment[354]
k. Date of granting conservation easement on the land: December 22, 2015[355]
l. Total deductions allocated as a result of the easement: $42,987,100[356]
m. Total tax benefit to taxpayer-investors: $16,086,633[357]
n. EcoVest's fees as a result of the transaction: $1,483,491[358]

2. Belle Harbour Resort (2015)

a. Acres: 36.7[359]
b. Purported units to be developed: 266 two-bedroom units, 500 three-bedroom units, and 286 four-bedroom units among 13 four-story buildings and one nine-story building[360]

[352] Ex. 32 – Assignment and Assumption of Membership Interest of Azalea Bay Resort (ex. p. ECOVEST-SF_0000787-98); Ex. 15 – Letter from Sean M. Akins, Partner, Covington & Burling LLP, to John L. Schoenecker, Senior Investigative Counsel, United States Senate Committee on Finance (June 21, 2019), at 23.

[353] Ex. 15 at 12.

[354] *Id.* at ex. p. ECOVEST-SF_0000009.

[355] *Id.* at 13.

[356] *Id.* at 15.

[357] *Id.* at 23.

[358] Ex. 30 at 12 (ex. p. ECOVEST-SF_0000027). This amount is calculated by adding "Arrangement Fee," "Annual Management Fee," and the "Disposition Management Fee" for the "Conservation Option" having been chosen. Reimbursements to EcoVest for its out-of-pocket expenses are not included in this amount.

[359] Ex. 88 – Belle Harbour Resort Holdings, LLC, Confidential Private Placement Memorandum (Sept. 21, 2015), at ex. p. ECOVEST-SF_0015101.

[360] Ex. 88 at ex. p. ECOVEST-SF_0015101.

c. Claud Clark's **"before"**-easement value of the property: **$59,207,554, or $1,613,285 per acre**[361]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[362]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Belle Harbour Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[363]
f. Claud Clark's **"after"**-easement value of the property: **$406,808, or $11,085 per acre**[364]
g. Number of taxpayer-investors involved in the transaction: 155[365]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $1,759,200, thus valuing the land at **$1,861,587.30, or $50,724 per acre**.[366]
i. Close date for investing in the transaction: December 17, 2015[367]
j. Taxpayer-investor vote on disposition of property: 548 votes in favor of granting a conservation easement on the land, 6 votes in favor of developing it, and 0 votes in favor of holding the property for future investment[368]
k. Date of granting conservation easement on the land: December 22, 2015[369]

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[361] Ex. 89 – Claud Clark, III, Clark-Davis, PC, Appraisal of Belle Harbour Resort (Dec. 15, 2015), at 2-3 (ex. p. ECOVEST-SF_0017583-84).

[362] *Id.* at 57 (ex. p. ECOVEST-SF_0017638).

[363] *Id.* at 56 (ex. p. ECOVEST-SF_0017637).

[364] *Id.* at 2-3 (ex. p. ECOVEST-SF_0017583-84).

[365] Ex. 15 at 16.

[366] Ex. 90 – Assignment and Assumption of Membership Interest (Dec. 17, 2015), at 1 (at ex. p. ECOVEST-SF_0016030); Ex. 15 – Letter from Sean M. Akins, Partner, Covington & Burling LLP, to John L. Schoenecker, Senior Investigative Counsel, United States Senate Committee on Finance (June 21, 2019), at 23.

[367] Ex. 15 at 13.

[368] *Id.* at 21.

[369] *Id.* at 13.

l. Total deductions allocated as a result of the easement: $55,890,950[370]
m. Total tax benefit to taxpayer-investors: $20,915,511[371]
n. EcoVest's fees as a result of the transaction: $1,423,434[372]

3. Cypress Cove Marina (2015)

a. Acres: 28[373]
b. Purported units to be developed: 242 two-bedroom units, 485 three-bedroom units, and 252 four-bedroom units among 10 four-story buildings and one nine-story building[374]
c. Claud Clark's **"before"**-easement value of the property: **$39,960,013, or $1,427,143 per acre**[375]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[376]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Cypress Cove Marina, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[377]
f. Claud Clark's **"after"**-easement value of the property: **$263,462, or $9,409 per acre[378]**

[370] *Id.* at 15.

[371] *Id.* at 23.

[372] Ex. 88 at 13 (ex. p. ECOVEST-SF_0015122).

[373] Ex. 91 – Cypress Cove Marina Holdings, LLC, Confidential Private Placement Memorandum (Aug. 3, 2015), at ex. p. ECOVEST-SF_0007717.

[374] *Id.*

[375] Ex. 92 – Claud Clark, III, Clark-Davis, PC, Appraisal of Cypress Cove Marina (Dec. 15, 2015), at 2-3 (ex. p. ECOVEST-SF_0009220-01).

[376] *Id.* at 51 (ex. p. ECOVEST-SF_0009269).

[377] *Id.* at 50 (ex. p. ECOVEST-SF_0009268).

[378] *Id.* at 2-3 (ex. p. ECOVEST-SF_0009220-01).

g. Number of taxpayer-investors involved in the transaction: 114[379]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $1,040,000, thus valuing the land at **$1,100,529.10, or $39,304.61 per acre**.[380]
i. Close date for investing in the transaction: November 13, 2015[381]
j. Taxpayer-investor vote on disposition of property: 504 votes in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 0 votes in favor of holding the property for future investment[382]
k. Date of granting conservation easement on the land: December 22, 2015[383]
l. Total deductions allocated as a result of the easement: $37,742,150[384]
m. Total tax benefit to taxpayer-investors: $14,123,867[385]
n. EcoVest's fees as a result of the transaction: $1,012,568[386]

4. Diamond Grande Resort (2015)

a. Acres: 67.2[387]
b. Purported units to be developed: 292 two-bedroom units, 526 three-bedroom units, and 299 four-bedroom units among 13 five-story buildings and one nine-story building[388]

[379] Ex. 15 at 16.

[380] Ex. 91 at 23.

[381] Ex. 15 at 13.

[382] *Id.* at 21.

[383] *Id.* at 14.

[384] *Id.* at 16.

[385] *Id.* at 23.

[386] Ex. 91 at 13 (ex. p. ECOVEST-SF_0007738).

[387] Ex. 93 – Diamond Grande Resort Holdings, LLC, Confidential Private Placement Memorandum (Oct. 13, 2015), at ex. p. ECOVEST-SF_0021358.

[388] Ex. 93 at ex. p. ECOVEST-SF_0021358.

c. Claud Clark's **"before"**-easement value of the property: **$56,013,625, or $833,536 per acre**[389]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[390]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Diamond Grande Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[391]
f. Claud Clark's **"after"**-easement value of the property: **$454,191, or $6,759 per acre**[392]
g. Number of taxpayer-investors involved in the transaction: 168[393]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,226,560, thus valuing the land at **$3,414,349, or $50,809 per acre**[394]
i. Close date for investing in the transaction: December 23, 2015[395]
j. Taxpayer-investor vote on disposition of property: 621 votes in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 0 votes in favor of holding the property for future investment[396]
k. Date of granting conservation easement on the land: December 28, 2015[397]

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[389] Ex. 94 – Claud Clark, III, Clark-Davis, PC, Appraisal of Diamond Grande Resort (Dec. 15, 2015), at 2-3 (ex. p. ECOVEST-SF_0022898-99).

[390] *Id.* at 52 (ex. p. ECOVEST-SF_0022948).

[391] *Id.* at 51 (ex. p. ECOVEST-SF_0022947).

[392] Ex. 94 – Claud Clark, III, Clark-Davis, PC, Appraisal of Diamond Grande Resort (Dec. 15, 2015), at 2-3 (ex. p. ECOVEST-SF_0022898-99).

[393] Ex. 15 at 17.

[394] Ex. 95 – Assignment and Assumption of Membership Interest (Dec. 23, 2015), at 1 (at ex. p. ECOVEST-SF_0022187); Ex. 15 at 23.

[395] Ex. 15 at 13.

[396] *Id.* at 21.

[397] *Id.* at 14.

l. Total deductions allocated as a result of the easement: $52,811,050[398]
m. Total tax benefit to taxpayer-investors: $19,762,951[399]
n. EcoVest's fees as a result of the transaction: $1,224,872[400]

5. Magnolia Bay Resort (2015)

a. Acres: 150.55[401]
b. Purported units to be developed: 808 two-bedroom units (1,300 square-feet each), 808 three-bedroom units (1,600 square-feet each), and 292 four-bedroom units (2,200 square-feet each) for a total of 101 four-story buildings[402]
c. Claud Clark's **"before"**-easement value of the property: **$51,275,850, or approximately $340,590 per acre**[403]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[404]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Magnolia Bay Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[405]
f. Claud Clark's **"after"**-easement value of the property: **$962,500, or $6,393 per acre**[406]

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[398] *Id.* at 16.

[399] *Id.* at 23.

[400] Ex. 93 at 13 (ex. p. ECOVEST-SF_0021379).

[401] Ex. 36 – Magnolia Bay Resort Holdings, LLC, Confidential Private Placement Memorandum (June 11, 2015), at ex. p. ECOVEST-SF_0004100.

[402] Ex. 36 at ex. p. ECOVEST-SF_0004100.

[403] Ex. 37 – Claud Clark, III, Clark-Davis, PC, Appraisal of Magnolia Bay Resort (Dec. 15, 2015), at 2-3, (ex. p. ECOVEST-SF_0006067-68).

[404] *Id.* at 50 (ex. p. ECOVEST-SF_0006115).

[405] *Id.* at 49 (ex. p. ECOVEST-SF_0006114).

[406] *Id.* at 2-3 (ex. p. ECOVEST-SF_0006067-68).

g. Number of taxpayer-investors involved in the transaction: 138[407]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,250,321.98, thus valuing the land as being worth approximately **$3,439,494.16, or approximately $22,846 per acre**. [408]
i. Close date for investing in the transaction: October 9, 2015[409]
j. Taxpayer-investor vote on disposition of property: 682 votes in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 5 votes in favor of holding the property for future investment[410]
k. Date of granting conservation easement on the land: December 22, 2015[411]
l. Total deductions allocated as a result of the easement: $47,827,350[412]
m. Total tax benefit to taxpayer-investors: $17,897,951[413]
n. EcoVest's fees as a result of the transaction: $1,323,310[414]

6. Sanibel Resort, LLC (2015)

a. Acres: 28.53[415]
b. Purported units to be developed: 242 two-bedroom units, 476 three-bedroom units, and 270 four-bedroom units

[407] Ex. 15 at 17.

[408] Ex. 38 – Assignment and Assumption of Membership Interest of Magnolia Bay Resort (Oct. 9. 2015), ex. p. ECOVEST-SF_0005078-80; Ex. 15 – Letter from Sean M. Akins, Partner, Covington & Burling LLP, to John L. Schoenecker, Senior Investigative Counsel, United States Senate Committee on Finance (June 21, 2019), at 23.

[409] Ex. 15 at 13.

[410] *Id.* at 21.

[411] *Id.* at 14.

[412] *Id.* at 16.

[413] *Id.* at 23.

[414] Ex. 36 at 12 (ex. p. ECOVEST-SF_0004120).

[415] Ex. 96 – Sanibel Resort Holdings, LLC, Confidential Private Placement Memorandum (Sept. 14, 2015), at ex. p. ECOVEST-SF_0012024.

among two four-story buildings, one five-story building, and one nine-story building[416]

c. Claud Clark's **"before"**-easement value of the property: **$54,798,677, or $1,920,738.77 per acre[417]**
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[418]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Sanibel Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[419]
f. Claud Clark's **"after"**-easement value of the property: **$264,222, or $9,261 per acre[420]**
g. Number of taxpayer-investors involved in the transaction: 135[421]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,851,550, thus valuing the land at **$4,075,714.29, or $142,857.14 per acre**[422]
i. Close date for investing in the transaction: December 1, 2015[423]
j. Taxpayer-investor vote on disposition of property: 688 votes in favor of granting a conservation easement on the land, 8 votes in favor of developing it, and 0 votes in favor of holding the property for future investment.[424]

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[416] *Id.* at ex. p. ECOVEST-SF_0012024.

[417] Ex. 97 – Claud Clark, III, Clark-Davis, PC, Appraisal of Sanibel Resort (Dec. 15, 2015), at 2-3 (ex. p. ECOVEST-SF_0012951-52).

[418] *Id.* at 56 (ex. p. ECOVEST-SF_0013005).

[419] *Id.* at 55 (ex. p. ECOVEST-SF_0013004).

[420] *Id.* at 2-3 (ex. p. ECOVEST-SF_0012951-52).

[421] Ex. 15 at 17.

[422] Ex. 96 at 23.

[423] Ex. 15 at 13.

[424] *Id.* at 21.

k. Date of granting conservation easement on the land: December 22, 2015[425]
l. Total deductions allocated as a result of the easement: $51,837,300[426]
m. Total tax benefit to taxpayer-investors: $19,398,554[427]
n. EcoVest's fees as a result of the transaction: $1,173,602[428]

7. Seavista Resort, LLC (2015)

a. Acres: 29[429]
b. Purported units to be developed: 160 two-bedroom units, 376 three-bedroom units, and 215 four-bedroom units among two four-story buildings and one nine-story building[430]
c. Claud Clark's **"before"**-easement value of the property: **$55,379,424, or $1,909,635 per acre**[431]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[432]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Seavista Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[433]

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[425] *Id.* at 14.

[426] *Id.* at 16.

[427] *Id.* at 23.

[428] Ex. 96 at 13 (at ex. p. ECOVEST-SF_0012045).

[429] Ex. 98 – Seavista Resort Holdings, LLC, Confidential Private Placement Memorandum (Oct. 30, 2015), at ex. p. ECOVEST-SF_0025730.

[430] Ex. 98 – Seavista Resort Holdings, LLC, Confidential Private Placement Memorandum (Oct. 30, 2015), at ex. p. ECOVEST-SF_0025730.

[431] Ex. 99 – Claud Clark, III, Clark-Davis, PC, Appraisal of Seavista Resort (Dec. 15, 2015), at 2-3 (ex. p. ECOVEST-SF_0026637-38).

[432] *Id.* at 54 (ex. p. ECOVEST-SF_0026689).

