United States Tax Court

T.C. Memo. 2025-96

JACKSON STONE SOUTH, LLC, JACKSON SOUTH INVESTMENTS, LLC, TAX MATTERS PARTNER,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

JACKSON STONE NORTH, LLC, JACKSON NORTH INVESTMENTS, LLC, TAX MATTERS PARTNER,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket Nos. 12271-20, 12274-20.[1] Filed September 23, 2025.

Anson H. Asbury, *Robert B. Gardner III*, *Ethan J. Vernon*, *Lauren H. White*, and *Andrew R. Vazquez*, for petitioners.

Chelsey M. Pearson, *Olivia H. Rembach*, *Rachel L. Gregory*, *Holly L. Dennehy*, *Elizabeth M. Shaner*, and *Brian R. Cullin*, for respondent.

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[1] These cases have been consolidated for purposes of trial, briefing, and opinion.

Served 09/23/25

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MEMORANDUM FINDINGS OF FACT AND OPINION

MARSHALL, *Judge*: These cases involve noncash charitable contribution deductions claimed for 2016, the tax year at issue. By separate Notices of Final Partnership Administrative Adjustment (FPAAs), respondent disallowed charitable contribution deductions claimed by Jackson Stone South, LLC (JSS), and Jackson Stone North, LLC (JSN, and together with JSS, LLCs), for their respective deductions for grants of perpetual conservation easements over approximately 288 acres (JSS Conservation Easement) and 253 acres (JSN Conservation Easement and, together with the JSS Conservation Easement, Conservation Easements) of real property located in Jones County, Georgia (Subject Properties), respectively, to Oconee River Land Trust, Inc. (ORLT). Respondent determined that a 40% gross valuation misstatement penalty under section 6662(h)[2] applies or, in the alternative, that a 20% reportable transaction penalty under section 6662A applies with respect to any portions of the understatements to which the section 6662(h) penalty is found not to apply. Additionally, respondent determined that, if the gross valuation misstatement penalty under section 6662(h) and the reportable transaction understatement penalty under section 6662A do not apply, then a 20% accuracy-related penalty under section 6662(a) and (b)(1) or (2) applies

[2] Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times, regulation references are to the *Code of Federal Regulations*, Title 26 (Treas. Reg.), in effect at all relevant times, and Rule references are to the Tax Court Rules of Practice and Procedure. Except where otherwise indicated, monetary amounts are rounded to the nearest dollar.

[*6] for negligence or a substantial understatement of income tax, or a 20% substantial valuation misstatement penalty under section 6662(e)(1)(A) applies.

The issues for decision are (1) whether the LLCs satisfied the requirements of section 170 for their claimed charitable contribution deductions with respect to their donations of the Conservation Easements, (2) the fair market values (FMV) of the Conservation Easements, (3) whether any charitable contribution deductions from the Conservation Easements should be limited to basis, (4) whether 40% penalties under section 6662(h) for gross valuation misstatements will be imposed, or, in the alternative, (5) whether accuracy-related penalties pursuant to section 6662(a) will be imposed.[3]

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The First Stipulation of Facts, the Second Stipulation of Facts, the Third Stipulation of Facts, the Fourth Stipulation of Facts, the Fifth Stipulation of Facts, the Sixth Stipulation of Facts, the Seventh Stipulation of Facts, and the accompanying Exhibits are incorporated herein by this reference.

The LLCs are both limited liability companies treated as partnerships under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 401–407, 96 Stat. 324, 648–71, for federal income tax purposes.[4] Petitioners in these cases, Jackson South Investments, LLC (JS Investments), and Jackson North Investments, LLC (JN Investments and together with JS Investments, petitioners), are tax matters partners (TMPs) and managers for JSS and JSN, respectively. Howard Brian Jackson was the only manager of the LLCs during the tax year at issue. The Petitions commencing these cases were

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[3] In the FPAAs issued to the LLCs, respondent relied on I.R.S. Notice 2017-10, 2017-4 I.R.B 544, in asserting penalties under section 6662A. In *Green Valley Investors, LLC v. Commissioner*, 159 T.C. 80, 103 (2022), we held that imposition of reportable transaction understatement penalties on syndicated conservation easement transactions that are the same as or substantially similar to those described in I.R.S. Notice 2017-10 was prohibited because Notice 2017-10 was issued without the notice and comment required by the Administrative Procedure Act. *See* 5 U.S.C. § 553.

[4] TEFRA, codified at sections 6221 through 6234, was repealed for returns filed for partnership tax years beginning after December 31, 2017. Before its repeal TEFRA governed the tax treatment and audit procedures for many partnerships, including JSS and JSN.

[*7] timely filed on October 15, 2020. When the Petitions were filed, each petitioner's principal place of business was in South Carolina.

I. *Subject Properties and Ownership History*

A. *Mr. Jackson's Family and Business in Jones County*

Mr. Jackson and his family have been in the residential construction business in the South Atlanta region, including Jones County, for over 70 years. They have deep ties to Jones County and to Jasper County, which borders Jones County to the north. Mr. Jackson's father and all of the members of his father's family were born and raised in Jones County and Jasper County. Mr. Jackson and his wife, Julia B. Jackson, were married in 1969 and raised three children, Brett Jackson, Scott Jackson, and Amy Jackson Shiver (Jackson children). The Jackson children reached adulthood before 2010.

In 2005, Mr. and Mrs. Jackson sold their primary residence in Fayetteville, Georgia, and moved to Jones County. Until Mr. Jackson retired in February 2022, he co-owned and operated Dames Ferry Properties, LLC, in Jones County with his son Brett Jackson. Dames Ferry Properties was engaged in real estate development in Jones County from 2003 through 2022. Mr. Jackson also owns Dames Ferry Communities, LLC, also engaged in real estate development in Jones County. Finally, Mr. Jackson owns Brian Jackson Commercial Family Limited Partnership, which owns vacant land in Jones County.

From 2003 through 2016, Mr. Jackson was involved in approximately 150 real estate transactions in Jones County, and his business in Jones County included purchasing, selling, and developing single-family homes on vacant land. During this period and because of his real estate development business, Mr. Jackson was generally aware of whether a property in Jones County sold for market value or was overvalued. As of the time of trial in these cases he was not aware of any property in Jones County selling for $19 million.

B. *Jackson Family Partnership*

Mr. Jackson formed the Jackson Family Partnership in 2010 for estate planning and wealth management purposes. In 2010 Mr. and Mrs. Jackson conveyed hundreds of acres of land to the Jackson Family Partnership, 561 acres of which collectively became the real property held by each of JSS and JSN. The Jackson Family Partnership owned the real property that became the property held by each of JSS and JSN

[*8] from December 29, 2010, through September 12, 2016, at which point it was conveyed to JSS and JSN. Mr. Jackson was the sole general partner of the Jackson Family Partnership from 2010. Mr. and Mrs. Jackson gave Jackson Family Partnership interests to the Jackson children. Mr. Jackson managed and controlled the Jackson Family Partnership. Along with Mr. Jackson as the general partner, Mrs. Jackson and the Jackson children were limited partners in, and the only members of, the Jackson Family Partnership from 2010. Mrs. Jackson and the Jackson children knew that they were partners in the Jackson Family Partnership.

C. *Prior Appraisal of Subject Properties*

In 2013, the Jackson Family Partnership had 200 acres of real property on the north side of Highway 18 West appraised for purposes of securing a loan. Half of the 200 acres that were pledged as collateral became part of the real property that was eventually held by JSN. Gary Stroup, on behalf of Morris Bank, appraised the 200 acres of the Jackson Family Partnership land at an FMV of $460,000, or $2,300 per acre, as of July 25, 2013 (2013 Appraisal). As part of his appraisal, Mr. Stroup determined that the highest and best use (HBU) of the 200 acres was rural residential and recreational timberland. Mr. Jackson received the 2013 Appraisal and was aware of the FMV determined by the 2013 Appraisal.

D. *JSS*

1. *Organization and Interests in JSS*

On May 23, 2016, JSS was organized as a limited liability company under the laws of the State of Georgia with its principal place of business in Gray, Georgia. JSS issued 10,000 membership units to its original members (together, Original JSS Members) in the following proportions:

Name of Partner/Member	*Percentage Interest*
H. Brian Jackson	39.51%
Julia B. Jackson	40.51%
Brett H. Jackson	6.66%
Scott B. Jackson	6.66%

[*9]

Amy J. Shiver	6.66%
Total	**100.00%**

The JSS Operating Agreement designated Mr. Jackson as the manager and TMP of JSS.[5] Mr. Jackson was the manager of JSS from September 14, 2016, through April 22, 2019.[6] Mr. Jackson, Mrs. Jackson, and the Jackson children signed the JSS Operating Agreement. It provided for the members' contributions of cash or property, as well as their rights to share income, profits, and losses. The Jacksons all became partners in JSS when they contributed real property interests (which they held through the Jackson Family Partnership) to JSS. The JSS Operating Agreement provided that the manager shall review a development plan and develop proposals for either (1) holding property for investment and appreciation pending a future sale of the property to a third-party developer or (2) conveying a conservation easement to ORLT to obtain tax benefits for JSS and its members.

2. *Organization and Interests in JS Investments*

On September 13, 2016, JS Investments was organized as a limited liability company under the laws of the State of Georgia. The original members of JS Investments were:

Name of Partner/Member	*Percentage Interest*
H. Brian Jackson	39.51%
Julia B. Jackson	40.51%
Brett H. Jackson	6.66%
Scott B. Jackson	6.66%
Amy J. Shiver	6.66%
Total	**100.00%**

Under the terms of the JS Investments share purchase agreement effective September 30, 2016 (JS Investments Share Purchase Agreement), the Original JSS Members agreed to sell to JS Investments

[5] As the manager of JSS, Mr. Jackson had the ultimate authority to manage the business and affairs of JSS.

[6] Mr. Jackson was also the TMP of JSS for the tax year at issue.