[433] *Id.* at 53 (ex. p. ECOVEST-SF_0026688).

f. Claud Clark's **"after"**-easement value of the property: **$264,950, or $9,136 per acre**[434]
g. Number of taxpayer-investors involved in the transaction: 107[435]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $2,948,400, thus valuing the land at **$3,120,000 or $107,586 per acre**[436]
i. Close date for investing in the transaction: December 24, 2015[437]
j. Taxpayer-investor vote on disposition of property: 719 votes in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 0 votes in favor of holding the property for future investment[438]
k. Date of granting conservation easement on the land: December 28, 2015[439]
l. Total deductions allocated as a result of the easement: $52,388,300[440]
m. Total tax benefit to taxpayer-investors: $19,604,750[441]
n. EcoVest's fees as a result of the transaction: $1,248,184[442]

[434] *Id.* at 2-3 (ex. p. ECOVEST-SF_0026637-38).

[435] Ex. 15 at 17.

[436] Ex. 98 at 23.

[437] Ex. 15 at 13.

[438] *Id.* at 21.

[439] *Id.* at 14.

[440] *Id.* at 16.

[441] *Id.* at 23.

[442] Ex. 98 at 13 (at ex. p. ECOVEST-SF_0025751).

8. South Bay Cove, LLC (2015)

a. Acres: 27.50[443]
b. Purported units to be developed: 135 two-bedroom units, 342 three-bedroom units, and 198 four-bedroom units in one nine-story building[444]
c. Claud Clark's **"before"**-easement value of the property: **$50,837,900, or $1,848,651 per acre**[445]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[446]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around South Bay Cove, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[447]
f. Claud Clark's **"after"**-easement value of the property: **$349,250, or $12,700 per acre**[448]
g. Number of taxpayer-investors involved in the transaction: 121[449]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,250,000, thus valuing the land at **$3,429,153 or $125,060 per acre**[450]
i. Close date for investing in the transaction: December 29, 2015[451]

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[443] Ex. 100 – South Bay Cove Holdings, LLC, Confidential Private Placement Memorandum (Nov. 17, 2015), at ex. p. ECOVEST-SF_0033593.

[444] *Id.* at ex. p. ECOVEST-SF_0033593.

[445] Ex. 101 – Claud Clark, III, Clark-Davis, PC, Appraisal of South Bay Cove (Dec. 15, 2015), at 2-3 (ex. p. ECOVEST-SF_0034545-46).

[446] *Id.* at 53 (ex. p. ECOVEST-SF_0034596).

[447] *Id.* at 52 (ex. p. ECOVEST-SF_0034595).

[448] *Id.* at 2-3 (ex. p. ECOVEST-SF_0034545-46).

[449] Ex. 15 at 17.

[450] Ex. 100 at 8 (at ex. p. ECOVEST-SF_0033609); Ex. 15 at 23.

[451] Ex. 15 at 13.

j. Taxpayer-investor vote on disposition of property: 691 votes in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 0 votes in favor of holding the property for future investment[452]
k. Date of granting conservation easement on the land: December 30, 2015[453]
l. Total deductions allocated as a result of the easement: $47,994,550[454]
m. Total tax benefit to taxpayer-investors: $17,960,521[455]
n. EcoVest's fees as a result of the transaction: $1,124,606[456]

9. Arcadian Quay Holdings, LLC (2016)

a. Acres: 30.27[457]
b. Purported units to be developed: 121 two-bedroom units, 318 three-bedroom units, and 94 four-bedroom units in ten four-story buildings and one nine-story building[458]
c. Claud Clark's **"before"**-easement value of the property: **$61,850,730, or $2,043,301 per acre**[459]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[460]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Arcadian Quay, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales.

[452] *Id.* at 21.

[453] *Id.* at 14.

[454] *Id.* at 16.

[455] *Id.* at 23.

[456] Ex. 100 at 13 (at ex. p. ECOVEST-SF_0033614).

[457] Ex. 102 – Arcadian Quay Holdings, LLC, Confidential Private Placement Memorandum (Nov. 17, 2015), at ex. p. ECOVEST-SF_0072633.

[458] *Id.* at ex. p. ECOVEST-SF_0072633.

[459] Ex. 103 – Claud Clark, III, Clark-Davis, PC, Appraisal of Arcadian Quay (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0076241-42).

[460] *Id.* at 55 (ex. p. ECOVEST-SF_0076293).

This is one of the last remaining large tracts available in the area to develop."[461]

f. Claud Clark's **"after"**-easement value of the property: **$198,432, or $6,555 per acre**[462]
g. Number of taxpayer-investors involved in the transaction: 168[463]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,170,286, thus valuing the land at **$3,354,800 or $110,829 per acre**[464]
i. Close date for investing in the transaction: December 2, 2016[465]
j. Taxpayer-investor vote on disposition of property: 626 votes in favor of granting a conservation easement on the land, 2 votes in favor of developing it, and 0 votes in favor of holding the property for future investment[466]
k. Date of granting conservation easement on the land: December 15, 2016[467]
l. Total deductions allocated as a result of the easement: $61,652,000[468]
m. Total tax benefit to taxpayer-investors: $23,071,411[469]
n. EcoVest's fees as a result of the transaction: $1,575,129[470]

[461] *Id.* at 54 (ex. p. ECOVEST-SF_0076293).

[462] *Id.* at 2-3 (ex. p. ECOVEST-SF_0076241-42).

[463] Ex. 15 at 16.

[464] Ex. 102 at 8 (ex. p. ECOVEST-SF_0072650); Ex. 15 at 23.

[465] Ex. 15 at 12.

[466] *Id.* at 21.

[467] *Id.* at 13.

[468] *Id.* at 15.

[469] *Id.* at 23.

[470] Ex. 102 at 13 (at ex. p. ECOVEST-SF_0072655).

10. Camellia Station Holdings, LLC (2016)

a. Acres: 45.22[471]
b. Purported units to be developed: 140 two-bedroom units, 420 three-bedroom units, and 140 four-bedroom units in eight four-story buildings and six nine-story buildings[472]
c. Claud Clark's **"before"**-easement value of the property: **$53,627,227, or $1,185,918 per acre**[473]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[474]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Camellia Station, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[475]
f. Claud Clark's **"after"**-easement value of the property: **$222,320, or $4,916 per acre**[476]
g. Number of taxpayer-investors involved in the transaction: 96[477]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $4,186,450, thus valuing the land at **$4,430,105.82 or $97,968 per acre**[478]
i. Close date for investing in the transaction: December 1, 2016[479]

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[471] Ex. 104 – Camellia Station Holdings, LLC, Confidential Private Placement Memorandum (Sept. 1, 2016), at ex. p. ECOVEST-SF_0068068.

[472] *Id.* at ex. p. ECOVEST-SF_0068068.

[473] Ex. 105 – Claud Clark, III, Clark-Davis, PC, Appraisal of Camellia Station (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0069752-53).

[474] *Id.* at 56 (ex. p. ECOVEST-SF_0069806).

[475] *Id.* at 55 (ex. p. ECOVEST-SF_0069805).

[476] *Id.* at 2-3 (ex. p. ECOVEST-SF_0069752-53).

[477] Ex. 15 at 16.

[478] Ex. 104 at 23.

[479] Ex. 15 at 13.

j. Taxpayer-investor vote on disposition of property: 795 votes in favor of granting a conservation easement on the land, 2 votes in favor of developing it, and 4 votes in favor of holding the property for future investment[480]
k. Date of granting conservation easement on the land: December 15, 2016[481]
l. Total deductions allocated as a result of the easement: $53,405,000[482]
m. Total tax benefit to taxpayer-investors: $19,985,219[483]
n. EcoVest's fees as a result of the transaction: $1,216,405[484]

11. Lakeshore Resort Holdings, LLC (2016)

a. Acres: 44.23[485]
b. Purported units to be developed: 102 two-bedroom units, 306 three-bedroom units, and 102 four-bedroom units in six four-story buildings and three 13-story building[486]
c. Claud Clark's **"before"**-easement value of the property: **$49,409,360, or $1,117,101 per acre**[487]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[488]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Lakeshore Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying

[480] *Id.* at 21.

[481] *Id.* at 13.

[482] *Id.* at 15.

[483] *Id.* at 23.

[484] Ex. 104 at 13 (at ex. p. ECOVEST-SF_0068090).

[485] Ex. 106 – Lakeshore Resort Holdings, LLC, Confidential Private Placement Memorandum (Aug. 3, 2016), at ex. p. ECOVEST-SF_0058880.

[486] *Id.* at ex. p. ECOVEST-SF_0058880.

[487] Ex. 107 – Claud Clark, III, Clark-Davis, PC, Appraisal of Lakeshore Resort (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0060368-69).

[488] *Id.* at 56 (ex. p. ECOVEST-SF_0060422).

strong sales. This is one of the last remaining large tracts available in the area to develop."[489]

f. Claud Clark's **"after"**-easement value of the property: **$220,720, or $4,990 per acre**[490]
g. Number of taxpayer-investors involved in the transaction: 124[491]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,002,000, thus valuing the land at **$3,176,719.58 or $71,823 per acre**.[492]
i. Close date for investing in the transaction: November 2, 2016[493]
j. Taxpayer-investor vote on disposition of property: 623 votes in favor of granting a conservation easement on the land, 0 votes in favor of developing it, and 6 vote in favor of holding the property for future investment[494]
k. Date of granting conservation easement on the land: December 15, 2016[495]
l. Total deductions allocated as a result of the easement: $49,189,000[496]
m. Total tax benefit to taxpayer-investors: $18,407,508[497]
n. EcoVest's fees as a result of the transaction: $1,213,255[498]

[489] *Id.* at 55 (ex. p. ECOVEST-SF_0060421).

[490] *Id.* at 2-3 (ex. p. ECOVEST-SF_0060368-69).

[491] Ex. 15 at 17.

[492] Ex. at 8 (ex. p. ECOVEST-SF_0058897); Ex. 15 at 23.

[493] Ex. 15 at 13.

[494] *Id.* at 21.

[495] *Id.* at 14.

[496] *Id.* at 16.

[497] *Id.* at 23.

[498] Ex. 106 at ex. p. ECOVEST-SF_0058880.

12. Myrtle West Resort Holdings, LLC (2016)

a. Acres: 27.43[499]
b. Purported units to be developed: 119 two-bedroom units, 266 three-bedroom units, and 154 four-bedroom units in one seven-story building[500]
c. Claud Clark's **"before"**-easement value of the property: **$42,587,132, or $1,552,575 per acre**[501]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[502]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Myrtle West Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[503]
f. Claud Clark's **"after"**-easement value of the property: **$349,250, or $12,732 per acre**[504]
g. Number of taxpayer-investors involved in the transaction: 102[505]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,250,000, thus valuing the land at **$3,439,153.44 or $125,379 per acre**[506]
i. Close date for investing in the transaction: August 23, 2016[507]

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[499] Ex. 108 – Myrtle West Resort Holdings, LLC, Confidential Private Placement Memorandum (Mar. 29, 2016), at ex. p. ECOVEST-SF_0045818.

[500] *Id.* at ex. p. ECOVEST-SF_0045818.

[501] Ex. 109 – Claud Clark, III, Clark-Davis, PC, Appraisal of Myrtle West Resort (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0047203-04).

[502] *Id.* at 56 (ex. p. ECOVEST-SF_0047257).

[503] *Id.* at 55 (ex. p. ECOVEST-SF_0047256).

[504] *Id.* at 2-3 (ex. p. ECOVEST-SF_0047203-04).

[505] Ex. 15 at 17.

[506] Ex. 108 at 23.

[507] Ex. 15 at 13.

j. Taxpayer-investor vote on disposition of property: 571 votes in favor of granting a conservation easement on the land, 10 votes in favor of developing it, and 0 votes in favor of holding the property for future investment[508]
k. Date of granting conservation easement on the land: November 3, 2016[509]
l. Total deductions allocated as a result of the easement: $42,238,000[510]
m. Total tax benefit to taxpayer-investors: $15,806,304[511]
n. EcoVest's fees as a result of the transaction: $965,343[512]

13. North Bay Cove Holdings, LLC (2016)

a. Acres: 28.04[513]
b. Purported units to be developed: 97 two-bedroom units, 246 three-bedroom units, and 70 four-bedroom units in four four-story buildings and one nine-story building[514]
c. Claud Clark's **"before"**-easement value of the property: **$46,172,176, or $1,646,654 per acre**[515]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[516]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around North Bay Cove, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying

[508] *Id.* at 21.

[509] *Id.* at 14.

[510] *Id.* at 16.

[511] *Id.* at 23.

[512] Ex. 108 at 13 (ex. p. ECOVEST-SF_0045840).

[513] Ex. 110 – North Bay Cove Holdings, LLC, Confidential Private Placement Memorandum (Aug. 25, 2016), at ex. p. ECOVEST-SF_0063638.

[514] *Id.* at ex. p. ECOVEST-SF_0063638.

[515] Ex. 111 – Claud Clark, III, Clark-Davis, PC, Appraisal of North Bay Cove (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0065164-65).

[516] *Id.* at 55 (ex. p. ECOVEST-SF_0065217).

strong sales. This is one of the last remaining large tracts available in the area to develop."[517]

f. Claud Clark's **"after"**-easement value of the property: **$194,864, or $6,950 per acre**[518]
g. Number of taxpayer-investors involved in the transaction: 115[519]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,250,000, thus valuing the land at **$3,439,153.44 or $115,906 per acre**[520]
i. Close date for investing in the transaction: November 30, 2016[521]
j. Taxpayer-investor vote on disposition of property: 735 votes in favor of granting a conservation easement on the land, 9 votes in favor of developing it, and 0 vote in favor of holding the property for future investment[522]
k. Date of granting conservation easement on the land: December 15, 2016[523]
l. Total deductions allocated as a result of the easement: $45,977,000[524]
m. Total tax benefit to taxpayer-investors: $17,205,513[525]
n. EcoVest's fees as a result of the transaction: $1,109,027[526]

[517] *Id.* at 54 (ex. p. ECOVEST-SF_0065216).

[518] *Id.* at 2-3 (ex. p. ECOVEST-SF_0065164-65).

[519] Ex. 15 at 17.

[520] Ex. 110 at 8 (ex. p. ECOVEST-SF_0063655); Ex. 15 at 23.

[521] Ex. 15 at 13.

[522] *Id.* at 21.

[523] *Id.* at 14.

[524] *Id.* at 16.

[525] *Id.* at 23.

[526] Ex. 110 at 13 (ex. p. ECOVEST-SF_0063660).

14. Ocean Grove Resort Holdings, LLC (2016)

a. Acres: 225.5[527]
b. Purported units to be developed: 332 two-bedroom units, 996 three-bedroom units, and 332 four-bedroom units in 83 four-story buildings[528]
c. Claud Clark's **"before"**-easement value of the property: **$81,553,913, or $361,658 per acre**[529]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[530]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Ocean Grove Resort, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[531]
f. Claud Clark's **"after"**-easement value of the property: **$960,800, or $4,261 per acre**[532]
g. Number of taxpayer-investors involved in the transaction: 193[533]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $5,024,000, thus valuing the land at **$5,316,402.12 or $23,576 per acre**[534]
i. Close date for investing in the transaction: October 14, 2016[535]

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[527] Ex. 112 – Ocean Grove Resort Holdings, LLC, Confidential Private Placement Memorandum (June 17, 2016), at ex. p. ECOVEST-SF_0050078.

[528] *Id.* at ex. p. ECOVEST-SF_0050078.

[529] Ex. 113 – Claud Clark, III, Clark-Davis, PC, Appraisal of Ocean Grove Resort (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0051547-48).

[530] *Id.* at 58 (ex. p. ECOVEST-SF_0051603).

[531] *Id.* at 57 (ex. p. ECOVEST-SF_0051602).

[532] *Id.* at 2-3 (ex. p. ECOVEST-SF_0051547-48).

[533] Ex. 15 at 17.

[534] Ex. 112 at 8 (ex. p. ECOVEST-SF_0050095); Ex. 15 at 23.

[535] Ex. 15 at 13.

j. Taxpayer-investor vote on disposition of property: 596 votes in favor of granting a conservation easement on the land, 8 votes in favor of developing it, and 3 votes in favor of holding the property for future investment[536]
k. Date of granting conservation easement on the land: November 21, 2016[537]
l. Total deductions allocated as a result of the easement: $80,593,000[538]
m. Total tax benefit to taxpayer-investors: $30,159,512[539]
n. EcoVest's fees as a result of the transaction: $2,006,291[540]

15. Queen's Cove Holdings, LLC (2016)

a. Acres: 51.38[541]
b. Purported units to be developed: 116 two-bedroom units, 328 three-bedroom units, and 136 four-bedroom units in 19 four-story buildings and one ten-story building[542]
c. Claud Clark's **"before"**-easement value of the property: **$61,224,881, or $1,191,609 per acre**[543]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[544]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Queens Cove, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales.

[536] *Id.* at 21.

[537] *Id.* at 14.

[538] *Id.* at 16.

[539] *Id.* at 23.

[540] Ex. 112 at 13 (ex. p. ECOVEST-SF_0050100).

[541] Ex. 114 – Queen's Cove Holdings, LLC, Confidential Private Placement Memorandum (Nov. 17, 2016), at ex. p. ECOVEST-SF_0087138.

[542] *Id.* at ex. p. ECOVEST-SF_0087138.

[543] Ex. 115 – Claud Clark, III, Clark-Davis, PC, Appraisal of Queen's Cove (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0088838-39).

[544] *Id.* at 55 (ex. p. ECOVEST-SF_0088891).

This is one of the last remaining large tracts available in the area to develop."[545]

f. Claud Clark's **"after"**-easement value of the property: **$2,405,408, or $46,816 per acre**[546]
g. Number of taxpayer-investors involved in the transaction: 145[547]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $6,152,400, thus valuing the land at **$6,510,476.19 or $126,712 per acre**[548]
i. Close date for investing in the transaction: December 19, 2016[549]
j. Taxpayer-investor vote on disposition of property: 581 votes in favor of granting a conservation easement on the land, 18 votes in favor of developing it, and 11 votes in favor of holding the property for future investment[550]
k. Date of granting conservation easement on the land: December 27, 2016[551]
l. Total deductions allocated as a result of the easement: $58,819,000[552]
m. Total tax benefit to taxpayer-investors: $22,011,246[553]
n. EcoVest's fees as a result of the transaction: $1,782,226[554]

[545] *Id.* at 54 (ex. p. ECOVEST-SF_0088890).

[546] *Id.* at 2-3 (ex. p. ECOVEST-SF_0088838-39).

[547] Ex. 15 at 17.

[548] Ex. 114 at 8 (ex. p. ECOVEST-SF_0087155); Ex. 15 at 23.

[549] Ex. 15 at 13.

[550] *Id.* at 21.

[551] *Id.* at 14.

[552] *Id.* at 16.

[553] *Id.* at 23.

[554] Ex. 114 at 13 (ex. p. ECOVEST-SF_0087160).

16. Waterway Grove Holdings, LLC (2016)

a. Acres: 30.41[555]
b. Purported units to be developed: 121 two-bedroom units, 318 three-bedroom units, and 94 four-bedroom units in ten four-story buildings and one nine-story building[556]
c. Claud Clark's **"before"**-easement value of the property: **$61,631,524, or $2,026,686 per acre**[557]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[558]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around Waterway Grove, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying strong sales. This is one of the last remaining large tracts available in the area to develop."[559]
f. Claud Clark's **"after"**-easement value of the property: **$198,656, or $6,533 per acre**[560]
g. Number of taxpayer-investors involved in the transaction: 146[561]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $3,249,550, thus valuing the land at **$3,438,677.25 or $113,077 per acre**[562]
i. Close date for investing in the transaction: December 22, 2016[563]

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[555] Ex. 116 – Waterway Grove Holdings, LLC, Confidential Private Placement Memorandum (Dec. 2, 2016), at ex. p. ECOVEST-SF_0094675.

[556] *Id.* at ex. p. ECOVEST-SF_0094675.

[557] Ex. 117 – Claud Clark, III, Clark-Davis, PC, Appraisal of Waterway Grove (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0095501-02).

[558] *Id.* at 56 (ex. p. ECOVEST-SF_0095555).

[559] *Id.* at 55 (ex. p. ECOVEST-SF_0095554).

[560] *Id.* at 2-3 (ex. p. ECOVEST-SF_0095501-02).

[561] Ex. 15 at 17.

[562] Ex. 116 at 23.

[563] Ex. 15 at 13.

j. Taxpayer-investor vote on disposition of property: 539 votes in favor of granting a conservation easement on the land, 4 votes in favor of developing it, and 2 votes in favor of holding the property for future investment[564]
k. Date of granting conservation easement on the land: December 27, 2016[565]
l. Total deductions allocated as a result of the easement: $61,433,000[566]
m. Total tax benefit to taxpayer-investors: $22,989,457[567]
n. EcoVest's fees as a result of the transaction: $1,589,173[568]

17. White Sands Village Holdings, LLC (2016)

a. Acres: 181.2[569]
b. Purported units to be developed: 304 two-bedroom units, 912 three-bedroom units, and 304 four-bedroom units in 76 four-story buildings[570]
c. Claud Clark's **"before"**-easement value of the property: **$77,492,023, or $427,660 per acre**[571]
d. Claud Clark's primary method for estimating **"before"** value of the property: discounted cash flow[572]
e. Claud Clark's opinion on development potential of the property: "Sufficiency of Demand – The success of developed residential lots in and around White Sands Village, as well as other similar developments is evident. Competing developed areas have sold out or are enjoying

[564] *Id.* at 21.

[565] *Id.* at 14.

[566] *Id.* at 16.

[567] *Id.* at 23.

[568] Ex. 116 at 13 (ex. p. ECOVEST-SF_0094697).

[569] Ex. 118 – White Sands Village Holdings, LLC, Confidential Private Placement Memorandum (July 1, 2016), at ex. p. ECOVEST-SF_0055253.

[570] *Id.* at ex. p. ECOVEST-SF_0055253.

[571] Ex. 119 – Claud Clark, III, Clark-Davis, PC, Appraisal of White Sands Village (Jan. 2, 2017), at 2-3 (ex. p. ECOVEST-SF_0056023-24).

[572] *Id.* at 57 (ex. p. ECOVEST-SF_0056078).

strong sales. This is one of the last remaining large tracts available in the area to develop."[573]

f. Claud Clark's **"after"**-easement value of the property: **$889,920, or $4,911 per acre**[574]
g. Number of taxpayer-investors involved in the transaction: 143[575]
h. Taxpayer-investors' total buy-in for 94.5 percent of company owning the underlying land: $4,601,000, thus valuing the land at **$4,868,783.07 or $26,870 per acre**[576]
i. Close date for investing in the transaction: October 19, 2016[577]
j. Taxpayer-investor vote on disposition of property: 634 votes in favor of granting a conservation easement on the land, 6 votes in favor of developing it, and 3 votes in favor of holding the property for future investment[578]
k. Date of granting conservation easement on the land: November 21, 2016[579]
l. Total deductions allocated as a result of the easement: $76,602,000[580]
m. Total tax benefit to taxpayer-investors: $28,666,000[581]
n. EcoVest's fees as a result of the transaction: $1,937,239[582]

[573] *Id.* at 56 (ex. p. ECOVEST-SF_0056077).

[574] *Id.* at 2-3 (ex. p. ECOVEST-SF_0056023-24).

[575] Ex. 15 at 17.

[576] Ex. 118 at 8 (ex. p. ECOVEST-SF_0055270); Ex. 15 at 23.

[577] Ex. 15 at 13.

[578] *Id.* at 21.

[579] *Id.* at 14.

[580] *Id.* at 16.

[581] *Id.* at 23.

[582] Ex. 118 at 13 (ex. p. ECOVEST-SF_0055275).

ii. EvrSource Capital

1. Bienville 75 Acquisitions, LLC

a. Acres: 1,267.37 (1,194 to be conserved)[583]
b. Purported units to be developed: 144 motor coach lots, 161 lakefront homes sites, 222 smaller lakefront homes, 1,330 interior single family homes, 742 duplexes, 1 hotel, 1 transient RV site, 24 commercial sites, 20 boat and RV storage sites, 24 utility sites, and 1 golf course[584]
c. Raymond Veal's **"before"**-easement value of the property: **$90,000,000, or $71,013 per acre**[585]
d. Raymond E. Veal's method for estimating **"before"** value of the property: discounted cash flow, referred to as "income capitalization approach" or "discounted sellout analysis"[586]
e. Raymond Veal's opinion on development potential of the property: "Previously, no efforts have been made to attract mixed use development to the area. As a result there are few nearby residents, and little market activity, because of a lack of product. The northern portion of Florida has a long history of demand for residential real estate, which is documented in the Norton Consulting Report provided. There is ample market evidence that a mixed use development geared toward a nationally known fishing and hunting plantation would be feasible."[587]
f. Raymond Veal's **"after"**-easement value of the property: **$1,267,370, or $1,000 per acre**[588]

[583] Ex. 120 – Form 8886 – Reportable Transaction Disclosure Statement for Bienville 75 Acquisitions, LLC at 2, supplemental 4 (ex. p. SENATE_FINANCE-0007127, 31); Ex. 42 – Raymond E. Veal, Market Value Appraisal Bienville 75 (Oct. 20, 2015) at 2, 115 (ex. p. SENATE_FINANCE-0002703, -0002821).

[584] *Id.* at 80 (ex. p. SENATE_FINANCE-0002786).

[585] *Id.* at 86 (ex. p. SENATE_FINANCE-0002792).

[586] *Id.* at 78-81 (ex. p. SENATE_FINANCE-002784-2787).

[587] *Id.* at 75 (ex. p. SENATE_FINANCE-0002781).

[588] *Id.* at 124 (ex. p. SENATE_FINANCE-0002830).

g. Number of taxpayer-investors involved in the transaction: 174[589]
h. Taxpayer-investors' total buy-in for 98 percent of company owning the underlying land, known as Bienville 75, LLC: $12,200,000.00, thus valuing the land at **$12,448,979.60, or $9,823 per acre**[590]
i. Close date for investing in the transaction: December 23, 2015[591]
j. Taxpayer-investor vote on disposition of property: 98.84 percent (12,057,500 votes) in favor of granting a conservation easement, 0.71 percent (86,000 votes) in favor of developing the land, and 0.45 percent (55,000) in favor of holding it for further investment[592]
k. Date of granting conservation easement on the land: December 29, 2015[593]
l. Total deductions allocated to taxpayer-investors as a result of the easement: $88,530,000[594]
m. Total tax benefit to taxpayer-investors: $35,057,880[595]

[589] Ex. 43 – Senate Committee on Finance Supplemental Response Written Answer – Bienville 75 Acquisitions, LLC at p. 2 of 8.

[590] Ex. 44 – Bienville 75, LLC, Private Placement Memorandum (Oct. 30, 2015) at 3 (ex. p. SENATE_FINANCE-0002637).

[591] Ex. 43 at p. 2 of 8.

[592] Based on the documents provided in this investigation, the results of this vote are not entirely clear. EvrSource Capital affirmatively answered that 55,000 votes out of up to 19,334,299 were in favor of holding the land for long-term investment, and 86,000 votes were in favor of developing the land. These answers did not answer how many votes favored granting a conservation easement on the land. *See* Ex. 43 at p. 1 and 6 of 8. However, the vote totals listed above for the conservation-easement option are necessarily too low. Of the 125 taxpayer-investor ballots provided in this investigation, 119 were in favor of granting a conservation easement, 2 were in favor of further developing the land, 1 was in favor of holding the land for investment, and 3 could not be determined based on the information provided. Of the 119 ballots affirmatively in favor of granting the conservation easement, 30 such ballots failed to list the number of votes in favor of that option. Because the average number of votes per ballot with known vote totals was 131,060, it is very likely that the vote total for granting the conservation easement was over 99 percent in favor of it. *See* Ex. 45 – Bienville 75 Acquisitions, LLC ballots at ex. p. SENATE_FINANCE-0008467-8778.

[593] Ex. 43 at p. 2 of 8.