[*10] 9,500 of the 10,000 outstanding membership units of JSS in the same proportions as those in which the Original JSS Members owned the units. The sale contemplated in the JS Investments Share Purchase Agreement closed on December 13, 2016. Mr. Jackson, Mrs. Jackson, and the Jackson children signed the JS Investments Share Purchase Agreement. After the sale, the membership units of JSS were held in the following proportions:

Name of Partner/Member	*Percentage Interest*
JS Investments	95%
H. Brian Jackson	1.9755%
Julia B. Jackson	2.0255%
Brett H. Jackson	0.333%
Scott B. Jackson	0.333%
Amy J. Shiver	0.333%
Total	**100.00%**

William Wingate served as the manager of JS Investments.

3. *JSS Property*

On December 20, 1976, Howard N. Jackson, Sr., conveyed to Mr. Jackson a one-fourth undivided interest in Parcel 1 (90 acres), Parcel 2 (150 acres), and Parcel 3 (80 acres), totaling 320 acres, all being tracts or parcels of land in Jones County, via warranty deed. On February 17, 1994, the trustees of the Jackson Family Trust conveyed to Mr. Jackson all remaining interest in Parcels 1, 2, and 3, via warranty deed. On August 17, 2009, Mr. Jackson conveyed the 320 acres of land to himself and Mrs. Jackson as joint tenants with the right of survivorship. On December 29, 2010, Mr. and Mrs. Jackson conveyed Parcel 1 (90 acres), Parcel 2 (150 acres), and Parcel 3 (80 acres) less and except a 10-acre tract, along with other property in Jones County, to the H. Brian Jackson Farm Family Limited Partnership (Jackson Family Partnership)[7] via warranty deed.

[7] At the time it was organized, the Jackson Family Partnership was named Brian Jackson Farm Family Limited Partnership. The Jackson Family Partnership

[*11] A new survey plat was completed for JSS on August 18, 2016, which revised the property description to include 342.87 acres. The survey plat depicted 342.87 acres as including Tract 1 (288.08 acres), Tract 2 (15 acres), Tract 3 (10 acres), and Tract 4 (29.79 acres). On September 12, 2016, the Jackson Family Partnership conveyed Tract 1 (288.08 acres) and Tract 3 (10 acres) (together, JSS Property) to JSS via warranty deed.[8] The JSS Property lies on the south side of a two-lane road, Highway 18 West.[9] As of December 15, 2016, land on the south side of Highway 18 West was largely vacant land that was primarily used for outdoor recreation and hunting, and also included some small areas for timber production.[10] Mr. and Mrs. Jackson's home is in Tract 2, a parcel that is not owned by JSS but is in the middle of (and so surrounded on all sides by) the JSS property. This has been their primary residence since 2007. The Jones County Tax Commissioner assessed the 2017 FMVs of the two parcels making up the JSS Property at $507,592 and $95,000 (i.e., combined value of approximately $603,000).

E. *JSN*

1. *Organization and Interests in JSN*

On May 23, 2016, JSN was organized as a limited liability company under the laws of the State of Georgia with its principal place of business in Gray, Georgia. JSN issued 10,000 membership units to its original members (together, Original JSN Members) in the following proportions:

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filed a Certificate of Amendment Name Change on December 29, 2010, changing its name to H. Brian Jackson Farm Family Limited Partnership.

[8] Tract 2 (15 acres) was retained by Hunter's Rest, LLC. Tract 4 (29.79 acres) was retained by the Jackson Family Partnership. The two tracts were not conveyed to JSS.

[9] As of December 12, 2016, the JSS Property was the only asset held by JSS.

[10] The area surrounding the Subject Properties is primarily agricultural with some homes on small acreage parcels. There are very few traditional residential subdivisions in the area. There is no public water or sewer service in this area.

[*12]

Name of Partner/Member	*Percentage Interest*
H. Brian Jackson	39.51%
Julia B. Jackson	40.51%
Brett H. Jackson	6.66%
Scott B. Jackson	6.66%
Amy J. Shiver	6.66%
Total	**100.00%**

The Jacksons all became partners in JSN when they contributed real property interests (which they held through the Jackson Family Partnership) to JSN. The JSN Operating Agreement designated Mr. Jackson as the manager and TMP of JSN.[11] Mr. Jackson was the manager of JSN from September 14, 2016, through April 22, 2019.[12] Mr. Jackson, Mrs. Jackson, and the Jackson children signed the JSN Operating Agreement.

2. *Organization and Interests in JN Investments*

On September 13, 2016, JN Investments was organized as a limited liability company under the laws of the State of Georgia. The original members of JN Investments were:

Name of Partner/Member	*Percentage Interest*
H. Brian Jackson	39.51%
Julia B. Jackson	40.51%
Brett H. Jackson	6.66%
Scott B. Jackson	6.66%
Amy J. Shiver	6.66%
Total	**100.00%**

[11] As the manager of JSN, Mr. Jackson had the ultimate authority to manage the business and affairs of JSN.

[12] Mr. Jackson was also the TMP of JSN for the tax year at issue.

[*13] Under the terms of the JN Investments share purchase agreement effective September 30, 2016 (JN Investments Share Purchase Agreement), the Original JSN Members agreed to sell to JN Investments 9,500 of the 10,000 outstanding membership units of JSN in the same proportions as those in which the Original JSN Members owned the units. The sale contemplated in the JN Investments Share Purchase Agreement closed on December 13, 2016. Mr. Jackson, Mrs. Jackson, and the Jackson children signed the JN Investments Share Purchase Agreement. After the sale, the membership units of JSN were held in the following proportions:

Name of Partner/Member	*Percentage Interest*
JN Investments	95%
H. Brian Jackson	1.9755%
Julia B. Jackson	2.0255%
Brett H. Jackson	0.333%
Scott B. Jackson	0.333%
Amy J. Shiver	0.333%
Total	**100.00%**

Mr. Wingate served as the manager of JN Investments.

3. *JSN Property*

On February 27, 2004, American Natural Resources, LLC, conveyed to High Grove Development, Inc., 340.69 acres in Jones County via special warranty deed. On August 1, 2006, High Grove Development conveyed 340.69 acres in Jones County to Mr. and Mrs. Jackson via warranty deed. On December 29, 2010, Mr. and Mrs. Jackson conveyed the 340.69-acre parcel, along with other property in Jones County, to the Jackson Family Partnership via warranty deed.

A survey plat prepared for JSN, dated August 18, 2016, depicted the 340.69-acre parcel as Tract 5 (10 acres), Tract 6 (252.92 acres), and Tract 7 (77.77 acres). On September 12, 2016, the Jackson Family Partnership conveyed Tract 5 (10 acres) and Tract 6 (252.92 acres)

[*14] (together, JSN Property) to JSN via Warranty Deed.[13] The JSN Property lies on the north side of Highway 18 West.[14] As of December 15, 2016, the land on the north side of Highway 18 West was largely vacant land that was primarily used for timber production, outdoor recreation, and hunting. The Jones County Tax Commissioner assessed the 2017 FMV of the two tracts making up the JSN Property, at $99,228 and $454,379 (i.e., combined value of approximately $554,000).

The JSN Property is adjacent to the Piedmont National Wildlife Refuge (Piedmont Refuge), which sits to the north and east. The Piedmont Refuge is a 35,000-acre tract owned and managed by the U.S. Fish and Wildlife Service. The JSN Property is also near the Oconee National Forest, Cedar Creek Wildlife Management, and the B.F. Grant Wildlife Management Area. Buttlers Creek and its floodplain run approximately 5,280 feet through the middle of the JSN Property. Buttlers Creek flows through the Piedmont Refuge before reaching the JSN Property. It is a tributary of the Ocmulgee River and is in the Upper Ocmulgee Watershed; the waters flow into the greater Altamaha River Basin and then ultimately into the Atlantic Ocean.

II. *Land Evaluation*

A. *Mr. Wingate*

Mr. Wingate has extensive experience with conservation easement transactions, including syndicated conservation easement transactions such as those at issue in these cases. He also has experience in real estate and land conservation. In the aughts, Mr. Wingate was a real estate broker who ran the southeastern office of Orvis/Cushman & Wakefield Ranch and Recreational Properties; he was their real estate agent specializing in outdoor properties and conservation properties. From 2009 through 2012, Mr. Wingate worked for the Georgia Conservancy as their vice president of advocacy and land conservation. As of 2016, Mr. Wingate had participated in approximately 100 conservation easement transactions, of which approximately 20% were syndicated.

From 2013 through December 29, 2020, Mr. Wingate and Shannon Mayfield co-owned Winfield Conservation Services, LLC (WCS). Mr. Wingate organized, marketed, and executed conservation

[13] Tract 7 (77.77 acres) was not conveyed to JSN and was retained by the Jackson Family Partnership.

[14] As of December 13, 2016, the JSN Property was the only asset held by JSN.

[*15] easement transactions through WCS. In 2016, WCS provided services to multiple landowners resulting in the donation of at least 17 conservation easements. WCS focused on, and sought, properties for syndicated easement transactions where the HBU could be mining. Mr. Wingate was also familiar with the "granite belt" in Georgia and zoning issues in southern Georgia that would be relevant to a mining property.

WCS worked on approximately ten syndicated deals a year in 2015, 2016, and 2017, for a total of approximately 30 syndicated deals. From 2015 through 2018, mining was the claimed HBU for every syndicated deal done by WCS, and none of those transactions ultimately yielded a quarry. Instead, they all yielded conservation easements.

WCS found investors for their conservation easement transactions by developing relationships with certified public accountants (CPAs). The CPAs knew which of their clients were interested in reducing their taxable income with deductions generated by the conservation easement transactions.