[594] *Id.* at p. 7 of 8.

[595] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

n. EvrSource Capital's fees as a result of the transaction: $1,157,000[596]

2. Roaring Florida Acquisitions

a. Acres: 1,518.44 (1,478.08 to be conserved)[597]
b. Purported units to be developed: 150 lodge units, 192 transient recreational-vehicle units, 1291 single-family homes, 466 duplexes, 200 assisted-living apartments, 258 lake-front or lake-access second homes, 144 permanent recreational-vehicle units[598]
c. Raymond Veal's **"before"**-easement value of the property: **$69,050,000, or $45,474 per acre**[599]
d. Raymond E. Veal's method for estimating **"before"** value of the property: discounted cash flow, referred to as "income capitalization approach" or "discounted sellout analysis"[600]
e. Raymond Veal's opinion on development potential of the property: "Previously, no efforts have been made to attract mixed use development to the area. As a result there are few nearby residents, and little market activity, because of a lack of product. The northern portion of Florida has a long history of demand for residential real estate, which is documented in the Norton Consulting Report provided. There is ample market evidence that a mixed use development geared toward a nationally known fishing and hunting plantation would be feasible."[601]

[596] Ex. 44 at 15 (ex. p. SENATE_FINANCE-0002649). This amount is derived by adding the $500,000 "EvrSource Capital, LLC" fee listed therein to the "additional consulting fees" upon the condition of Bienville 75 Acquisitions' investors choosing the "Conservation Proposal" listed in footnote 9 therein. According to EvrSource Capital's answers to the Finance Committee, this additional consulting fee was $657,000. Ex. 43 at p. 8 of 8.

[597] Ex. 47 – Raymond E. Veal, Market Value Appraisal Roaring Creek Plantation (Feb. 14, 2017) at 2, 92 (ex. p. SENATE_FINANCE-0001993, -0002083).

[598] *Id.* at 25 (ex. p. SENATE_FINANCE-0002016).

[599] *Id.* at 88-90 (ex. p. SENATE_FINANCE-0002079-81).

[600] *Id.* at 79-90 (ex. p. SENATE_FINANCE-0002070-81).

[601] *Id.* at 78 (ex. p. SENATE_FINANCE-0002069).

f. Raymond Veal's **"after"**-easement value of the property: **$1,520,100, or $1,000 per acre**[602]
g. Number of taxpayer-investors involved in the transaction: 136[603]
h. Taxpayer-investors' total buy-in for 96.564 percent of company owning the underlying land, known as Roaring Creek Plantation, LLC: $9,513,393.16, thus valuing the land at **$9,851,904.60, or $6,488 per acre**[604]
i. Close date for investing in the transaction: December 22, 2016[605]
j. Taxpayer-investor vote on disposition of property: appr. 98 percent in favor of granting a conservation easement, appr, two percent in favor of either developing the land or holding it for further investment[606]
k. Date of granting conservation easement on the land: December 28, 2016[607]
l. Total deductions allocated to taxpayer-investors as a result of the easement: $67,530,000[608]
m. Total tax benefit to taxpayer-investors: $26,741,880[609]

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[602] *Id.* at 121 (ex. p. SENATE_FINANCE-0002112).

[603] Ex. 49 – Senate Committee on Finance Supplemental Response Written Answer – Roaring Florida Acquisitions, LLC at p. 2 of 9.

[604] Ex. 46 – Roaring Florida Acquisitions, LLC, Private Placement Memorandum (Nov. 8, 2016) at 4 (ex. p. SENATE_FINANCE-0001091).

[605] Ex. 49 at p. 2 of 9.

[606] Based on the documents provided in this investigation, the results of this vote are not entirely clear. EvrSource Capital affirmatively answered that 280,000 votes out of up to 15,303,567 were in favor of holding the land for long-term investment (1.83 percent), and 50,000 votes were in favor of developing the land (0.33 percent). These answers did not say exactly how many votes favored granting a conservation easement on the land. *See* Ex. 49 at p. 1, 6, and 7 of 9. However, a draft email turned over in the investigation indicates that EvrSource Capital personnel contemplated telling its Roaring Florida Acquisition taxpayer-investors that, in light of the IRS having issued Notice 2017-10 on December 23, 2016, which was around the time of that vote, they could change their vote if they wanted to, as EvrSource Capital "only received votes representing 36.66% of the shares" during the initial vote days earlier. In that initial vote, "The Conservation easement received the most votes representing 36.18% of the 36.66% received," which the conservation-easement option received 98.69 percent of the vote. Ex. 50 – Draft email to Roaring Florida Acquisition members, ex. p. SENATE_FINANCE-0009436.

[607] Ex. 49 at p. 2 of 9.

[608] *Id.* at p. 7 of 9.

[609] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

n. EvrSource Capital's fees as a result of the transaction: $1,460,000[610]

iii. Webb Creek

1. Adam Smith Ventures (2013)

a. Acres: 227[611]
b. Purported units to be developed: 800 units[612]
c. Jim Clower's **"before"**-easement value of the property: **$12,400,000, or $55,000 per acre**[613]
d. Jim Clower's method for estimating **"before"** value of the property: sales comparisons[614]
e. Jim Clower's opinion on development potential of the property: "The proposed development is an ideal location for an active community due to the amenities and natural landscape."[615]
f. Jim Clower's **"after"**-easement value of the property: **$295,100, or $1,300 per acre**[616]
g. Number of taxpayer-investors involved in the transaction: 56[617]

[610] Ex. 46 at 24 (ex. p. SENATE_FINANCE-0001111). This amount is derived by adding the $500,000 "EvrSource Capital, LLC" fee listed therein to the $960,000 listed for "additional consulting fees to EvrSource" upon the condition of Roaring Florida Acquisitions' investors choosing the "Conservation Proposal" listed in footnote 14 therein.

[611] Ex. 54 – Adam Smith Ventures, LLC, Confidential Private Placement Memorandum (Nov. 30, 2012), Appendix 4, Jim R. Clower, Sr., A Self-Contained Appraisal Report for a Proposed Conservation Easement on an Approximate 227 +/- Acre Tract of Vacant Land (Nov, 12, 2012) at ex. p. WCP000105.

[612] Ex. 53 – Jim R. Clower, Sr., A Self-Contained Appraisal Report for a Proposed Conservation Easement on an Approximate 227 +/- Acre Tract of Vacant Land (Nov. 12, 2013) at ex. p. WCP000852.

[613] *Id.*

[614] *Id.* at ex. p. WCP000841-52.

[615] *Id.* at ex. p. WCP000902.

[616] *Id.* at ex. p. WCP000860.

[617] Ex. 51 – Brian W. Kelley's responses regarding Adam Smith Ventures, LLC to questions in letter from Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance, to Brian Kelley, Webb Creek Management Group (Mar. 27, 2019), at ex. p. WCP000538.

h. Taxpayer-investors' total buy-in for 91.282 percent of company owning the underlying land: $2,347,640, thus valuing the land at **$2,571,854.25, or $11,330 per acre**[618]
i. Close date for investing in the transaction: December 26, 2013[619]
j. Taxpayer-investor vote on disposition of property: 96 percent in favor of granting a conservation easement, four percent in favor of further of the investment proposal[620]
k. Date of granting conservation easement on the land: December 28, 2013[621]
l. Total deductions allocated to taxpayer-investors as a result of the easement: $12,000,000[622]
m. Total tax benefit to taxpayer-investors: $4,752,000[623]
n. Webb Creek's fees as a result of the transaction: $200,000[624]

iv. Ornstein-Schuler

1. FG River Partners LLC

a. Acres: 122.5[625]
b. Development potential: 6.775 million tons of limerock[626]

[618] Ex. 52 – Letter from Bryan W. Kelley, CEO, Webb Creek Management Group, LLC, to Adam Smith Ventures, LLC members (Sept. 1, 2017), containing draft sample Form 8886 – Reportable Transaction Disclosure Statement at ex. p. WCP000520.

[619] Ex. 51 at ex. p. WCP000538.

[620] *See* Ex. 51 at ex. p. WCP000541-42.

[621] Ex. 51 at ex. p. WCP000538.

[622] *Id.*

[623] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[624] Ex. 54 at 19 (ex. p. WCP000129).

[625] Ex. 57 – Clayton M. Weibel, MAI, Appraisal Report for FG River Resources LLC (as of Dec. 29, 2015), at HK_SFCSubpoena_000029885.

[626] *Id.* at 94, Exhibit IV, page 10 of 21 (ex. p. HK_SFCSubpoena_000029982, 30107).

c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $145,306 per acre** [627]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[628]
e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[629]
f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[630]
g. Date of drilling and sampling program: August 15 to 16, 2006[631]
h. Average overburden: "The general stratigraphy of the property starts with the overburden which consists of between 1 and 3 feet of dark brown, high organic sandy soil, then a variety of layers of sand, clayey sand, sandy clay and clay averaging about 39 feet."[632]
i. Clayton Weibel's **"after"**-easement value of the property: **$440,000, or $3,592 per acre**[633]
j. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,558,000, purchased on December 10, 2015,[634] thus valuing the land at **$3,706,636.11, or $30,258 per acre**

[627] *Id.* at 1 (ex. p. HK_SFCSubpoena_000029889).

[628] *Id.* at 69 (ex. p. HK_SFCSubpoena_000029957).

[629] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000029958-77).

[630] *Id.* at 94, Exhibit IV, page 10 of 21 (ex. p. HK_SFCSubpoena_000029982, 30107).

[631] *Id.*, Exhibit IV, page 7 of 21 (ex. p. HK_SFCSubpoena_000030104).

[632] *Id.*, Exhibit IV, Appendix B, p. 4 (ex. p. HK_SFCSubpoena_000030127).

[633] *Id.* at HK_SFCSubpoena_000029885.

[634] Ex. 66 – Letter from Christopher DeLacy, Partner, Holland & Knight LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on

k. Close date for investing in the transaction: November 28, 2015[635]
l. Taxpayer-investor vote on disposition of property: 91.02 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 3.85 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[636]
m. Date of granting conservation easement on the land: December 22, 2015[637]
n. Total deductions allocated to taxpayer-investors as a result of the easement: $17,360,000[638]
o. Total tax benefit to taxpayer-investors: $6,874,560[639]

2. Green Cove Group LLC

a. Acres: 128.2[640]
b. Development potential: 6.775 million tons of limerock[641]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $138,846 per acre**[642]

Finance (Apr. 30, 2019), Attachment – OSI Response Chart 2(b) and 2(d); Ex. 9 – The 2015 Information Package for FG River Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000029444).

[635] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[636] Ex. 67 – Request10VotingData, SFCHK00116379.

[637] Ex. 57 at 1 (ex. p. HK_SFCSubpoena_000029889).

[638] Ex. 121 – IRS Form 1065, U.S. Return of Partnership Income for FG River Resources LLC (for tax year beginning Dec. 11, 2015 and ending Dec. 31, 2015), Schedule K, Statement 1, at 7 (ex. p. HK_SFCSubpoena_000123996).

[639] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[640] Ex. 58 – Clayton M. Weibel, MAI, Appraisal Report for Green Cove Rock LLC (Dec. 28, 2015), at HK_SFCSubpoena_000037585; Ex. 66 – Letter from Christopher DeLacy, Partner, Holland & Knight LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Apr. 30, 2019), Attachment – OSI Response Chart 2(b) and 2(d).

[641] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000037682, 37807).

[642] *Id.* at 1 (ex. p. HK_SFCSubpoena_000037585).

d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[643]
e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[644]
f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[645]
g. Date of drilling and sampling program: August 9 to 11, 2006[646]
h. Clayton Weibel's **"after"**-easement value of the property: **$450,000, or $3,510 per acre** [647]
i. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,645,000, purchased December 10, 2015,[648] thus valuing it at **3,797,270.55, or 29,620 per acre**
j. Close date for investing in the transaction: November 5, 2015[649]
k. Taxpayer-investor vote on disposition of property: 77.82 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0

[643] *Id.* at 69 (ex. p. HK_SFCSubpoena_000037657).

[644] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000037658-77).

[645] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000037682, 37807).

[646] *Id.* at 94, Exhibit VI, page 7 of 21 (ex. p. HK_SFCSubpoena_000037804).

[647] *Id.* at HK_SFCSubpoena_000037585.

[648] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 10 – The 2015 Information Package for Green Cove Group LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000037142).

[649] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

percent in favor of leasing it, and 0 percent in favor of holding the property for future investment.[650]

l. Date of granting conservation easement on the land: December 22, 2015[651]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,350,000[652]
n. Total tax benefit to taxpayer-investors: $6,870,600[653]

3. Huston Minerals Partners LLC

a. Acres: 126.4[654]
b. Development potential: 6.775 million tons of limerock[655]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $140,823 per acre**[656]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[657]
e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[658]
f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven

[650] Ex. 67, SFCHK00116379.

[651] Ex. 58 at 1 (ex. p. HK_SFCSubpoena_000037589).

[652] Ex. 58 at 1 (ex. p. HK_SFCSubpoena_000037585).

[653] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[654] Ex. 59 – Clayton M. Weibel, MAI, Appraisal Report for Huston Minerals LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000053018; Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[655] Ex. 59 at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000053115, 53241).

[656] *Id.* at 1 (ex. p. HK_SFCSubpoena_000053022).

[657] *Id.* at 69 (ex. p. HK_SFCSubpoena_000053090).

[658] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000053091-110).

mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[659]

g. Date of drilling and sampling program: August 9 to 11, 2006[660]
h. Clayton Weibel's **"after"**-easement value of the property: **$440,000, or $3,481 per acre**[661]
i. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,645,000, purchased December 10, 2015,[662] thus valuing it at **3,797,270.55, or 30,042 per acre**
j. Close date for investing in the transaction: November 5, 2015[663]
k. Taxpayer-investor vote on disposition of property: 83.22 percent of votes in favor of granting a conservation easement on the land, 3.66 percent in favor of mining it, 0 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[664]
l. Date of granting conservation easement on the land: December 28, 2015[665]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,360,000[666]
n. Total tax benefit to taxpayer-investors: $6,874,560[667]

[659] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000053115, 53241).

[660] *Id.* at Exhibit VI, page 7 of 21 (ex. p. HK_SFCSubpoena_000053238).