Between late 2015 and early 2016, Mr. Jackson contacted Mr. Wingate to learn about conservation easements. Mr. Wingate explained to Mr. Jackson what steps were necessary to effect syndicated deals to donate conservation easements with respect to his properties. Before March 2016, Mr. Jackson knew Mr. Wingate would have to solicit third-party investors to raise money needed for the transactions. As early as March 21, 2016, Mr. Wingate believed Mr. Jackson had enough land to do two syndicated conservation easement projects claiming mining as the HBU. Mr. Wingate made this determination before any drilling took place because he knew that there was a mine operated by Vulcan Materials Co. (Vulcan) nearby and expected that a rock resource would also be present on Mr. Jackson's properties.

Before March 2016, Mr. Jackson and Mr. Wingate negotiated how much money the Jackson Family Partnership would receive if the syndicated conservation easement deals were successful. Mr. Wingate offered Mr. Jackson $1 million per side of Highway 18 West for the land needed for the conservation easement transactions. Mr. Wingate determined that Mr. Jackson would be paid $1 million for each property because that is what Mr. Wingate thought the market would bear and the price for which he thought he could get a potential seller to sell the properties.

[*16] Mr. Jackson and Mr. Wingate discussed only effecting syndicated conservation easement transactions and did not discuss otherwise donating easements on the properties. Mr. Jackson pursued syndicated conservation easement transactions because of financial motivations (including Mr. Wingate's offer of $1 million per side) and because he wanted to conserve the properties, which he loves, forever. Mr. Jackson needed the money at the time, and no conservation easement would have occurred on the Jackson Family Partnership's land in 2016 unless the target amount of money was raised from third-party investors through a syndicated deal.

B. *Jackson-Wingate Agreement*

On March 21, 2016, the Jackson Family Partnership entered into an agreement with WCS (Jackson-Wingate Agreement). Mr. Jackson signed the Jackson-Wingate Agreement as the general partner of the Jackson Family Partnership, and Mr. Wingate signed it on behalf of WCS. The Jackson-Wingate Agreement contemplated that the Jackson Family Partnership would receive $1 to $2 million in exchange for its interest in the securities of the entities that received a portion of the Jackson Family Partnership's land (i.e., JSS and JSN). In addition to the purchase price for the land, the Jacksons (through the Jackson Family Partnership) would be entitled to a tax deduction of 5% of the value of the conservation easement donation. The entities holding the land would be 95% owned by third-party investors. Pursuant to the terms of the agreement, WCS had to (1) pay all costs and expenses for exploring whether the property was appropriate for a conservation easement, (2) raise money for the conservation easement transaction through selling ownership interests in an entity created to hold the property, and (3) form new entities for the syndicated transaction structure.

WCS had the option to cancel the Jackson-Wingate Agreement if WCS would not receive a satisfactory return. Mr. Wingate viewed the properties' qualification for a mining HBU as directly related to WCS's ability to obtain a satisfactory return. Mr. Jackson did not know, or ask, what the phrase "satisfactory return" meant as contemplated by the Jackson-Wingate Agreement. Mr. Jackson understood that whether the Jackson Family Partnership was paid $1 million, $2 million, or nothing depended on the valuation of the Subject Properties.

The Jackson Family Partnership was to receive payment out of the proceeds of the closing. The Jackson-Wingate Agreement defines the

[*17] closing as the "closing of the funding under the Syndicated Investment Ownership Structure" and defines the Syndicated Investment Ownership Structure as the Landowner's agreement that "the Contractor can raise money for a possible Conservation Easement through allowing the sale of their ownership interests in an entity to hold the Property" and the Landowner's agreement "to cooperate in all aspects with such sales." If the funds from the sale of securities to third parties were insufficient to pay the owner compensation, then either WCS or the Jackson Family Partnership could elect to not proceed with the closing without penalty. In 2016, the Jackson Family Partnership received $2.5 million from the conservation easement transactions involving JSN and JSS.[15]

Mr. Jackson did not tell Mr. Wingate, or appraisers Dale W. Hayter or J. Chad Edwards, about the 2013 Appraisal or its conclusions.

C. *Subject Properties in 2016*

Mr. Wingate engaged multiple professionals to establish values for the properties on the basis of subsurface aggregate, biotite granite gneiss, that is known to be abundant in the area. He retained (1) NOVA Engineering and Environmental, LLC (NOVA), to test for aggregate on the Subject Properties, (2) Richard C. Capps, an economic geologist, to value the aggregate and mine operations,[16] (3) Mr. Hayter and Mr. Edwards to separately appraise the easements, (4) Gregory Stanish, a geologist, to prepare reserve reports for the Subject Properties, (5) Michael F. Wick, an engineer with experience valuing minerals and mineral real estate, to determine the mineral valuation on the Subject Properties, and (6) William "Dolph" Winders from the law firm of Fisher Broyles, LLP, to advise on the tax components of the easement transactions and prepare tax opinion letters for JN Investments and JS Investments. Below, we discuss these professionals' roles in the easement transactions.

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[15] Mr. Wingate increased the amount that the Jackson Family Partnership received for the conservation easement transactions to $2.5 million because he felt that Mr. Jackson was a great partner and it was a successful transaction.

[16] The parties and their experts refer to the hypothetical activity on the Subject Properties as both a quarry and an aggregate mine. For purposes of this report, we use these terms interchangeably. Similarly, the parties and their experts refer to the hypothetical mining operations on the Subject Properties as granite mining or aggregate mining. For purposes of this report, we use these terms interchangeably as well.

[*18] 1. *Drilling and Testing*

In 2016, Wingate Strategies, LLC, hired NOVA to complete a preliminary geotechnical exploration, which ultimately resulted in the production of reports for JSS and JSN (NOVA Reports) dated September 20, 2016. As part of the scope of work, Wingate Strategies directed NOVA to explore the property and search for evidence of subsurface aggregate deposits that, when tested, met Georgia Department of Transportation (GDOT) Group II aggregate standards.[17]

NOVA engaged Premier Drilling, LLC, to conduct drilling on the JSS Property from April 25 to 27, 2016, and on the JSN Property from April 27 to May 2, 2016. Premier Drilling drilled four holes on each of the JSS Property and the JSN Property to obtain samples of subsurface materials. NOVA engaged GeoTesting Express (GeoTesting) to determine the physical properties of the drilling samples. After reviewing GeoTesting's geotechnical test reports for JSS and JSN, NOVA concluded that the rock quality met GDOT Group II, Class A aggregate quality standards for crushed rock aggregate that is used for road construction. GeoTesting and NOVA prepared reports of their findings. After testing, the core hole samples were retained by JSS and JSN. The results of the drilling and testing were sent to Dr. Capps, of Capps Geoscience, LLC. WCS hired Dr. Capps as its geologist to provide a resource valuation report for the JSS and JSN Conservation Easement projects.[18]

2. *Colwell Letter of Intent and Quote*

In November 2016, JSN paid $5,000 to Colwell Construction Co. (Colwell)[19] for a letter of intent for development and general management services for the operation of a mine on the JSN Property. Colwell provided a separate letter of intent for development and general management services for the operation of a mine on the JSS Property. The identified services included support in procuring necessary licenses

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[17] Aggregate is crushed stone that is suitable for construction material. It is primarily used for road construction but has other applications.

[18] WCS often engaged Dr. Capps for the conservation easement transactions that they worked on during 2015 through 2018. WCS hired Dr. Capps to provide services related to at least 13 conservation easement projects in 2016.

[19] Colwell was owned by Curtis Colwell. WCS retained Mr. Colwell to provide mine management price quotes for the conservation easement transactions it worked on during 2015 through 2018. WCS paid Mr. Colwell for mining management agreements and crushing quotes in at least 11 conservation easement projects in 2016.

[*19] and permits, quarry design and development, design of crushing operation and equipment needs, equipment procurement, market strategy for sale of mined products, strategic forecast planning of operations, and personnel management analysis and training, for an hourly fee of $250. By separate letter, Colwell provided a quote for rock crushing services of $8.75 per ton for the first year of operations with annual 3% price increases. The quote does not include startup costs or drilling and blasting costs.

3. *Dr. Capps's Reports*

In December 2016, Dr. Capps prepared an overview of proposed quarries on the JSS and JSN Properties and the profitability of operating the proposed quarries (collectively, Capps Reports). He determined that the net present value of minable aggregate was $23,126,738 for each of the JSS Property and the JSN Property using a discounted cashflow (DCF) analysis. He is not a real estate appraiser and did not provide an FMV of the unencumbered Subject Properties. He determined that on each of the Subject Properties there are total resource reserves of over 20 million short tons of minable aggregate. For his valuation of both the JSS and JSN Properties, he determined that a 40-acre mine on either property could produce 10,524,358 tons of aggregate over 25 years that would sell for $15.75 per ton as follows: 300,000 tons in years 1 and 2 and 400,000 tons in years 3 through 7 with an annual 1% increase in years 8 through 25.[20] In projecting the production figures for each hypothetical mine, Dr. Capps did not take the potential production of the other hypothetical mine into account. He relied on Mr. Colwell's $8.75-per-ton price quote for operating costs and applied a discount rate of 11% to calculate the net present value. He did not adjust the price of aggregate or the operating costs for inflation and did not account for any startup expenses.

Dr. Capps determined that the market for each of the proposed mines encompassed an area within a 50-mile radius of the mines. He

[20] In his reports, Dr. Capps erroneously used the terms "mineral reserve" and "mineral resource" to describe the Subject Properties' aggregate. Both terms have special meanings in the mining industry, and both a mineral reserve and a mineral resource must be identified through a feasibility study. As discussed below, the drilling and testing that NOVA and GeoTesting conducted do not satisfy the industry guidelines for a feasibility study that is required to declare either a mineral resource or a mineral reserve. Thus, it was inappropriate for Dr. Capps to use these terms to refer to the Subject Properties' aggregate according to industry standards. We find that these mistakes go to the reliability of his reports and the reports of petitioners' other experts that relied on Dr. Capps's opinions.

[*20] explained that the demand for aggregate is highly dependent on population growth and construction activity. He estimated that for each mine, the 50-mile radius market area had an annual demand for 5.1 million tons of aggregate and the proposed mine could capture at least 5% of the market. He determined that, over the life of each mine, the market would support his full production projection of about 400,000 tons annually.

As discussed above, the Capps Reports are dated December 2016; however, they were not finalized until April 2017. The Capps Reports included cost information from Mr. Colwell that was not provided to Dr. Capps until March 2017.

The Capps Reports were shared with petitioners' appraisal experts, Mr. Hayter and Mr. Edwards. Mr. Hayter reviewed the information in Dr. Capps's reports in preparing his appraisal.

III. *Jones County*

A. *Location, Population, and Aggregate*

Jones County is in central Georgia, approximately 10 miles north of Macon and 70 miles south of Atlanta's Central Business District. It is one of five counties that make up the Macon Metropolitan Statistical Area (Macon MSA). The northern end of Jones County is primarily rural, and the central and southern areas are primarily suburban.

The Subject Properties are zoned AG–1, Agricultural District. Permitted uses include (1) single-family dwellings, (2) public and private schools, (3) agricultural, forestry, livestock, and poultry production, (4) tenant dwellings for farm workers when located on the same lot or tract as a principal residence, (5) Type A manufactured homes, and (6) accessory buildings, structures, and uses customarily incidental to any use allowed as permitted or conditional use and located on the same lot as the principal structure or use. To open an aggregate mine in Georgia, the mine's operator must have an approved surface mining permit from the Georgia Department of Natural Resources Environmental Protection Division (EPD). The LLCs would have been required to obtain EPD permits including permits relating to stormwater and wastewater discharge, surface and ground water withdrawal, and air quality before they could operate mines.

Aggregate is abundant in Jones County and in this part of Georgia. The Subject Properties are situated on the granite bedrock side

[*21] of the Piedmont "Fall Line," which is a boundary line where the general geology for the region changes from granite bedrock to a clay and sand base.

Aggregate is a heavy, low cost per ton product, and therefore haul distance generally controls the price of aggregate. Because of the high cost of transportation, almost all aggregate produced in Georgia is used in Georgia and the market for aggregate with respect to a Georgia mine is generally limited to the area that is 40 to 50 miles around the mine.

Demand for aggregate is driven by population, population growth, and construction activity. The Subject Properties are near various cities in Georgia: approximately 9 miles west of Gray (i.e., the county seat of Jones County), 11 miles northwest of Macon, 90 miles south of Atlanta, 85 miles south of Athens, 100 miles east of Columbus, and 130 miles west of Augusta. The Subject Properties are in central Jones County just east of neighboring Monroe County. In 2016, Jones County had a population of approximately 28,500. From 2010 through 2015, Jones County's population decreased by 0.6%. In 2016, the population within a 25-mile and a 50-mile radius of the Subject Properties was approximately 280,000 and 1,100,000, respectively.

B. *Jones County Zoning*

1. *Jones County Zoning Ordinance*

The proposed aggregate mines would not have been permitted on the Subject Properties under the existing zoning regulations without a rezoning of, and issuance of a conditional use permit for, the Subject Properties to M–1, Light Industrial.

The Comprehensive Land Development Resolution for the Unincorporated Area of Jones County (Zoning Ordinance) establishes permitted uses and conditional uses within each zoning district. Jones County adopted its first zoning ordinance in 1970. Tim Pitrowski has been the Jones County zoning director since 1996 and is responsible for monitoring compliance with zoning requirements and issuing permits for development. In 2016 and 2017, Mr. Pitrowski reviewed permit applications and wrote staff reports related to rezoning and conditional use permit requests that were submitted to the Jones County Planning and Zoning Department (Zoning Department) and the Jones County Commission for consideration. The staff reports written by

[*22] Mr. Pitrowski included his recommendations for whether the rezoning and/or conditional use permit should be granted or denied.[21]

Permitted uses for each zoning district are established in the Zoning Ordinance and allow a property owner to use the real property without having to receive the approval of the Jones County Commission. Conditional uses for a particular zoning district are established in the Zoning Ordinance and may be exercised by a property owner only after receiving the permission of the Jones County Commission. In 2016 and 2017, mining was a conditional use in two zoning districts, neither of which included the Subject Properties.

During 2016 and 2017, to obtain a rezoning or a conditional use permit, first, an application would be submitted to the Zoning Department. Next, a hearing would be held before the Jones County Planning and Zoning Commission (Zoning Commission), which would provide a recommendation to be forwarded to the Jones County Commission. Finally, the Jones County Commission would vote on whether to approve or deny the rezoning and/or conditional use permit application. The Jones County Commission is composed of five members who are elected officials.

The Zoning Ordinance requires a Plan of Development to be submitted with any zoning permit application regarding a proposed mine. In 2016 and 2017, mining was not a permitted use or a conditional use in the AG–1 zoning district, in which the Subject Properties were zoned. As discussed, to operate the proposed mines on the Subject Properties the landowner would need approval from the Jones County Commission to rezone the property and for a conditional use permit.

2. *Rezoning Application Standards*

The Zoning Ordinance establishes six standards by which the Zoning Commission and the Jones County Commission evaluate a rezoning request.[22] The standards have been the same since at least 2006. In 2016 and 2017, Mr. Pitrowski applied these standards when

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[21] Mr. Pitrowski guessed that 90 to 95% of zoning applications applied for in Jones County are approved.

[22] The Zoning Ordinance also establishes five standards by which the Zoning Commission and the Jones County Commission evaluate a conditional use permit request. The conditional use permit standards are the same as the rezoning standards except that they do not consider the reasonable economic use of the property as currently zoned.

[*23] preparing his staff reports and recommendations on approval or denial of rezoning applications. The standards are whether:

1. The proposed zoning decision will permit a use of property that is suitable in view of the use and development of adjacent and nearby property (Suitable Use Standard[23]);

2. The proposed zoning decision will adversely affect the existing use or usability of adjacent or nearby property (Adverse Effect Standard[24]);

3. The property to be affected by the proposed zoning decision has a reasonable economic use as currently zoned (Reasonable Economic Use Standard);

4. The proposed zoning decision will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools (Negative Infrastructure Impacts Standard[25]);

5. The proposed zoning decision is in conformity with the policy and intent of the land use plan (Future Land Use Plan Standard) as set forth in the Future Land Use Map (FLU Map); and

6. There are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of

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[23] During 2016 and 2017, when determining whether a proposed rezoning use was suitable, the uses of property surrounding the subject property were evaluated to determine whether the proposed rezoning use was compatible with surrounding property uses.

[24] The Adverse Effect Standard considered whether the proposed rezoning use would harm nearby properties. Potential adverse effects on nearby properties from a granite mine include noise, vibrations, dust, excessive light, increased truck traffic, and negative impacts on water wells. Mr. Pitrowski considered these potential adverse effects when making staff recommendations to the Jones County Commission related to rezonings and conditional use permit applications related to granite mines.

[25] Granite mines have negative impacts on infrastructure, including increased wear and tear on roads from increased truck traffic and on ground water levels, which may necessitate public water access to offset impacts on ground water and wells. Mr. Pitrowski considered such negative infrastructure impacts when making staff recommendations to the Jones County Commission related to rezonings and conditional use permit applications related to granite mines.

[*24] the proposed zoning decision (Changing Conditions Standard).

Below, we briefly discuss Jones County's comprehensive land use strategy as reflected in its comprehensive planning and FLU Map.

3. *Jones County's Comprehensive Land Use Strategy*

The Jones County Commission has adopted comprehensive plans and FLU Maps to intentionally guide land uses within the county. The Jones County FLU Map is a planning document used in rezoning decisions to guide potential land use changes over time. The Jones County FLU Map is a component of a larger Jones County comprehensive plan. The Jones County Commission adopted a comprehensive plan in 2007 (2007 Comprehensive Plan) that was used from 2007 through mid-2017. Similarly, the Jones County Commission adopted an FLU Map in 2007 (2007 FLU Map) that was used from 2007 through mid-2017.

On the 2007 FLU Map, the JSS Property was categorized as Rural Residential. The 2007 Comprehensive Plan listed recommended land uses for the categories listed on the 2007 FLU Map. The 2007 Comprehensive Plan listed site-built dwellings and manufactured homes on individual lots (with a two-acre minimum), agricultural and forestry uses, and light commercial uses as recommended uses for property in the Rural Residential category on the 2007 FLU Map. A granite mine was not a recommended land use in the Rural Residential category on the 2007 FLU Map.

On the 2007 FLU Map, the JSN Property was categorized as Agricultural Forestry. The 2007 Comprehensive Plan listed land dedicated to farming, agriculture, commercial timber, or pulpwood harvesting uses as recommended uses for property located in the Agricultural Forestry category on the 2007 FLU Map.

In mid-2017, the Jones County Commission adopted a new comprehensive plan (2017 Comprehensive Plan) and FLU Map (2017 FLU Map). The JSS Property was again categorized as Rural Residential, and the JSN Property was categorized as Agricultural Forestry, on the 2017 FLU Map. There was community input when the 2007 Comprehensive Plan, 2007 FLU Map, 2017 Comprehensive Plan, and 2017 FLU Map were created.

[*25] The 2017 Comprehensive Plan included a Short-Term Work Program, which was a statement of needs, projects, and goals that the Jones County government wanted to accomplish in the following five years. Work began on the Short-Term Work Program in 2016. The "Economic Development" section of the Short-Term Work Program did not list mining nor mineral extraction. The "Economic Development" section of the Short-Term Work Program explicitly called for the development of a targeted tourism strategy that promotes the ecological assets of Jones County. Paragraph 5 of the "Land Use" section of the Short-Term Work Program included a goal of preventing "the intrusion of incompatible development" along the periphery of national and state forests, wildlife management areas, and public lands in Jones County. The goal of preventing development intrusion along the periphery of public lands was to protect public lands. The effect of this goal was to give additional weight and consideration to the negative impact of development on public lands.

During 2016 and 2017, Mr. Pitrowski gave significant weight to the FLU Map when making staff report recommendations to the Jones County Commission regarding proposed rezonings and conditional use permit applications.