[661] *Id.* at 1 (ex. p. HK_SFCSubpoena_000053022).

[662] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 122 – The 2015 Information Package for Huston Minerals Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000052577).

[663] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[664] Ex. 67, SFCHK00116379.

[665] Ex. 59 at 1 (ex. p. HK_SFCSubpoena_000053022).

[666] *Id.* at 1 (ex. p. HK_SFCSubpoena_000053022).

[667] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

4. Imperial Aggregates Group LLC

    a. Acres: 123.3[668]
    b. Development potential: 6.775 million tons of limerock[669]
    c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $144,363 per acre**[670]
    d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[671]
    e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[672]
    f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[673]
    g. Date of drilling and sampling program: August 8 to 11, 2006[674]
    h. Clayton Weibel's **"after"**-easement value of the property: **$450,000, or $3,650 per acre**[675]
    i. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,641,000,

[668] Ex. 60 – Clayton M. Weibel, MAI, Appraisal Report for Imperial Aggregates LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000058263; Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[669] Ex. 60 at 95, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000058362, 58486).

[670] *Id.* at 1 (ex. p. HK_SFCSubpoena_000058266).

[671] *Id.* at 70 (ex. p. HK_SFCSubpoena_000058337).

[672] *Id.* at 71-90 (ex. p. HK_SFCSubpoena_000058338-57).

[673] *Id.* at 95, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000058362, 58486).

[674] *Id.* at Exhibit VI, page 7 of 21 (ex. p. HK_SFCSubpoena_000058483).

[675] *Id.* at 1 (ex. p. HK_SFCSubpoena_000058266).

purchased December 10, 2015,[676] thus valuing it at **3,793,103.45, or 30,763 per acre**

j. Close date for investing in the transaction: November 3, 2015[677]
k. Taxpayer-investor vote on disposition of property: 98.18 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment.[678]
l. Date of granting conservation easement on the land: December 21, 2015[679]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,350,000[680]
n. Total tax benefit to taxpayer-investors: $6,870,600[681]

5. Jackson River Partners LLC

a. Acres: 134.1[682]
b. Development potential: 6.775 million tons of limerock[683]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $132,737 per acre**[684]

[676] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 123 – The 2015 Information Package for Imperial Aggregates LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000057821).

[677] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[678] Ex. 67, SFCHK00116379.

[679] Ex. 60 at 1 (ex. p. HK_SFCSubpoena_000058266).

[680] *Id.*

[681] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[682] Ex. 61 – Clayton M. Weibel, MAI, Appraisal Report for Jackson River Minerals LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000062585; Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[683] Ex. 61 at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000062683, 62810).

[684] *Id.* at 1 (ex. p. HK_SFCSubpoena_000062590).

d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[685]
e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[686]
f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[687]
g. Date of drilling and sampling program: August 6, 2006 and December 21, 2006[688]
h. Clayton Weibel's **"after"**-easement value of the property: **$460,000, or $3,430 per acre**[689]
i. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,599,000, purchased December 10, 2015,[690] thus valuing it at **3,749,349.89, or 27,959 per acre**
j. Close date for investing in the transaction: November 13, 2015[691]
k. Taxpayer-investor vote on disposition of property: 67.91 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0

[685] *Id.* at 69 (ex. p. HK_SFCSubpoena_000062658).

[686] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000062659-678).

[687] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000062683, 62810).

[688] *Id.* at Exhibit VI, page 7 of 21 (ex. p. HK_SFCSubpoena_000062807).

[689] *Id.* at 1 (ex. p. HK_SFCSubpoena_000062590).

[690] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 124 – The 2015 Information Package for Jackson River Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000062148).

[691] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[692]

l. Date of granting conservation easement on the land: December 22, 2015[693]

m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,340,000[694]
Total tax benefit to taxpayer-investors: $6,866,640[695]

6. KR Stone Group LLC

a. Acres: 126.8[696]

b. Development potential: 6.775 million tons of limerock[697]

c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $140,379 per acre**[698]

d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[699]

e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[700]

f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven

[692] Ex. 67, SFCHK00116379.

[693] Ex. 61 at 1 (ex. p. HK_SFCSubpoena_000062590).

[694] *Id.*

[695] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[696] Ex. 62 – Clayton M. Weibel, MAI, Appraisal Report for KR Stone Resources LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000071111; Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[697] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000071209, 71335).

[698] *Id.* at 1 (ex. p. HK_SFCSubpoena_000071116).

[699] *Id.* at 69 (ex. p. HK_SFCSubpoena_000071184).

[700] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000071185-204).

mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[701]

g. Date of drilling and sampling program: August 15 and 16, 2006[702]
h. Clayton Weibel's **"after"**-easement value of the property: **$450,000, or $3,549 per acre**[703]
i. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,624,000, purchased December 10, 2015,[704] thus valuing it at **3,775,393.27, or 29,774 per acre**
j. Close date for investing in the transaction: November 12, 2015[705]
k. Taxpayer-investor vote on disposition of property: 91.91 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0 percent in favor of leasing it, and 3.34 percent in favor of holding the property for future investment[706]
l. Date of granting conservation easement on the land: December 22, 2015[707]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,350,000[708]
n. Total tax benefit to taxpayer-investors: $6,870,600[709]

[701] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p HK_SFCSubpoena_000071209, 71335).

[702] *Id.* at Exhibit VI, page 7 of 21 (ex. p. HK_SFCSubpoena_000071332).

[703] *Id.* at 1 (ex. p. HK_SFCSubpoena_000071116).

[704] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 125 – The 2015 Information Package for KR Stone Group LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000070675).

[705] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[706] Ex. 76, SFCHK00116379.

[707] Ex. 62 at 1 (ex. p. HK_SFCSubpoena_000071116).

[708] Ex. 62 at 1 (ex. p. HK_SFCSubpoena_000071116).

[709] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

7. LM Bass Partners LLC

a. Acres: 130.1[710]
b. Development potential: 6.775 million tons of limerock[711]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $136,818 per acre**[712]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[713]
e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[714]
f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[715]
g. Date of drilling and sampling program: August 15 and 16, 2006[716]
h. Clayton Weibel's **"after"**-easement value of the property: **$450,000, or $3,459 per acre**[717]
i. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,604,000,

[710] Ex. 63 – Clayton M. Weibel, MAI, Appraisal Report for LM Bass Aggregates LLC (as of Dec. 29, 2015), at HK_SFCSubpoena_000075441; Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[711] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000075539, 75665).

[712] *Id.* at 1 at HK_SFCSubpoena_000075446).

[713] *Id.* at 69 (ex. p. HK_SFCSubpoena_000075514).

[714] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000075515-34).

[715] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000075539, 75665).

[716] *Id.* at Exhibit VI, page 7 of 21 (ex. p. HK_SFCSubpoena_000075662).

[717] *Id.* at 1 at HK_SFCSubpoena_000075446).

purchased December 10, 2015,[718] thus valuing it at **3,754,557.77, or 28,859 per acre**

j. Close date for investing in the transaction: November 11, 2015[719]
k. Taxpayer-investor vote on disposition of property: 97.69 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[720]
l. Date of granting conservation easement on the land: December 22, 2015[721]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,350,000[722]
n. Total tax benefit to taxpayer-investors: $6,870,600[723]

8. Manatee Minerals Group LLC

a. Acres: 157.2[724]
b. Development potential: 6.775 million tons of limerock[725]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, $113,232 per acre**[726]

[718] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 126 – The 2015 Information Package for LM Bass Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000075001).

[719] Ex. 66 – Letter from Christopher DeLacy, Partner, Holland & Knight LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Apr. 30, 2019), Attachment – OSI Response Chart 2(b) and 2(d).

[720] Ex. 67 – Request10VotingData, SFCHK00116379.

[721] Ex. 63 at 1 at HK_SFCSubpoena_000075446).

[722] Ex. 63 at 1 at HK_SFCSubpoena_000075446).

[723] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[724] Ex. 64 – Clayton M. Weibel, MAI, Appraisal Report for Manatee Minerals LLC (as of Dec. 28, 2015), at HK_SFCSubpoena_000083207; Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[725] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000083305, 83428).

[726] *Id.* at 1 (ex. p. HK_SFCSubpoena_000083212).

d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[727]
e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[728]
f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[729]
g. Date of drilling and sampling program: August 16 and 17, 2006[730]
h. Clayton Weibel's **"after"**-easement value of the property: **$500,000, or 3,181 per acre**[731]
i. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,667,000, purchased December 11, 2015,[732] thus valuing it at **3,820,189.60, or 24,301 per acre**
j. Close date for investing in the transaction: November 12, 2015[733]
k. Taxpayer-investor vote on disposition of property: 95.25 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0

[727] *Id.* at 69 (ex. p. HK_SFCSubpoena_000083280).

[728] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000083281-300).

[729] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000083305, 83428).

[730] *Id.* at Exhibit VI, page 7 of 21 (ex. p. HK_SFCSubpoena_000083425).

[731] *Id.* at 1 (ex. p. HK_SFCSubpoena_000083212).

[732] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 127 – The 2015 Information Package for Manatee Minerals Group LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000082768).

[733] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[734]

l. Date of granting conservation easement on the land: December 22, 2015[735]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,300,000[736]
n. Total tax benefit to taxpayer-investors: $6,850,800[737]

9. Nassau River Partners LLC

a. Acres: 193.1[738]
b. Development potential: 6.775 million tons of limerock[739]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $92,180 per acre**[740]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[741]
e. Location of Clayton Weibel's comparable sales: Vero Beach, Indian River County, Florida; Mobile County, Alabama; La Salle County, Illinois; Jackson County, Wisconsin; and Hall County, Georgia[742]
f. Clayton Weibel's opinion on development potential of the property: "The reserve conclusions are: Proven Mineral Reserves without 20 acres plant is 6.775 million tons of limerock. The drilling and geology of the area give a high level of confidence in the resource to determine it a proven

[734] Ex. 67, SFCHK00116379.

[735] Ex. 64 at 1 (ex. p. HK_SFCSubpoena_000083212).

[736] *Id.* at 1 (ex. p. HK_SFCSubpoena_000083212).

[737] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[738] Ex. 65 – Clayton M. Weibel, MAI, Appraisal Report for Nassau River Stone LLC (as of Dec. 29, 2015), at HK_SFCSubpoena_000088859; Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[739] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000088957, 89086).

[740] *Id.* at 1 (ex. p. HK_SFCSubpoena_000088864).

[741] *Id.* at 69 (ex. p. HK_SFCSubpoena_000088932).

[742] *Id.* at 70-89 (ex. p. HK_SFCSubpoena_000088933-852).

mineral reserve. In addition, there are several other mining operations with close proximity mining the same deposit."[743]

g. Date of drilling and sampling program: August 15 and 16, 2006[744]
h. Clayton Weibel's **"after"**-easement value of the property: **$530,000, or $2,745 per acre**[745]
i. Taxpayer-investors' total buy-in for 95.99 percent of company owning the underlying land: $3,679,000, purchased December 11, 2015,[746] thus valuing it at **3,832,690.91, or 19,848 per acre**
j. Close date for investing in the transaction: November 12, 2015[747]
k. Taxpayer-investor vote on disposition of property: 96.19 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 1.24 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[748]
l. Date of granting conservation easement on the land: December 22, 2015[749]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,270,000[750]
n. Total tax benefit to taxpayer-investors: $6,838,920[751]

[743] *Id.* at 94, Exhibit VI, page 10 of 21 (ex. p. HK_SFCSubpoena_000088957, 89086).

[744] *Id.* at Exhibit VI, page 7 of 21 (ex. p. HK_SFCSubpoena_000089083).

[745] *Id.* at 1 (ex. p. HK_SFCSubpoena_000088864).

[746] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 128 – The 2015 Information Package for Nassau River Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC, at 13 (ex. p. HK_SFCSubpoena_000088419).

[747] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[748] Ex. 67, SFCHK00116379.

[749] Ex. 65 at 1 (ex. p. HK_SFCSubpoena_000088864).

[750] *Id.*

[751] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

10. Orange Woods Partners LLC

a. Acres: 125.31[752]
b. Development potential: 4.8 million tons of limerock[753]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $142,048 per acre**[754]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[755]
e. Location of Clayton Weibel's comparable sales: Mobile County, Alabama, Florida; La Salle County, Illinois; Jackson County, Wisconsin; San Diego County, California; and Hall County, Georgia[756]
f. Clayton Weibel's opinion on development potential of the property: "Based on the geologic investigation of the area including drilling and other considerations for mining feasibility, such as legally permissible, financial soundness, and market data, this classifies as 'Proven Mineral Reserves.' In addition, there are several other mining operations mining the same deposit in the region. Therefore, Proven Mineral Reserves without 20-acre plant is ≈4.8 million tons of lime rock that is both FDOT Road Base and general construction material." [757]
g. Date of drilling and sampling program: August 8 through 17, 2006 and December 21, 2006[758]
h. Clayton Weibel's **"after"**-easement value of the property: **$375,000, or $2,993 per acre**[759]
i. Taxpayer-investors' total buy-in for 98.99 percent of company owning the underlying land: $3,673,351,

[752] Ex. 68 – Clayton M. Weibel, MAI, Appraisal Report for Orange Woods Capital LLC (as of Oct. 5, 2016), at HK_SFCSubpoena_000090710).

[753] *Id.* at 88 (ex. p. HK_SFCSubpoena_000090803).

[754] *Id.* at 1 (ex. p. HK_SFCSubpoena_000090716).

[755] *Id.* at 70 (ex. p. HK_SFCSubpoena_000090785).

[756] *Id.* at 71-83 (ex. p. HK_SFCSubpoena_000090786-98).

[757] *Id.* at 88 (ex. p. HK_SFCSubpoena_000090803) (emphasis removed).

[758] *Id.* at Exhibit V, page 1 (ex. p. HK_SFCSubpoena_000090930).

[759] *Id.* at 1 (ex. p. HK_SFCSubpoena_000090716).

purchased August 11, 2016,[760] thus valuing it at **3,710,830.39, or 29,613 per acre**

j. Close date for investing in the transaction: July 12, 2016[761]
k. Taxpayer-investor vote on disposition of property: 86.98 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[762]
l. Date of granting conservation easement on the land: October 5, 2016[763]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,425,000[764]
n. Total tax benefit to taxpayer-investors: $6,900,300[765]

11. Palmetto Waters Group LLC

a. Acres: 121.99[766]
b. Development potential: 4.8 million tons of limerock[767]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $145,914 per acre**[768]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[769]

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[760] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 129 – The 2016 Information Package for Orange Woods Partners LLC, Ornstein-Schuler Investments LLC, at 14 (ex. p. HK_SFCSubpoena_000090238).

[761] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[762] Ex. 67, SFCHK00116379.

[763] Ex. 68 at 1 (ex. p. HK_SFCSubpoena_000090716).

[764] *Id.* at 1 (ex. p. HK_SFCSubpoena_000090716).

[765] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[766] Ex. 69 – Clayton M. Weibel, MAI, Appraisal Report for Palmetto Waters LLC (as of Oct. 5, 2016), at HK_SFCSubpoena_000092754.

[767] *Id.* at 88 (ex. p. HK_SFCSubpoena_000092847).

[768] *Id.* at 1 (ex. p. HK_SFCSubpoena_000092760).

[769] *Id.* at 70 (ex. p. HK_SFCSubpoena_000092829).

e. Location of Clayton Weibel's comparable sales: Mobile County, Alabama, Florida; La Salle County, Illinois; Jackson County, Wisconsin; San Diego County, California; and Hall County, Georgia[770]
f. Clayton Weibel's opinion on development potential of the property: "Based on the geologic investigation of the area including drilling and other considerations for mining feasibility, such as legally permissible, financial soundness, and market data, this classifies as 'Proven Mineral Reserves.' In addition, there are several other mining operations mining the same deposit in the region. Therefore, Proven Mineral Reserves without 20-acre plant is ≈4.8 million tons of lime rock that is both FDOT Road Base and general construction material."[771]
g. Date of drilling and sampling program: August 8 through 17, 2006 and December 21, 2006[772]
h. Clayton Weibel's **"after"**-easement value of the property: **$375,000, or $3,074 per acre**[773]
i. Taxpayer-investors' total buy-in for 98.99 percent of company owning the underlying land: $3,774,000, purchased August 31, 2016,[774] thus valuing it at **3,812,506.31, or 31,253 per acre**
j. Close date for investing in the transaction: August 5, 2016[775]
k. Taxpayer-investor vote on disposition of property: 96.27 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[776]

[770] *Id.* at 71-83 (ex. p. HK_SFCSubpoena_000092830-42).

[771] *Id.* at 88 (ex. p. HK_SFCSubpoena_000092847).

[772] *Id.*, Exhibit V, page 1 (ex. p. HK_SFCSubpoena_000092973).

[773] *Id.* at 1 (ex. p. HK_SFCSubpoena_000092760).

[774] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 130 – The 2016 Information Package for Palmetto Waters Group LLC, Ornstein-Schuler Investments LLC, at 14 (ex. p. HK_SFCSubpoena_000092281).

[775] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[776] Ex. 67, SFCHK00116379.

l. Date of granting conservation easement on the land: October 5, 2016[777]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,425,000[778]
n. Total tax benefit to taxpayer-investors: $6,900,300[779]

12. Quality Stones Group LLC

a. Acres: 111[780]
b. Development potential: 4.812 million tons of limerock[781]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,860,000, or $160,901 per acre**[782]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[783]
e. Location of Clayton Weibel's comparable sales: Mobile County, Alabama, Florida; La Salle County, Illinois; Jackson County, Wisconsin; San Diego County, California; and Hall County, Georgia[784]
f. Clayton Weibel's opinion on development potential of the property: "Based on the geologic investigation of the area including drilling and other considerations for mining feasibility, such as legally permissible, financial soundness, and market data, this classifies as 'Proven Mineral Reserves.' In addition, there are several other mining operations mining the same deposit in the region. Therefore, Proven Mineral Reserves without 20-acre plant

[777] Ex. 69 at 1 (ex. p. HK_SFCSubpoena_000092760).

[778] Ex. 69 at 1 (ex. p. HK_SFCSubpoena_000092760).

[779] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[780] Ex. 70 at HK_SFCSubpoena_000096549.

[781] *Id.* at 88 (ex. p. HK_SFCSubpoena_000096642).

[782] *Id.* at 1 (ex. p. HK_SFCSubpoena_000096555).

[783] *Id.* at 70 (ex. p. HK_SFCSubpoena_000096624).

[784] *Id.* at 71-83 (ex. p. HK_SFCSubpoena_000096624-37).

is ≈4.812 million tons of lime rock that is both FDOT Road Base and general construction material."[785]

g. Date of drilling and sampling program: August 8 through 17, 2006 and December 21, 2006[786]
h. Clayton Weibel's **"after"**-easement value of the property: **$360,000, or $3,243 per acre**[787]
i. Taxpayer-investors' total buy-in for 98.99 percent of company owning the underlying land: $3,673,000, purchased December 21, 2016,[788] thus valuing it at **3,710,475.81, or 33,428 per acre**
j. Close date for investing in the transaction: December 14, 2016[789]
k. Taxpayer-investor vote on disposition of property: 98.14 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0 percent in favor of leasing it, and 1.86 percent in favor of holding the property for future investment[790]
l. Date of granting conservation easement on the land: December 22, 2016[791]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,500,000[792]
n. Total tax benefit to taxpayer-investors: $6,930,000[793]

[785] *Id.* at 88 (ex. p. HK_SFCSubpoena_000096642) (emphasis removed).

[786] *Id.* Exhibit V, page 1 (ex. p. HK_SFCSubpoena_000096767).

[787] *Id.* at 1 (ex. p. HK_SFCSubpoena_000096555).

[788] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 131 – The 2016 Information Package for Quality Stones Group LLC, Ornstein-Schuler Investments LLC, at 14 (ex. p. HK_SFCSubpoena_000096078).

[789] *Id.*, Attachment – OSI Response Chart 2(b) and 2(d).

[790] Ex. 67 – Request10VotingData, SFCHK00116379.

[791] Ex. 70 – Clayton M. Weibel, MAI, Appraisal Report for Quality River Stones LLC (as of Dec. 22, 2016), at 1 (ex. p. HK_SFCSubpoena_000096555).

[792] *Id.*

[793] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

13. Regional Minerals Partners LLC

a. Acres: 121.04[794]
b. Development potential: 4.808 million tons of limerock[795]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,800,000, or $147,059 per acre**[796]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[797]
e. Location of Clayton Weibel's comparable sales: Mobile County, Alabama, Florida; La Salle County, Illinois; Jackson County, Wisconsin; San Diego County, California; and Hall County, Georgia[798]
f. Clayton Weibel's opinion on development potential of the property: "Based on the geologic investigation of the area including drilling and other considerations for mining feasibility, such as legally permissible, financial soundness, and market data, this classifies as 'Proven Mineral Reserves.' In addition, there are several other mining operations mining the same deposit in the region. Therefore, Proven Mineral Reserves without 20-acre plant is ≈4.808 million tons of lime rock that is both FDOT Road Base and general construction material."[799]
g. Date of drilling and sampling program: August 8 through 17, 2006 and December 21, 2006[800]
h. Clayton Weibel's **"after"**-easement value of the property: **$375,000, or $3,098 per acre**[801]
i. Taxpayer-investors' total buy-in for 98.99 percent of company owning the underlying land: $3,720,000,

[794] Ex. 71 – Clayton M. Weibel, MAI, Appraisal Report for Regional Minerals LLC (as of Dec. 27, 2016), at HK_SFCSubpoena_000098601.

[795] *Id.* at 88 (ex. p. HK_SFCSubpoena_000098694).

[796] *Id.* at 1 (ex. p. HK_SFCSubpoena_000098607).

[797] *Id.* at 70 (ex. p. HK_SFCSubpoena_000098676).

[798] *Id.* at 71-83 (ex. p. HK_SFCSubpoena_000098677-89).

[799] *Id.* at 88 (ex. p. HK_SFCSubpoena_000098694) (emphasis removed).

[800] *Id.*, Exhibit V, page 1 (ex. p. HK_SFCSubpoena_000098820).

[801] *Id.* at 1 (ex. p. HK_SFCSubpoena_000098607).

purchased December 21, 2016,[802] thus valuing it at **3,757,955.35, or 31,047 per acre**

j. Close date for investing in the transaction: December 15, 2016[803]
k. Taxpayer-investor vote on disposition of property: 92.18 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0 percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[804]
l. Date of granting conservation easement on the land: December 27, 2016[805]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,425,000[806]
n. Total tax benefit to taxpayer-investors: $6,900,300[807]

14. Sailfish Cove Group LLC

a. Acres: 122.95[808]
b. Development potential: 4.805 million tons of limerock[809]
c. Clayton Weibel's **"before"**-easement value of the property: **$17,790,000, or $144,693 per acre**[810]
d. Clayton Weibel's primary method for estimating **"before"** value of the property: discounted cash flow, supported by comparable sales of surface mining operations[811]

[802] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d); Ex. 132 – The 2016 Information Package for Regional Minerals Partners LLC, Ornstein-Schuler Investments LLC, at 14 (ex. p. HK_SFCSubpoena_000098130).

[803] Ex. 66, Attachment – OSI Response Chart 2(b) and 2(d).

[804] Ex. 67, SFCHK00116379.

[805] Ex. 71 at 1 (ex. p. HK_SFCSubpoena_000098607).

[806] *Id.* at 1 (ex. p. HK_SFCSubpoena_000098607).

[807] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[808] Ex. 72 – Clayton M. Weibel, MAI, Appraisal Report for Sailfish Cove LLC (as of Dec. 5, 2016), at HK_SFCSubpoena_000102381.

[809] *Id.* at 89 (ex. p. HK_SFCSubpoena_000102475).

[810] *Id.* at 1 (ex. p. HK_SFCSubpoena_000102387).

[811] *Id.* at 71 (ex. p. HK_SFCSubpoena_000102459).

e. Location of Clayton Weibel's comparable sales: Mobile County, Alabama, Florida; La Salle County, Illinois; Jackson County, Wisconsin; San Diego County, California; and Hall County, Georgia[812]
f. Clayton Weibel's opinion on development potential of the property: "Based on the geologic investigation of the area including drilling and other considerations for mining feasibility, such as legally permissible, financial soundness, and market data, this classifies as 'Proven Mineral Reserves.' In addition, there are several other mining operations mining the same deposit in the region. Therefore, Proven Mineral Reserves without 20-acre plant is ≈4.805 million tons of lime rock that is both FDOT Road Base and general construction material."[813]
g. Date of drilling and sampling program: August 8 through 17, 2006 and December 21, 2006[814]
h. Clayton Weibel's **"after"**-easement value of the property: **$360,000, or $2,928 per acre**[815]
i. Taxpayer-investors' total buy-in for 98.99 percent of company owning the underlying land: $3,750,000, purchased November 21, 2016,[816] thus valuing it at **3,788,261.44, or 30,811 per acre**
j. Close date for investing in the transaction: October 21, 2016[817]
k. Taxpayer-investor vote on disposition of property: 100 percent of votes in favor of granting a conservation easement on the land, 0 percent in favor of mining it, 0

[812] *Id.* at 72-84 (ex. p. HK_SFCSubpoena_000102458-70).

[813] *Id.* at 89 (ex. p. HK_SFCSubpoena_000102475) (emphasis removed).

[814] *Id.*, Exhibit V, page 1 (ex. p. HK_SFCSubpoena_000102602).

[815] *Id.* at 1 (ex. p. HK_SFCSubpoena_000102387).

[816] Ex. 66 – Letter from Christopher DeLacy, Partner, Holland & Knight LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Apr. 30, 2019), Attachment – OSI Response Chart 2(b) and 2(d); Ex. 133 – The 2016 Information Package for Sailfish Cove Group LLC, Ornstein-Schuler Investments LLC, at 14 (ex. p. HK_SFCSubpoena_000101910).

[817] Ex. 66 – Letter from Christopher DeLacy, Partner, Holland & Knight LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Apr. 30, 2019), Attachment – OSI Response Chart 2(b) and 2(d).

percent in favor of leasing it, and 0 percent in favor of holding the property for future investment[818]

l. Date of granting conservation easement on the land: December 5, 2016[819]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,430,000[820]
n. Total tax benefit to taxpayer-investors: $6,902,280[821]

15. Fantail Holdings LLC

a. Acres: 100.56[822]
b. Development potential: 4.563 million tons of limerock[823]
c. Clayton Weibel's and Lucus M. Von Esh's **"before"**-easement value of the property: **$19,230,000, or $191,229 per acre**[824]
d. Clayton Weibel's and Lucus M. Von Esh's primary method for estimating **"before"** value of the property: discounted cash flow[825]
e. Clayton Weibel's and Lucus M. Von Esh's opinion on development potential of the property: "Based on the geologic investigation of the area including drilling and other considerations for mining feasibility, such as legally permissible, financial soundness, and market data, this classifies as 'Proven Mineral Reserves.' In addition, there are several other mining operations mining the same deposit in the region. Therefore, Proven Mineral Reserves with a portable plant is ≈4.563 million tons of lime rock

[818] Ex. 67, SFCHK00116379.

[819] *Id.* at 1 (ex. p. HK_SFCSubpoena_000102387).

[820] *Id.* at 1 (ex. p. HK_SFCSubpoena_000102387).

[821] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[822] Ex. 73 – Clayton M. Weibel, MAI, and Lucas Mason, Inc., Appraisal Report for Fantail Holdings LLC (as of Nov. 30, 2017), at HK_SFCSubpoena_000161167.

[823] *Id.* at 76 (ex. p. HK_SFCSubpoena_000161249).

[824] *Id.* at 1 (ex. p. HK_SFCSubpoena_000161174).