4. *Granite Mining in Jones County*

a. *Rezoning Applications and Conditional Use Requests for New Granite Mines in Jones County*

Since at least 1996, no rezonings have been applied for or approved in Jones County for a proposed new granite mine. Since at least 1996, only one conditional use permit has been applied for in Jones County for a proposed new granite mine. That application was submitted by A Mining Group, LLC (A Mining Group), in 2006. The Jones County Commission denied A Mining Group's application for a conditional use permit. In Jones County and Monroe County it was more difficult to obtain a rezoning for a new mine as opposed to an existing mine that sought to expand.

b. *Rezoning Applications Related to Mining*

Since 2000, the Zoning Department has received three applications for rezoning related to mining. It recommended approval of the applications. Two of the applications were for the storage of overburden, and the other application was a rezoning request to expand

[*26] an already existing granite mine. As discussed above, the Zoning Department did not recommend approval for any new granite mines.

c. *Denial of A Mining Group's Application*

Like the Subject Properties, the property for which A Mining Group sought a conditional use permit to operate a granite mine was zoned AG–1. Jones County residents broadly opposed A Mining Group's application. They expressed concerns about increased truck traffic, rail traffic, and dust resulting from the proposed granite mine. The Zoning Department's staff report regarding the A Mining Group's conditional use permit identified several factors that led to the denial including negative effects on infrastructure, inconsistency of a granite mine with the FLU Map, and mismatch of a granite mine with nearby properties. The proximity of the Big O Ranch property, owned by one of Otis Redding's relatives, to the proposed mine was not a factor and did not affect Mr. Pitrowski's staff report recommending that A Mining Group's conditional use permit be denied. A Mining Group unsuccessfully appealed the Jones County Commission's denial of a conditional use permit to operate a granite mine.

d. *Community Opposition to Granite Mines*

On May 2, 2006, the Jones County Commission amended the Zoning Ordinance by a unanimous vote, to remove mining as a conditional use in the AG–1 zoning district. Members of the general public filed the application for an amendment to the Zoning Ordinance to remove mining as a conditional use in the AG–1 zoning district. Residents who lived near the Subject Properties, including in the close-by Tumbling Shoals residential neighborhood, would have been publicly opposed to a granite mine being built on the Subject Properties. They were concerned about dust, noise, the lights at nighttime, and increased heavy truck traffic on nearby roads, including Highway 18 West. These residents would have spoken in opposition to a granite mine at a public meeting.

e. *Other Granite Mines in Jones County*

During 2015 and 2016, the Zoning Department did not receive any applications to rezone, or for a conditional use permit for, the Subject Properties. Similarly, it did not receive any Plan of Development for a proposed granite mine on the Subject Properties. In 2016, there were two active operating granite mines in Jones County. Martin Marietta Materials, Inc. (Martin Marietta), operated one of the mines

[*27] (Martin Ruby) and Vulcan operated the other (Vulcan Postell or Lite-n-Tie). Both began operations before Jones County adopted its first zoning ordinance in 1970. These two granite mines were actively operating in Jones County in 2016 and were located in southern Jones County. In 2016 and 2017, industrial land uses were also concentrated in southern Jones County.

IV. *Easement Transactions*

A. *Marketing*

As discussed *supra* Findings of Fact Part I.D.1 and E.1, JSS and JSN were formed on May 23, 2016. After the JS Investments Share Purchase Agreement and the JN Investments Share Purchase Agreement, each of JS Investments and JN Investments held 95% of the membership units in JSS and JSN, respectively. Mr. Jackson, Mrs. Jackson, and their children held the remaining 5% of the membership units in JSS and JSN. Mr. Wingate and his associates, including Bo Schill and Michael Dean, actively marketed the conservation easement transactions with respect to JSS and JSN to CPAs, financial advisors, and potential investors, seeking investment in JS Investments and JN Investments in exchange for membership units in the same. As early as September 2016, nine months before Mr. Hayter and five months before Mr. Edwards issued their respective appraisals of the Subject Properties, and continuing through December 2016, Mr. Wingate and his associates marketed the investment as a natural-resource-based conservation easement producing a deduction of 4.5 to 1 on the potential investors' investments.

B. *Third-Party Investments*

Mr. Winders of Fisher Broyles[26] prepared the Confidential Private Offering Summaries (Private Placement Memorandum or PPM), tax opinion letters,[27] deed transfers, legal structures, formation of investment companies, and other legal documents for JS Investments

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[26] Mr. Winders was involved in at least ten easement projects with WCS in 2016.

[27] The tax opinion letters warned prospective investors: "PARTICIPANTS IN THE PROPOSED TRANSACTION WILL NOT BE ABLE TO RELY ON THIS OPINION TO ESTABLISH A REASONABLE BELIEF THAT THE TAX TREATMENT OF THE PROPOSED [JSS/JSN CONSERVATION EASEMENT] TRANSACTION WAS PROPER OR FOR ANY OTHER PENALTY PROTECTION PURPOSES."

[*28] and JN Investments. Mr. Wingate and his associates distributed the JS Investments PPM and the JN Investments PPM (together with the JS Investments PPM, PPMs) to prospective investors.

The JS Investments PPM offered 9,500 units ($4,000,555 rounded) in JS Investments for $421.11 per unit with a minimum subscription per investor of $50,000. The JN Investments PPM offered 9,500 units ($4,110,270) in JN Investments for $432.66 per unit with a minimum subscription per investor of $50,000. Both offerings were fully subscribed and closed on December 13, 2016.

The PPMs state that JSS's and JSN's sole assets are their respective easement properties and propose two uses for the land: (1) holding the property for investment, which could include mining the property for granite or selling the property in the future, or (2) granting a conservation easement. Either option had to be approved by a vote of the majority percentage of the holders of shares in each of JSS or JSN. The PPMs also warn investors that the primary purpose of the investments "may not be to maximize profits for members."

The JS Investments PPM states that, based on Mr. Hayter's preliminary appraisal, the conservation easement option would generate a charitable contribution deduction of $18,950,000, which would inure to the members according to their relative ownership percentages in JS Investments. Similarly, the JN Investments PPM states that, based on Mr. Hayter's preliminary appraisal, the conservation easement option would generate a charitable contribution deduction of $19,470,000, which would inure to the members according to their relative ownership percentages in JN Investments. Each of the PPMs dedicates 19 pages to discussing the tax implications of a conservation easement. As discussed *supra* Findings of Fact Part I.D.2 and E.2, after the offerings closed on December 13, 2016, JS Investments and JN Investments purchased 95% of the units of JSS and JSN, respectively, and 9,500 units in each of JSS and JSN were transferred to the new investors.

C. *Execution of Conservation Easement Deeds*

Shortly thereafter, shareholders of JSS and JSN approved the conservation easement options, and Mr. Wingate and Mr. Jackson placed Conservation Easements on the Subject Properties by executing easement deeds. On December 15, 2016 (Donation Date), JSS conveyed a conservation easement to ORLT over 288.08 acres of the JSS Property

[*29] (JSS Easement Property) via a Deed of Conservation Easement (JSS Easement Deed). On the same day, JSN conveyed a conservation easement to ORLT over 252.92 acres of the JSN Property (JSN Easement Property, and together with the JSS Easement Property, Easement Properties) via a Deed of Conservation Easement (JSN Easement Deed, together with the JSS Easement Deed, Easement Deeds). ORLT is a qualified organization as defined in section 170(h)(3).[28] The Easement Deeds were recorded with the Jones County Clerk of the Court on December 16, 2016.

The Easement Deeds state two conservation purposes: first, the "protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" under section 170(h)(4)(A)(ii); and second, the "preservation of open space" that is pursuant to a clearly delineated governmental conservation policy and "will yield a significant public benefit" under section 170(h)(4)(A)(iii)(II). The specific provision of the JSN Easement Deed that address the open space conservation purpose states that the JSN Conservation Easement ensures the preservation of open space pursuant to the Georgia Conservation Tax Credit Program (GCTCP) and the Georgia Conservation Tax Assessment (GCTA) program. JSN did not apply for, and therefore did not participate in, the GCTCP. The JSN Easement Property was not enrolled in the GCTA program.

The JSS Easement Deed permitted (1) general vegetation management; (2) forest management including herbicide application, planting, burning, thinning and harvesting of trees, and other activities necessary for the sale, trade, or removal of forest products; (3) maintenance and use of existing fields, or conducting agricultural activities including planting and cultivating any crop(s), operating a livestock grazing operation in the fields, and boring or drilling wells for water to be used to support agricultural activities on the property; (4) maintenance of existing unpaved roads and construction of additional unpaved roads if approved by ORLT; (5) maintenance, repair, or replacement of existing structures and creation of one new residential envelope no greater than two acres within which the grantor can construct, maintain, repair, remove, or replace one residential dwelling; (6) construction and maintenance of pedestrian, equestrian, and bicycle trails for nonmotorized and educational purposes; (7) installation, maintenance, and replacement of any fences; (8) shielded outdoor

[28] WCS worked on at least 11 conservation easement projects with ORLT in 2016.

[*30] lighting; (9) construction, maintenance, and replacement of utilities including power, water, septic systems and communication to support approved structures or uses on the property; (10) use of the property for scientific and environmental education of the public; (11) use of the property for recreational purposes including bird watching, hunting, fishing, swimming, equestrian use, bicycling, hiking, and the use of off-road and all-terrain vehicles; (12) maintenance and repair of the existing lake and pond dam, including dredging; and (13) construction and maintenance of a waterfowl impoundment no greater than two acres in area. The JSN Easement Deed included all of the reserved rights listed above except for item (12).

D. *JSN Baseline Report*[29]

Luke Rushing holds a master of landscape architecture degree and a bachelor of science in environmental design from Auburn University. At the time of trial in these cases, he had worked at Williamson Landscape Architecture, formerly the Jaeger Co., since 2003 and had extensive experience in land conservation and land management. Mr. Rushing wrote the baseline reports for JSS and JSN to establish the conditions of the Easement Properties at the time of the donations.

On September 13, 2016, Mr. Rushing visited the JSN Easement Property. In the JSN Baseline JSN and ORLT acknowledge that the "report is an accurate representation of the property as of the date of the conveyance of the conservation easement referenced in this report by the landowner ('Grantor') to the Oconee River Land Trust, Inc. ('Grantee')." Mr. Jackson signed the JSN Baseline as the managing member of JSN and Smith Wilson signed it as the chair of ORLT. JSN attached the JSN Baseline to its 2016 Form 1065, U.S. Return of Partnership Income, to establish the condition of the JSN Easement Property at the time of the donation.

The JSN Baseline states that Mr. Rushing observed only common wildlife species from the Piedmont Ecoregion of Georgia (Piedmont Ecoregion) on the JSN Easement Property during his site visit. Additionally, the JSN Baseline identifies five land cover types on the JSN Easement Property: (1) open fields, (2) mesic hardwood forest, (3) bottomland hardwood forest, (4) planted pine forest, and

[29] The findings of fact in this Part IV.D are limited to the JSN baseline report dated October 14, 2016 (JSN Baseline), and do not address the JSS baseline report because facts about the latter are not necessary to decide these cases.

[*31] (5) oak-hickory-pine forests. It separates the JSN Easement Property into four sections: (1) a 200' riparian buffer, (2) special natural areas, (3) forestry envelopes, and (4) fields. The JSN Baseline states that the following land cover types, amounts, and percentage of the overall acreage occur on the JSN Easement Property: (1) 100.9 acres of oak-hickory-pine forest that cover 39.8%, (2) 73.16 acres of planted pine forest that cover 28.9%, (3) 37.46 acres of bottomland hardwood forest that cover 14.8%, (4) 24.59 acres of mesic hardwood forest that cover 9.8%, and (5) 16.81 acres of open fields that cover 6.7%. These habitat and land cover types were also identified in the ecological features map included as Attachment 10 to the JSN Baseline.

Mr. Rushing created multiple drafts of the JSN Baseline and shared them with Laura Hall, a representative of ORLT. Mr. Rushing and Ms. Hall exchanged several emails regarding Ms. Hall's proposed revisions to the JSN Baseline. An ecological features map dated September 22, 2016, in a draft JSN Baseline did not reference any mesic hardwood forest on the JSN Easement Property. Instead, the ecological features map in the draft JSN Baseline indicated that the property had four land types: (1) bottomland hardwood forest, (2) oak-hickory-pine forest, (3) planted pine forest, and (4) open fields.[30] Additionally, the photographs that were included in that draft report did not include any captions about the existence of mesic hardwood forest.

In October 2016, Ms. Hall provided Mr. Rushing feedback on a draft baseline report.[31] She directed him to change the bottomland hardwood forest that was described in the draft report to a mesic hardwood forest because some of the species described in the draft were not typical of bottomland hardwood forests and, in Ms. Hall's view, the

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[30] We note that mesic hardwood forest was also absent from the types of forest stands listed in the Georgia Forestry Commission's 2010 Forest Stewardship Plan for the land that became the JSN Easement Property and the 2021 Forest Stewardship Plan for the JSN Easement Property. The Georgia Forestry Commission can provide a landowner a forest management plan to manage forestland for timber, wildlife habitat, recreational opportunities, aesthetics, and soil and water conservation. The 2010 Forest Stewardship Plan stand map listed four types of forest stands on what became the JSN Easement Property: (1) mature planted pine, (2) planted pine, (3) hardwood, and (4) wildlife openings. Similarly, the 2021 Forest Stewardship Plan stand map listed four types of forest stands on the JSN Easement Property: (1) 1970 planted pine, (2) 1988 planted pine, (3) bottomland hardwood, and (4) fields/wildlife openings.

[31] Ms. Hall's feedback consisted of a list of 20 items to be modified or clarified. It ranged from substantive items such as changing the identification and description of certain habitats and types of vegetation to nonsubstantive items such as enlarging the appearance and borders on maps.

[*32] topography of the land suggested that it was mesic hardwood forest. She also provided him with photos from the JSN Easement Property that Mr. Schill had sent to her of supposed bottomland forest and directed him to other pictures that she indicated were of mesic hardwood forest. She directed Mr. Rushing to include these photos in the draft report and to change the captions for certain photos. The changes to the captions were to state that picture 17 on page 36 of the JSN Baseline is a view of a mesic hardwood forest and that pictures 15 and 16 on page 35 of the JSN Baseline are of a future duck impoundment location in bottomland forest.

In December 2016, Mr. Jackson communicated to ORLT that the special natural areas listed in the JSN Baseline were inaccurate. The areas in question were delineated as special natural areas and oak-hickory-pine forest, but Mr. Jackson informed ORLT that the areas were actually pine forests. On December 16, 2016, ORLT raised this discrepancy about the special natural areas and pine forests with Mr. Rushing. Mr. Rushing agreed that he had made a mistake in the JSN Baseline about the distribution of the special natural areas and pine forest on the JSN Easement Property. He also acknowledged to ORLT that the JSN Baseline should be revised for Mr. Jackson's corrections. Nonetheless, the JSN Baseline was not corrected, and the errors remained in the final version.

V. *Appraisals*

A. *Hayter Appraisals*

In 2016, Mr. Wingate hired Mr. Hayter, with whom he had worked previously,[32] to value the Conservation Easements. Mr. Hayter is the owner of Independent Appraisals, LLC, and regularly performed real estate appraisals. Mr. Hayter had more than 25 years of experience as an appraiser and is licensed in the State of Georgia. He is a member

[32] In 2016, Mr. Hayter performed 12 appraisals for Mr. Wingate, and from 2014 through 2018 he performed approximately 20 appraisals for Mr. Wingate. All 12 of the 2016 appraisals had an HBU of mining. According to Mr. Hayter, all 12 appraisals "likely" had reports from Dr. Capps and NOVA. All of the appraisals that Mr. Hayter had performed since 2013 likely used the DCF approach for the before value. Generally, the DCF approach estimates the future cashflows from a business and discounts those cashflows to present value.

[*33] of the Appraisal Institute, holds its MAI designation,[33] and has the appraisal review designation for commercial properties.

Before Mr. Hayter performed his appraisals, Mr. Wingate sent him the NOVA Reports; and he later sent him the Capps Reports. Mr. Hayter's appraisal notes state that 20 acres (in total) are excluded from the area over which the Conservation Easements were to be granted. The excluded parcels run along Highway 18 West and are composed of woodlands that are a mix of pines and hardwoods of moderate maturity. Each excluded parcel is contiguous to its respective Easement Property.

Mr. Hayter performed appraisals for both Subject Properties for the purpose of determining the FMVs of the Conservation Easements (Hayter Appraisals). The Hayter Appraisals include descriptions of the Subject Properties that have sufficient detail for a person unfamiliar with the types of property to ascertain that the Subject Properties that were appraised were the Subject Properties that were contributed. They include the date of contribution of the Conservation Easements. The Hayter Appraisals also include Mr. Hayter's name, address, identifying number, and qualifications. Finally, the Hayter Appraisals include statements that they were prepared for income tax purposes.

In preparing his appraisals[34] he determined that a mine operation was the HBU of the Subject Properties.[35] Mr. Hayter, relying on the Capps Reports, estimated that annual demand for aggregate was 5,085,423 tons based on a population of 1,130,094 and a per capita

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[33] MAI membership requires certification as a general real property appraiser; a four-year bachelor's degree; completing courses on valuation standards, fair housing, business practices, and ethics; a passing grade on advanced income capitalization, advanced market analysis and highest and best use, advanced concepts and case studies, quantitative analysis, and the Appraisal Institute's general comprehensive exam; and a minimum of 4,500 hours of specialized work. *See* https://www.appraisalinstitute.org/why-join/pursue-a-designation/mai-designation (last visited July 2, 2025) (providing MAI designation requirements).

[34] Mr. Winders, the attorney for JS Investments and JN Investments, provided advice on the issue of zoning to Mr. Hayter as Mr. Hayter prepared the Hayter Appraisals. Mr. Hayter also contacted Mr. Winders to discuss other legal issues as he prepared the Hayter Appraisals.

[35] Mr. Hayter considered other financially feasible uses of the property and excluded single-family residential use on the Subject Properties because "it is not likely to be financially viable due to very limited demand." He further stated that his observation of the surrounding area found "virtually no residential subdivision development."

[*34] demand rate of 4.5 tons. He did not perform an analysis to estimate supply in the primary market area.

Mr. Hayter estimated that a hypothetical mine on each of the Subject Properties should sell about 500,000 tons of commercial grade granite aggregate and 100,000 tons of specialty product per year on a stabilized basis.[36] Mr. Hayter's DCF analysis projected that, over the life of the mine (LOM), each mine would produce an estimated 13,135,793 tons of aggregate. This estimate was based on two studies of other mines. The first study was of four aggregate mines in the eastern I–20 corridor that sold in the range of 450,000 to 550,000 tons per mine per year. The second study was of aggregate sales at several mines in north and central Georgia. Based on the second study, he estimated that each of the Subject Properties would sell about 450,000 to 800,000 tons once they reached stabilized operations. He also considered Dr. Capps's estimate that a hypothetical mine on each of the Subject Properties would sell 300,000 tons per year. After considering these estimates, Mr. Hayter concluded that a hypothetical mine on each of the Subject Properties would sell about 500,000 tons of aggregate and 100,000 tons of specialty products per year.

For each of the Easement Properties, Mr. Hayter prepared a DCF analysis estimating future income from a hypothetical mine operation, using various assumptions about recoverable volumes of aggregate, future pricing of aggregate, capital expenses, ordinary business expenses, discount rates, and so on.

Mr. Hayter also performed a sales comparison analysis from four mining properties that he deemed comparable to the Easement Properties. Three of the comparables were in Clayton County and Hall County, Georgia, and one was in Talladega County, Alabama. All of the selected comparable mining properties were either working mines with long operating histories, or in one case, an expansion purchase of property that was adjacent to a working mine that had a long operating history. The range of prices per acre for the comparable sales was $12,575 to $133,929 per acre.