[825] *Id.* at 72 (ex. p. HK_SFCSubpoena_000161245).

that is both FDOT Road Base and general construction material."[826]

f. Date of drilling and sampling program: August 8 through 17, 2006 and December 21, 2006[827]
g. Clayton Weibel's and Lucus M. Von Esh's **"after"**-easement value of the property: **$220,000, or $2,188 per acre**[828]
h. Date of granting conservation easement on the land: November 30, 2016[829]
i. Total deductions allocated to taxpayer-investors as a result of the easement: $19,010,000[830]
j. Total tax benefit to taxpayer-investors: $7,527,960[831]

16. Orange Stone Group LLC

a. Acres: 109.46[832]
b. Development potential: 6.16 million tons of limerock[833]
c. Clayton Weibel's and Lucus M. Von Esh's **"before"**-easement value of the property: **$26,070,000, or $238,169 per acre**[834]
d. Clayton Weibel's and Lucus M. Von Esh's primary method for estimating **"before"** value of the property: discounted cash flow[835]
e. Clayton Weibel's and Lucus M. Von Esh's opinion on development potential of the property: "Based on the

[826] *Id.* at 76 (ex. p. HK_SFCSubpoena_000161249) (emphasis removed).

[827] *Id.*, Exhibit IV, page 1 (ex. p. HK_SFCSubpoena_000161393).

[828] *Id.* at 1 (ex. p. HK_SFCSubpoena_000161174).

[829] *Id.* at 1 (ex. p. HK_SFCSubpoena_000161174).

[830] *Id.* at 1 (ex. p. HK_SFCSubpoena_000161174).

[831] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[832] Ex. 74 – Clayton M. Weibel, MAI, and Lucas Mason, Inc., Appraisal Report for Orange Stone LLC (as of Nov. 20, 2017), at HK_SFCSubpoena_000188211.

[833] *Id.* at 76 (ex. p. HK_SFCSubpoena_000188293).

[834] *Id.* at 1 (ex. p. HK_SFCSubpoena_000188218).

[835] *Id.* at 71 (ex. p. HK_SFCSubpoena_000188288).

geologic investigation of the area including drilling and other considerations for mining feasibility, such as legally permissible, financial soundness, and market data, this classifies as 'Proven Mineral Reserves.' In addition, there are several other mining operations mining the same deposit in the region. Therefore, Proven Mineral Reserves with a portable plant is ≈6.160 million tons of lime rock that is both FDOT Road Base and general construction material."[836]

f. Date of drilling and sampling program: August 8 through 17, 2006 and December 21, 2006[837]
g. Clayton Weibel's and Lucus M. Von Esh's **"after"**-easement value of the property: **$240,000, or $2,193 per acre**[838]
h. Date of granting conservation easement on the land: November 20, 2016[839]
i. Total deductions allocated to taxpayer-investors as a result of the easement: $25,830,000[840]
j. Total tax benefit to taxpayer-investors: $10,228,680[841]

[836] *Id.* at 76 (ex. p. HK_SFCSubpoena_000188293) (emphasis removed).

[837] *Id.* at Exhibit IV, page 1 (ex. p. HK_SFCSubpoena_000188435).

[838] *Id.* at 1 (ex. p. HK_SFCSubpoena_000188218).

[839] *Id.* at 1 (ex. p. HK_SFCSubpoena_000188218).

[840] *Id.* at 1 (ex. p. HK_SFCSubpoena_000188218).

[841] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

v. Dr. Kyle Carney

1. Little Pumpkin Creek (Kyle Carney)

a. Acres: 1209.38[842]
b. Purported development: residential development, "49 large view lots averaging 24± acres"[843]
c. Ronald S. Foster's **"before"**-easement value of the property: **$18,470,000, or approximately $15,272 per acre**.[844] Little Pumpkin Creek, LLC purchased the property for **$1,250 per acre** just 14 months earlier, on October 21, 2015 (2,497.25 acres for $3,121,562.50)[845]
d. Ronald S. Foster's methods for estimating **"before"** value of the property: discounted cash flow and sales comparisons[846]
e. Locations of comparable sales: one in Robertson County, Tennessee; one in Madison County, Tennessee; and one in Shelby County, Tennessee[847]
f. Ronald S. Foster's opinion on development potential of the property: "The residential market in the immediate neighborhood has experienced moderate growth. Research indicates that demand for residential properties average in the subject area. Many buyers are looking for an adequate sized parcel with adequate available utilities and natural scenic views. The subject tracts large size gives it the ability to subdivide into numerous single-family lots fitting market demand. For these reasons, it is my opinion that the

[842] Ex. 76 – Letter from Daniel J. Donovan, Partner, King & Spalding LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Apr. 30, 2019), Appendix A, Attachment A at SFC-Carney_00000001 (first spreadsheet).

[843] Ex. 13 – Investment Summary for Little Pumpkin Creek Investments, LLC, at SFC-Carney_00002181; Ex. 77 – Ronald S. Foster, Ronald S. Foster & Company, Inc., Appraisal Report for Little Pumpkin Creek, LLC (Dec. 2, 2016), at 61 (ex. p. CARNEY-SFC_00005130).

[844] Ex. 77 at 3 (ex. p. CARNEY-SFC_00005072).

[845] *Id.* at 40 (ex. p. CARNEY-SFC_00005109).

[846] *See id.* at 57-89 (ex. p. CARNEY-SFC_00005126-5158).

[847] *Id.* at 65-70 (ex. p. CARNEY-SFC_00005134-5139).

subject property development with residential lots is financially feasible."[848]

g. Ronald S. Foster's **"after"**-easement value of the property: **$1,209,360, or $1,000 per acre**[849]
h. Number of taxpayer-investors involved in the transaction: 47[850]
i. Taxpayer-investors' total buy-in for 96 percent of company owning the underlying land: $3,047,000, thus valuing the land as being worth **$3,173,958.33, or $2,624 per acre**[851]
j. Close date for investing in the transaction: September 2, 2016[852]
k. Taxpayer-investor vote on disposition of property: 46 out of Little Pumpkin Creek Investments' 47 taxpayer-investors voted to grant a conservation easement on the land, and one taxpayer-investor failed to properly vote[853]
l. Date of granting conservation easement on the land: December 2, 2016[854]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $17,260,000[855]
n. Total tax benefit to taxpayer-investors: $6,834,960[856]
o. Dr. Carney's fees as a result of the transaction: $500,000[857]

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[848] *Id.* at 61 (ex. p. CARNEY-SFC_00005130).

[849] *Id.* at 3 (ex. p. CARNEY-SFC_00005402).

[850] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[851] Ex. 78 – Little Pumpkin Creek, LLC, Confidential Private Placement Memorandum, at 6, 17 (ex. p. SFC-Carney_00002194, 2205).

[852] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[853] Ex. 79 – Letter from Daniel J. Donovan, Partner, King & Spalding LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (Sept. 10, 2019), Appendix A, Attachment A, at SFC-Carney_00043654.

[854] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[855] *Id.*

[856] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[857] Ex. 80 – Letter from Daniel J. Donovan, Partner, King & Spalding LLP, to Charles Grassley, Chairman, U.S. Senate Committee on Finance, and Ron Wyden, Ranking Member, U.S. Senate Committee on Finance (July 31, 2019), Appendix A, Attachment A at SFC-Carney_00012643 (second spreadsheet).

2. Little Pumpkin Creek North Investments

a. Acres: 1287.13[858]
b. Purported development: residential development, "31 large view lots averaging 41± acres"[859]
c. Ronald S. Foster's **"before"**-easement value of the property: **$20,000,000, or approximately $15,538 per acre**.[860] Little Pumpkin Creek, LLC purchased the property for **$1,250 per acre** just 14 months earlier, on October 21, 2015 (2,497.25 acres for $3,121,562.50).[861]
d. Ronald S. Foster's methods for estimating **"before"** value of the property: discounted cash flow and sales comparisons[862]
e. Locations of comparable sales: one in Robertson County, Tennessee; one in Madison County, Tennessee; and one in Shelby County, Tennessee[863]
f. Ronald S. Foster's opinion on development potential of the property: "The residential market in the immediate neighborhood has experienced moderate growth. Research indicates that demand for residential properties average in the subject area. Many buyers are looking for an adequate sized parcel with adequate available utilities and natural scenic views. The subject tracts large size gives it the ability to subdivide into numerous single-family lots fitting market demand. For these reasons, it is my opinion that the subject property development with residential lots is financially feasible."[864]
g. Ronald S. Foster's **"after"**-easement value of the property: **$1,287,130, or $1,000 per acre**[865]

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[858] Ex. 12 – Investment Summary for Little Pumpkin Creek North Investments, LLC, at SFC-Carney_00002331); Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (first spreadsheet).

[859] Ex. 12 at SFC-Carney_00002332; Ex. 75 at 56 (ex. p. CARNEY-SFC_00005455).

[860] Ex. 75 at 3 (ex. p. CARNEY-SFC_00005402).

[861] *Id.* at 38 (ex. p. CARNEY-SFC_00005437).

[862] *Id.* at 52-84 (ex. p. CARNEY-SFC_00005451-5483).

[863] *Id.* at 60-67 (ex. p. CARNEY-SFC_00005459-5466).

[864] *Id.* at 56 (ex. p. CARNEY-SFC_00005455).

[865] *Id.* at 3 (ex. p. CARNEY-SFC_00005402).

h. Number of taxpayer-investors involved in the transaction: Four[866]
i. Taxpayer-investors' total buy-in for 95 percent of company owning the underlying land: $3,329,150, thus valuing the land as being worth **$3,504,368.42, or $2,723 per acre**.[867]
j. Close date for investing in the transaction: November 28, 2016[868]
k. Taxpayer-investor vote on disposition of property: all four of Little Pumpkin Creek North Investments' partners voted to grant a conservation easement on the land[869]
l. Date of granting conservation easement on the land: December 2, 2016[870]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $18,711,000[871]
n. Total tax benefit to taxpayer-investors: $7,409,556[872]
o. Dr. Carney's fees as a result of the transaction: $500,000[873]

3. Ginn Creek

a. Acres: 1081.06[874]
b. Purported development: low-density residential[875]

[866] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[867] Ex. 81 at 6, 17 (ex. p. SFC-Carney_00002345, 2356).

[868] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[869] Ex. 79, Appendix A, Attachment A, at SFC-Carney_00043654.

[870] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[871] *Id.*, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[872] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[873] Ex. 80, Appendix A, Attachment A at SFC-Carney_00012643 (second spreadsheet).

[874] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (first spreadsheet).

[875] Ex. 14 – Investment Summary for Ginn Creek Investments, LLC, at SFC-Carney_00001954; Ex. 82 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Ginn Creek, LLC (Dec. 8, 2016), at 7 (ex. p. CARNEY-SFC_00004361).

c. David Roberts' **"before"**-easement value of the property: **$14,054,000, or approximately $13,000 per acre**[876]
d. David Roberts' methods for estimating **"before"** value of the property: sales comparisons[877]
e. Locations of comparable sales: three in Williamson County, Tennessee; one on Lookout Mountain, Walker County, Georgia; and one in Rutherford County, Tennessee[878]
f. David Roberts' opinion on development potential of the property: "Humphreys and Perry County, Tennessee have not experienced a large amount of residential growth and development at this time. However, in recent years several residential properties have been built near the Duck River for recreational purposes. There has also been extensive use of large land tracts for private hunting land. The growth and development from Nashville, Tennessee west has begun to reach the subject market area, including Humphreys County, Tennessee. In 2014 Humphreys County, Tennessee had a total of 25 buildings permits and in 2015, 28 permits for residential development. Nearby Dickson County had a total of 81 permits in 2014, and 75 merits in 2015. Both of these counties indicate the increased growth and development of second homeowners to the area. Considering the location of the subject property, and the good access, the most financially feasible use of the site would be for low-density residential development with larger homesites, surrounded by private recreational and hunting land."[879]
g. David Roberts' **"after"**-easement value of the property: **$704,000, or $651 per acre**[880]
h. Number of taxpayer-investors involved in the transaction: 50[881]

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[876] Ex. 82 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Ginn Creek, LLC (Dec. 8, 2016), at 3 (ex. p. CARNEY-SFC_00004358).

[877] *See id.* at 50-65 (ex. p. CARNEY-SFC_00004404-4419).

[878] *Id.* at 63 (ex. p. CARNEY-SFC_00004417).

[879] *Id.* at 47 (ex. p. CARNEY-SFC_00004401).

[880] *Id.* at 3 (ex. p. CARNEY-SFC_00004358).

[881] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

i. Taxpayer-investors' total buy-in for 95 percent of company owning the underlying land: $2,007,500, thus valuing the land as being worth **$2,113,157.89, or $1,955 per acre**.[882]
j. Close date for investing in the transaction: July 13, 2016[883]
k. Taxpayer-investor vote on disposition of property: 49 out of Ginn Creek Investments' 50 taxpayer-investors voted to grant a conservation easement on the land, and one taxpayer-investor voted to hold the land for investment.[884]
l. Date of granting conservation easement on the land: December 2, 2016[885]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $13,350,000[886]
n. Total tax benefit to taxpayer-investors: $5,286,600[887]
o. Dr. Carney's fees as a result of the transaction: $500,000[888]

vi. Thomas Jason Free

1. Tennessee Ranch Estates (2015)

a. Acres: 1,010.43[889]
b. Purported development: low-density residential[890]
c. David Roberts' **"before"**-easement value of the property: **$14,146,000, or approximately $14,000 per acre**[891]

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[882] Ex. 83 – Ginn Creek Investments, LLC, Confidential Private Placement Memorandum, at 6, 17 (ex. p. SFC-Carney_00001967, 1978).

[883] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[884] Ex. 79, Appendix A, Attachment A, at SFC-Carney_00043654.

[885] Ex. 76, Appendix A, Attachment A at SFC-Carney_00000001 (second spreadsheet).

[886] *Id.*

[887] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[888] Ex. 80, Appendix A, Attachment A at SFC-Carney_00012643 (second spreadsheet).

[889] Ex. 8 – Tennessee Ranch Estates Investors, Confidential Private Placement Memorandum, LLC (Oct. 16, 2015), at 2 (ex. p. FREE00000418); Ex. 85 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Tennessee Ranch Estates, LLC (Dec. 3, 2015), at 1 (ex. p. FREE00000673).

[890] Ex. 85 at 7 (ex. p. FREE00002544).