On the basis of the DCF analysis, Mr. Hayter concluded that the FMV of the JSS Easement Property before the granting of the easement was $19,840,000 (or $68,870 per acre). Additionally, he determined that

[36] The Hayter Appraisals explain that "stabilized basis" refers to the mine's having successfully obtained a sustained customer base and a reputation for quality stone products at reasonable prices.

[*35] the value of the excluded ten-acre parcel before the granting of the easement was $32,000. In total, he determined that the FMV of the JSS Property before the granting of the easement was $19,872,000 (or $66,667 per acre). He determined that the FMV of the JSS Easement Property after the granting of the easement was $345,000 rounded (or approximately $1,200 per acre). Additionally, he determined that the value of the excluded 10-acre parcel after the granting of the easement was $46,000. In total, he determined that the FMV of the JSS Property after the granting of the easement was $391,000 (or $1,312 per acre). Subtracting the "after" value from the "before" value, he determined that the rounded and concluded[37] FMV of the JSS Conservation Easement was $19,480,000.

Similarly, Mr. Hayter concluded that the FMV of the JSN Easement Property before the granting of the easement was $19,360,000 (or $76,545 per acre). Additionally, he determined that the value of the excluded ten-acre parcel before the granting of the easement was $30,000. In total, he determined that the FMV of the JSN Property before the granting of the easement was $19,390,000 (or $73,749 per acre). He determined that the FMV of the JSN Easement Property after the granting of the easement was $300,000 rounded (or approximately $1,200 per acre). Additionally, he determined that the value of the excluded ten-acre parcel after the granting of the easement was $46,000. In total, he determined that the FMV of the JSN Property after the granting of the easement was $346,000 (or $1,316 per acre). Subtracting the "after" value from the "before" value, he determined that the rounded and concluded FMV of the JSN Conservation Easement was $19,044,000.

The appraisals for JSS and JSN each valued the Conservation Easements as of December 15, 2016. The JSS report was dated June 16, 2017, and the JSN report was dated June 17, 2017. Additionally, the Hayter Appraisals stated:

> Employment of the appraiser was not conditional upon the appraiser producing a specific value or a value within a given range, or a result that is favorable to the client. Future employment prospects are not dependent upon the

[37] Mr. Hayter noted that the indicated value of the easement after subtracting the "after" value from the "before" value was $19,481,000 but he rounded that amount to $19,480,000. Even though Mr. Hayter's appraisal for JSS concluded that the FMV of the easement was $19,480,000, JSS claimed a deduction of only $19,044,000 on the 2016 Form 1065.

[*36] appraiser producing a specified value or a result that favors the client. Employment of the appraiser and payment of the fee are not based upon the outcome of a loan application, upon the completion of a purchase/sale transaction, or any outcome that favors the client, or any future event.

The Hayter Appraisals also stated that "[n]o portion of the appraisal fee was based on a percentage of the appraised value of the property or the amount allowed as a deduction." Finally, the Hayter Appraisals stated that Mr. Hayter had no current or prospective interest in the Subject Properties or the parties involved. JSS and JSN attached the Hayter Appraisals to their 2016 Forms 1065.

B. *Edwards Appraisals*

Mr. Wingate also hired Chad Edwards to value the Conservation Easements. Like Mr. Hayter, Mr. Edwards had previously worked with WCS on conservation easement transactions. Mr. Schill described the nature of the project and the scope of work to Mr. Edwards. From that description Mr. Edwards understood that he was to determine whether use of each of the Subject Properties as a mine was a viable HBU. When Mr. Edwards accepted the assignment, Mr. Wingate and Mr. Schill referred to his appraisals as second appraisals, and Mr. Edwards was aware that other appraisals were being performed. Before completing his appraisals, Mr. Edwards was provided with a copy of Mr. Hayter's preliminary appraisal, the NOVA Reports, and the Capps Reports.

Mr. Edwards also prepared a DCF analysis to determine the FMV of the Subject Properties. Mr. Edwards's appraisal reports (Edwards Appraisals) determined that the before values of the JSS Property and the JSN Property were each $20,752,000. However, he did not believe that someone would pay $20,752,000 for either of the Subject Properties. He also determined that the FMV of the charitable contributions for the JSS Property and the JSN Property were $20,195,000, and $20,259,000, respectively. The Edwards Appraisals were dated January 30, 2017; however, Mr. Edwards was still finalizing his reports as late as March 2017. Even though the Edwards Appraisals were higher, WCS used the Hayter Appraisals for purposes of tax return reporting.

[*37] VI. *Tax Returns and Notices of Final Partnership Administrative Adjustment*

JSS and JSN each filed Forms 1065 for their short tax year ending December 31, 2016.[38] JSS and JSN attached Forms 8283, Noncash Charitable Contributions, to their Forms 1065. JSS's Form 8283 stated that the basis of the contributed property was $192,500. JSN's Form 8283 stated that the basis of the contributed property was $857,000. On each of JSS's and JSN's Forms 8283, Mr. Hayter signed Section B, Part III, Declaration of Appraiser, and Steffney Thompson signed Section B, Part IV, Donee Acknowledgment, for ORLT. On the returns, JSS and JSN each claimed charitable contribution deductions of $19,044,000 for donating the Conservation Easements over the JSS Easement Property and the JSN Easement Property, respectively, to ORLT. The total deductions claimed by JSS and JSN for the Conservation Easements were based on their alleged "before" FMVs, as determined by Mr. Hayter.

On July 9, 2020, respondent issued the FPAAs to the TMPs of JSS and JSN, disallowing the charitable contribution deductions and asserting penalties.

VII. *Expert Testimony*

A. *Petitioners' Experts*

Petitioners did not support the "before" values that Mr. Hayter determined in the Hayter Appraisals for the Subject Properties using a sales comparison approach. Rather, petitioners argue that, consistent with Mr. Hayter's approach in the Hayter Appraisals, the "before" values of the Subject Properties should be determined by hypothesizing the creation of a commercial granite aggregate business on each of the Subject Properties, estimating the future cashflow from each business, and discounting those cashflows to present value. As discussed *supra* note 32, this methodology is commonly referred to as a "discounted cash flow" or DCF approach. As discussed above, petitioners hired Mr. Stanish to opine as to the amounts of resources and reserves on the Subject Properties, Mr. Wick to opine as to the associated values of the mineral reserves underlying the Subject Properties, and Benjamin Black to opine on whether the prospective mines were legally permissible (i.e., that the Subject Properties would have received

[38] Mr. Wingate engaged Nichols, Cauley & Associates and Robins, Eskew, Smith & Jordan (Robins Eskew) to prepare the returns for JSS and JSN, respectively.

[*38] rezoning and conditional use permits) in Jones County. Petitioners hired James C. Clanton to prepare a retrospective appraisal report for the Easement Properties (Clanton Reports). The Clanton Reports address the HBU of the Easement Properties and the "after" value of the Easement Properties and the non-Easement Properties. Petitioners also hired Stephen Lee Echols, Jr., to render an opinion on the conservation values of the JSN Property[39] and the extent to which the JSN Conservation Easement and other supporting documentation protects those values in perpetuity. We discuss each of these experts below starting with Mr. Echols.

1. *Stephen Lee Echols, Jr.*

Mr. Echols is a consulting biologist with Southern Ecological Surveys, LLC. Mr. Echols holds a master of science in plant biology from the University of Georgia and a bachelor of science in ecology and environmental biology from Appalachian State University. He was also the director of conservation from 2020 to 2022, and a senior conservation biologist from 2007 to 2019, for the North American Land Trust. He has specialized knowledge in the fields of botany and ecology, and regularly performs ecological surveys in the southeast United States. We recognized him as an expert in ecology and conservation.

Mr. Echols prepared a report (Echols Report) presenting the conservation values that make the JSN property ecologically significant and determining the extent to which the recorded conservation easement and supporting documentation adequately protect those features in perpetuity. In preparing his report, Mr. Echols reviewed (1) an article about priority bird species in the Piedmont Conservation Region, (2) integrated geologic map databases for Georgia from the U.S. Geological Survey, (3) Mr. Jackson's forest stewardship plan, (4) an online database of bird distribution and abundance, (5) the Georgia State Wildlife Action Plan (Georgia SWAP), (6) the Georgia State Wildlife Georgia Biodiversity Portal, (7) information from the U.S. Geological Survey on the ecoregions of Alabama and Georgia, (8) the Forest Legacy Program Assessment of Needs for the State of Georgia by the Georgia Forestry Commission, (9) NatureServe Explorer, (10) the JSN Easement Deed, (11) the JSN Baseline, (12) Birds of Conservation Concern 2021 published by the U.S. Fish and Wildlife Service, and (13) certain other databases. Mr. Echols also visited the JSN Easement

[39] Respondent did not challenge the declared conservation purposes of the JSS Conservation Easement.

[*39] Property nine times throughout late summer and early fall of 2022 and during late 2022 into 2023. In total, he spent between 27 and 54 hours on the JSN Easement Property.

In his report, Mr. Echols created a list titled "Table 2. Potentially Occurring Rare Species within the Conservation Area" of 25 animals and plants that he characterized as "species of conservation concern" that potentially occurred within the property. The phrase "species of conservation concern" as used by Mr. Echols included any rare, threatened, or endangered species tracked by the State of Georgia that had the potential to occur on the JSN Easement Property. He initially developed this list using habitat data that was in the JSN Baseline and then further refined it based on his site visits. He noted that some of the species on the list are not rare and instead are common, but that they are experiencing significant enough population declines that they are of conservation concern. However, Mr. Echols did not state in his report that he observed or heard any species on the list of species of conservation concern, or any rare, threatened, or endangered species, while he was on the JSN Easement Property.