[891] *Id.* at 3, 93 (ex. p. FREE00002541, 2630).

d. David Roberts' primary method for estimating **"before"** value of the property: sales comparisons[892]
e. Locations of comparable sales: three in Williamson County and one in Rutherford County, Tennessee[893]
f. David Roberts's opinion on development potential of the property: "The subject property was opened in 2007 as a 109 site residential subdivision, Tennessee Ranch Estates. In 2008 the economic downturn that effected the entire United States stopped the sales of the property. The property has not been marketed for many years by the previous owners. Also information gathered from the immediate subject neighborhood, including an adjoining subdivision, indicate that the lack of sales in the immediate subject market area currently would not indicate the demand for 190 residential homesites. However, numerous developments with larger homesites ranging from 5 to 10-acres, located on the Cumberland Plateau, have experienced growth and development in this market. These include the Jasper Highlands neighborhood west of Chattanooga, Tennessee, and Long Branch Lakes. Combining the 190 residential homesites that average 5-acres in size to larger homesites would be best use of the property, adding to the privacy and appeal of the homesites. Considering the prime access to the site off I-140, and the attraction of the rolling Tennessee Hills in the subject neighborhood, the most financially feasible use of the subject property would be for larger residential homesites, adding to the privacy and appeal, utilizing the roads in place, to homesites of 10 to 20-acres in size."[894]
g. David Roberts' **"after"**-easement value of the property: **$1,094,000, or $1,083 per acre** (1,000.43 conserved, ten acres excluded for five homesites)[895]

[892] *Id.* at 45 (ex. p. FREE00002582).

[893] *Id.* at 55 (ex. p. FREE00002592).

[894] *Id.* at 42 (ex. p. FREE00002579).

[895] *Id.* at 3, 93 (ex. p. FREE000002541, 2630).

h. Number of taxpayer-investors involved in the transaction: 26[896]
i. Taxpayer-investors' total buy-in for 98 percent of company owning the underlying land: $2,618,330, thus valuing the land as being worth **$2,671,765.31, or $2,644 per acre**,[897] purchased on December 17, 2015. On December 24, 2014, Jason Free and Lane Lawler purchased the land using a holding company for $1,432,601 from a company called 1st American Land Holdings, Inc.[898]
j. Close date for investing in the transaction: December 15, 2015[899]
k. Taxpayer-investor vote on disposition of property: no vote[900]
l. Date of granting conservation easement on the land: December 29, 2015[901]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $12,790,960[902]
n. Total tax benefit to taxpayer-investors: $5,065,220[903]
o. Mr. Free's and Mr. Lawler's fees as a result of the transaction: $121,378[904]

[896] Ex. 84 – Letter from Mark D. Allison, Partner, Caplan & Drysdale, Chartered, to John L. Schoenecker, Senior Investigative Counsel, and Christopher Arneson, Senior Tax Policy Advisor, United States Senate Committee on Finance (July 31, 2019), at 9.

[897] Ex. 8 at 5 (ex. p. FREE00000421); Ex. 84 at 9.

[898] Ex. 8 at 6 (ex. p. FREE00000422); Ex. 84 at 6.

[899] Ex. 84 at 6.

[900] *Id.* at 17.

[901] *Id.* at 7.

[902] *Id.* at 8.

[903] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

[904] Ex. 84 at 21.

2. Crockett Investors, LLC (Jason Free and Lane Lawler – 2016)

    a. Acres: 941.76[905]
    b. Purported development: low-density residential[906]
    c. David Roberts' **"before"**-easement value of the property: **$11,301,000, or approximately $12,000 per acre**[907]
    d. David Roberts' primary method for estimating **"before"** value of the property: sales comparisons[908]
    e. Locations of comparable sales: two in Williamson County, Tennessee; one on Lookout Mountain, Walker County, Georgia; one in Rutherford County, Tennessee; and one in Sullivan County, Tennessee[909]
    f. David Roberts's opinion on development potential of the property: "Humphreys County, Tennessee has not experienced a large amount of residential growth and development at this time. However, in recent years several residential properties have been built near the Duck River for recreational purposes. There has also been extensive use of large land tracts for private hunting land. The growth and development from Nashville, Tennessee west has begun to reach the subject market area, including Humphreys County, Tennessee. In 2014 Humphreys County, Tennessee had a total of 25 buildings permits and in 2015, 28 permits for residential development. Nearby Dickson County had a total of 81 permits in 2014, and 75 merits in 2015. Both of these counties indicate the increased growth and development of second homeowners to the area. Considering the location of the subject property near the Duck River and the good access, the most financially feasible use of the site would be for low-density

[905] Ex. 86 – Crockett Investors, LLC, Confidential Private Placement Memorandum (Oct. 25, 2016), at 2 (ex. p. FREE00000002); Ex. 87 – David R. Roberts, Tennille & Associates, Inc., Appraisal Report for Crockett 941, LLC (Dec. 6, 2016), at 1 (ex. p. FREE00000673).

[906] Ex. 87 at 7 (ex. p. FREE00000678).

[907] *Id.* at 8 (ex. p. FREE00000679).

[908] *Id.* at 43 (ex. p. FREE00000714).

[909] *Id.* at 56 (ex. p. FREE00000727).

residential development with larger homesites, surrounded by private recreational and hunting land."[910]

g. David Roberts' **"after"**-easement value of the property: **$615,000, or $656 per acre** (937.76 conserved, four acres excluded for two homesites)[911]
h. Number of taxpayer-investors involved in the transaction: Four[912]
i. Jason Free's total buy-in for 98-percent interest in the land from the company originally owning that land: $752,800, thus valuing the land as being worth **$768,163.27, or $760 per acre**.[913] Taxpayer-investors' total buy-in for that 98-percent interest in the land: $2,100,000, thus valuing the land at **$2,142,857.14, or $2,275 per acre**.[914]
j. Close date for investing in the transaction: December 16, 2016[915]
k. Taxpayer-investor vote on disposition of property: all four of Crockett Investments' partners voted to grant a conservation easement on the land[916]
l. Date of granting conservation easement on the land: December 22, 2016[917]
m. Total deductions allocated to taxpayer-investors as a result of the easement: $10,501,680[918]
n. Total tax benefit to taxpayer-investors: $4,158,665[919]

[910] *Id.* at 40 (ex. p. FREE00000711).

[911] *Id.* at 8 (ex. p. FREE00000679).

[912] Ex. 84 at 9.

[913] Ex. 86 at 7 (ex. p. FREE00000007).

[914] Ex. 84 at 9.

[915] *Id.* at 6.

[916] *Id.* at 17.

[917] *Id.* at 7.

[918] *Id.* at 8.

[919] This figure is derived from multiplying the total deductions allocated to taxpayer-investors in the transaction by the then-existing top individual federal income-tax rate of 39.6 percent.

o. Mr. Free's and Mr. Lawler's fee as a result of the transaction: $736,780[920]

[920] Ex. 84 at 21.

b. Exhibit List

Ex. 1 – Email thread among Robert McCullough, Senior Vice President & CFO, EcoVest Capital, Inc., David Mirolli, Managing Partner, Catalyst Wealth Management, David [REDACTED], Robert [REDACTED], Tom [REDACTED], *et al.* (Dec. 7., 2017 through Dec. 9, 2017)

Ex. 2 – Letter from David J. Kautter, Acting Commissioner, Internal Revenue Service, to Orrin G. Hatch, Chairman, U.S Senate Committee on Finance, United States Senate (July 12, 2018)

Ex. 3 – Letter from Charles P. Rettig, Commissioner, Internal Revenue Service, to Charles Grassley, Chairman, U.S Senate Committee on Finance, United States Senate (Feb. 12, 2020)

Ex. 4 – Robert Ramsay, *A Dirty Dozen Myths About Conservation Easements and One Sad Truth*, EXEMPT ORGANIZATION TAX REVIEW, May 2020

Ex. 5 – Ronald Levitt and David Woolridge, Sirotte & Permutt PC, Conservation Easement Overview (2013)

Ex. 6 – audio recording of William M. Osterbrock, Baker Donelson, Webinar Presentation – Current Issues Concerning Charitable Gifts of Real Estate (Sep. 28, 2017), https://www.bakerdonelson.com/current-issues-concerning-charitable-gifts-real-estate (beginning at approximately 43:13, last visited May 13, 2020)

Ex. 6.1 – accompanying presentation slide

Ex. 7 – audio recording of William R. Sylvester, Baker Donelson, Webinar Presentation – Current Issues Concerning Charitable Gifts of Real Estate (Sep. 28, 2017), https://www.bakerdonelson.com/current-issues-concerning-charitable-gifts-real-estate (beginning at approximately 2:32, last visited May 13, 2020)

Ex. 7.1 – accompanying presentation slide

Ex. 8 – Tennessee Ranch Estates Investors, LLC, Confidential Private Placement Memorandum (Oct. 16, 2015)

Ex. 9 – The 2015 Information Package for FG River Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC

Ex. 10 – The 2015 Information Package for Green Cove Group LLC, Conservation Saves LLC & Galt Mining Investments, LLC

Ex. 11 – Azalea Bay Resort Holdings LLC, Manager's Analysis, EcoVest Capital, Inc. (Sept. 4, 2015)

Ex. 12 – Investment Summary for Little Pumpkin Creek North Investments, LLC

Ex. 13 – Investment Summary for Little Pumpkin Creek Investments, LLC

Ex. 14 – Investment Summary for Ginn Creek Investments, LLC

Ex. 15 – Letter from Sean M. Akins, Partner, Covington & Burling LLP, to John L. Schoenecker, Senior Investigative Counsel, United States Senate Committee on Finance (June 21, 2019)

Ex. 16 – Email thread among David Mirolli, Managing Partner, Catalyst Wealth Management, D. [REDACTED] , E. [REDACTED], and T. [REDACTED] (Sept. 1, 2017 through Sept. 8, 2017)

Ex. 17 – Email thread among E. [REDACTED] and Derek [REDACTED] (Nov. 10, 2016)

Ex. 18 – Email from Anthony [REDACTED] to E. [REDACTED], EcoVest Capital, Inc. (Oct. 23, 2018 through Dec. 11, 2018)

Ex. 19 – Email from Matt [REDACTED] to Investor Relations, EcoVest Capital, Inc. (Jan. 30, 2017)

Ex. 20 – Email thread among B. [REDACTED], EvrSource Capital, Laura [REDACTED], Matthew Campbell, EvrSource Capital, Peter [REDACTED] (Dec. 7, 2015 through Dec. 15, 2015)

Ex. 21 – Email thread among B. [REDACTED], EvrSource Capital, E. [REDACTED], Lisa [REDACTED], Matthew Campbell, EvrSource Capital, (Dec. 17, 2015 through Dec. 18, 2015)

Ex. 22 – Email thread among Chip Pearson, EvrSource Capital and John [REDACTED] (Nov. 4, 2015 through Dec. 15, 2015)

Ex. 23 – Email thread among J. [REDACTED], Matthew Ornstein, Ornstein-Schuler Investments, and Dr. Michael [REDACTED] (Sept. 21, 2015)

Ex. 24 – Email thread among D. [REDACTED] and Matthew Ornstein, Ornstein-Schuler Investments (Sept. 29, 2015)

Ex. 25 – Email thread among Shelly [REDACTED] and Matthew Ornstein, Ornstein-Schuler Investments (May 14, 2015 through July 7, 2015)

Ex. 26 – In re Claud Clark, III, State of Alabama Real Estate Appraiser Board, AB 16-15, Summons and Notice of Hearing and Complaint (Jan. 11, 2019)

Ex. 27 – In re Claud Clark, III, State of Alabama Real Estate Appraiser Board, AB 16-15, Voluntary Revocation Consent Order (May 16, 2019)

Ex. 28 – Claud Clark, III, Clark-Davis, PC, Appraisal of Black Bear Enter. (Mar. 18, 2015)

Ex. 29 – Letter from Susanne M. Curran, Managing Director, Curran Realty Advisors LLC, to Lisa Brooks, Executive Director, and Neva Conway, General Counsel at 8 (May 15, 2018)

Ex. 30 – Azalea Bay Resort Holdings, LLC, Confidential Private Placement Memorandum (June 1, 2015)

Ex. 31 – Claud Clark, III, Clark-Davis, PC, Appraisal of Azalea Bay Resort (Mar. 3, 2015)

Ex. 32 – Assignment and Assumption of Membership Interest of Azalea Bay Resort

Ex. 33 – Azalea Bay Resort Holdings, LLC spreadsheet calculator

Ex. 34 – Letter from Alan N. Solon, Chairman & CEO, EcoVest Capital, Inc., to Azalea Bay Holdings, LLC members (July 27, 2018)

Ex. 35 – Strategic Solutions Alliance, EcoVest Capital, Inc., Sandridge Recommendations (Dec. 4, 2018)

Ex. 36 – Magnolia Bay Resort Holdings, LLC, Confidential Private Placement Memorandum (June 11, 2015)

Ex. 37 – Claud Clark, III, Clark-Davis, PC, Appraisal of Magnolia Bay Resort (Dec. 15, 2015)

Ex. 38 – Assignment and Assumption of Membership Interest of Magnolia Bay Resort (Oct. 9. 2015)

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Ex. 70 – Clayton M. Weibel, MAI, Appraisal Report for Quality River Stones LLC (as of Dec. 22, 2016)

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Ex. 77 – Ronald S. Foster, Ronald S. Foster & Company, Inc., Appraisal Report for Little Pumpkin Creek, LLC (Dec. 2, 2016).

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Ex. 99 – Claud Clark, III, Clark-Davis, PC, Appraisal of Seavista Resort (Dec. 15, 2015)

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Exhibit 122 – The 2015 Information Package for Huston Minerals Partners LLC, Conservation Saves LLC & Galt Mining Investments, LLC

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Exhibit 125 – The 2015 Information Package for KR Stone Group LLC, Conservation Saves LLC & Galt Mining Investments, LLC

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Exhibit 127 – The 2015 Information Package for Manatee Minerals Group LLC, Conservation Saves LLC & Galt Mining Investments, LLC

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Exhibit 129 – The 2016 Information Package for Orange Woods Partners LLC, Ornstein-Schuler Investments LLC

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Exhibit 133 – The 2016 Information Package for Sailfish Cove Group LLC, Ornstein-Schuler Investments LLC

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