The Echols Report states that he observed five habitats that the Georgia SWAP designates as "high priority wildlife habitats." These were (1) bottomland hardwood forest, (2) canebrake, (3) mesic hardwood forest,[40] (4) oak-hickory-pine forest,[41] and (5) streams. For each of these habitats, his report discussed potentially occurring bird species of conservation concern that are known to breed within Jones County. Mr. Echols stated that he observed a G1 habitat, a G2 habitat, and a G3 habitat on the JSN Easement Property.[42] His report does not include a

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[40] Mr. Echols stated that he observed mesic hardwood forest on the JSN Easement Property but that it is more limited in extent than as described in the JSN Baseline. He also stated that the mesic hardwood forest was adjacent to Buttlers Creek but did not pinpoint it on a map in his report.

[41] In his report, Mr. Echols stated that he observed an oak-hickory-pine forest on the side slopes adjacent to bottomland forest within the southeast corner of the JSN Easement Property. However, he did not pinpoint it on a map in the report.

[42] G1, G2, and G3 habitats refer to definitions from NatureServe Conservation status ranks. NatureServe is a large, umbrella conservation group that relies on reports from biologists around the world to classify natural communities and to track species of conservation concern. A ranking of G1, Globally Critically Imperiled, means that there are five or fewer instances of it worldwide. A ranking of G2, Globally Imperiled, means there are 6–20 instances of it worldwide. A ranking of G3, Globally Vulnerable, means there are 20–80 instances of it worldwide.

[*40] map indicating where the G1, G2, or G3 habitat occurs.[43] The Echols Report does not include any photographs of the G1, G2, or G3 habitat on the JSN Easement Property.[44] Mr. Echols did not report his G2 or G3 habitat findings to the EPD or any other reporting body.[45]

2. *Gregory Stanish*

Mr. Stanish is director of geological services for John T. Boyd Co. (Boyd), a U.S. and international consultancy that specializes in mining-related technical, financial, and environmental projects. Mr. Stanish is a licensed geologist in the State of New York with over 16 years of experience in the mining industry. We recognized him as an expert in identification and quantification of mineral resources and reserves, especially construction aggregates.

In August 2022, petitioners hired Mr. Stanish and Boyd to determine the amounts of resources and reserves[46] on the Subject Properties. Mr. Stanish reviewed "existing project source data" including (1) the NOVA Reports, (2) the Capps Reports, (3) a survey for each of the properties, and (4) publicly available geologic and mining-related information for the region. Mr. Stanish collaborated with Michael Wick, petitioners' expert in valuation of minerals and mineral real estate, to reach his conclusions in written reports (Stanish Reports) regarding amounts of resources and reserves on the Subject Properties.

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[43] At trial, Mr. Echols was shown a map of the JSN Property, and he stated that he observed mesic hardwood forest on the JSN Property near the Piedmont Refuge. Mesic hardwood forest is classified as a G2 habitat.

[44] The parties dispute whether the Echols Report contained photos of a mesic hardwood forest, a G2 habitat. As discussed further *infra* Opinion Part II.B.5, we find that mesic hardwood forest did not exist on the JSN Property.

[45] There was no testimony on whether Mr. Echols reported the existence of a purported G1 habitat on the JSN Easement Property to the EPD or any other reporting body.

[46] There is an important distinction between a "mineral resource" and a "mineral reserve" that is relevant to understanding Mr. Stanish's and Mr. Wick's reports. A mineral resource is a concentration or occurrence of solid material of economic interest in or on the Earth's crust in such form, grade, or quality and quantity that there are reasonable prospects for its eventual extraction. Mineral resources can be classified as Inferred, Indicated, or Measured, with an increase in confidence being the differences between those classifications. A mineral reserve is the economically minable part of a measured and/or indicated mineral resource. A mineral reserve includes diluting materials and allowances for losses, which may occur when the material is mined or extracted. Modifying factors that include the variables about how the resource will be mined are applied to convert a mineral resource to a mineral reserve.

[*41] Mr. Stanish and Mr. Wick collaborated as a team in an iterative process.

Mr. Stanish relied on Mr. Wick to obtain some of the inputs necessary to develop a geologic computer model for the prospective mines, and in turn, the amounts of resources and reserves in the prospective mines. For instance, Mr. Wick determined areas of the Subject Properties that were set aside for placement of a processing plant and overburden. Mr. Wick also provided mining engineering parameters (pit slopes, mining bench height, safety bench width). With these inputs from Mr. Wick, Mr. Stanish was able to determine the total amounts of minable material in the ground on each of the Subject Properties. Mr. Wick then provided Mr. Stanish with an input for acceptable in-pit losses based on the type of material being considered. After applying an in-pit loss amount, Mr. Stanish determined a run-of-mine (ROM)[47] total number of granite tons that may be excavated from the defined pit and brought to a processing plant. Mr. Wick used the ROM amount to conduct an economic market study on what could physically be mined and processed. Mr. Wick's economic market study demonstrated economic viability of the Subject Properties as mines. Using that determination and the other information in the Stanish Reports, Mr. Stanish estimated that there are approximately 23.3 million ROM tons of probable granite reserves present on the JSS Property, and 22.6 million ROM tons of probable granite reserves present on the JSN Property.

3. *Michael Wick*

Mr. Wick is Boyd's director of industrial minerals and a vice president of the company. Mr. Wick has over 38 years of experience in engineering, operations, management, and consulting of which 25 years have included exploration, operations, and valuation/business development roles for operating mining companies. We recognized him as an expert in the valuation of minerals and mineral real estate.

In August 2022, petitioners hired Mr. Wick and Boyd to complete an independent expert study of the mineral resources underlying the Subject Properties and their associated values. As part of his scope of work, Mr. Wick reviewed (1) the Stanish Reports, (2) available market information and granite stone pricing, volumes, and growth projections

[47] ROM tons are the recoverable portion of the minable material that is expected to be removed from the pit and crushed for sale, i.e., the salable product.

[*42] for the Macon MSA and surrounding areas as of 2016, (3) market reports, (4) the Hayter Appraisals, (5) the Capps Reports, (6) U.S. Geological Survey Minerals Yearbook 2015 through 2017 for crushed stone pricing and consumption, (7) census data from the U.S. Census Bureau, (8) Mine Safety and Health Administration information, (9) Universal Appraisal Standards for Federal Land Acquisitions 2016, (10) certain public company websites for financial information to estimate the weighted average cost of capital, (11) Aggflow Stone Processing simulation software, (12) equipment pricing guides, (13) the SME[48] Guide for Reporting Results, Mineral Resources, and Mineral Reserves, (14) the Uniform Appraisal Standards for Federal Land Acquisitions, and (15) Google Earth. Mr. Wick's reports stated that their respective conclusions relied upon information in Appendix B of the reports, which included items (4) through (15) above.

Mr. Wick collaborated with Mr. Stanish by providing him with certain inputs to determine the mineral reserves for the Stanish Report, and Mr. Wick relied on the Stanish Reports in preparing his written valuation opinion for the minerals and the mineral real estate on the JSS Property (Wick JSS Report) and the JSN Property (Wick JSN Report, and together, Wick Reports).

a. *Wick JSS Report*

Mr. Wick performed a DCF analysis for the JSS Property in which he determined that as of the Donation Date, the net present value of the mineral reserves underlying the JSS Property that would be extracted from a mine operating on the JSS Property for 30 years is $18.5 million. He posited that the HBU for the JSS Property was mining. He determined that, from the 23.3 million ROM tons of probable granite reserves present on the JSS Property and after reduction for processing losses and waste, the JSS Property could produce 20,513,000 ROM tons of aggregate granite over 30 years. He priced the aggregate using an average sale price of all salable products that would be produced by the mine and determined that it would sell for $13.50 per ton.[49] He

[48] SME refers to the Society for Metallurgy and Mineral Exploration.

[49] Mr. Wick acknowledged that the $13.50-per-ton average base price is "considerably below market" but that it would "enable the operation to quickly gain market share." Mr. Wick's view that the $13.50-per-ton average base price was considerably below market is supported by other data cited in his report. The crushed granite average market price for 2016 for the State of Georgia in the U.S. Geological Survey's 2016 Minerals Yearbook was $14.50 per ton freight on board (FOB) quarry

[*43] estimated average sales of 250,000 tons beginning in year 2, increasing to 350,000 tons in year 3, 500,000 tons in year 4, 600,000 tons in year 5, and subsequent average sales increasing by 1.7% annually to correlate with GDOT's 2010 through 2040 yearly population growth projection for the market.[50]

Mr. Wick posited that the primary competitors of a hypothetical mine on the JSS Property are mines operated by Vulcan and Martin Marietta. Vulcan operates four of the six mines in the area. He opined that JSS, as a truck-only local supplier, would capture 15% of the target local market over five years and that most of its tonnage would displace that of Vulcan Postell and Martin Ruby. The Wick JSS Report stated that a hypothetical mine on the JSS Property would have an advantage over the large rail mines of Vulcan Postell and Martin Ruby for the Forsyth to McDonough I–75 growth corridor. Moreover, it posited that, because Vulcan Postell and Martin Ruby are predominantly rail focused, they would just ship their tonnage to Florida and markets to the south instead of selling it locally.

For his cost analysis, Mr. Wick assumed that JSS would incur initial capital expenses of $13.4 million, including $5.9 million for a processing plant, $3.9 million for mining equipment, $1.2 million to purchase the existing home and property on the JSS Property, and $1 million for initial overburden stripping and site preparation. Additionally, he estimated that the mine would require $8.1 million of additional sustaining capital expenditures over the 30-year life of the project. He also estimated that the mine would have LOM average cost of goods sold of $5.70 per ton. This figure included $4.85 per ton in LOM operating costs, $0.10 per ton in LOM land reclamation costs, and $0.58 cents per ton in LOM overhead costs. He applied a discount rate of 12% to determine the net present value on a pretax, constant dollar basis.

(i.e., the sale price does not include transportation and handling). Mr. Wick also reviewed the pricing estimates in the Capps Reports and compared the pricing from two quarries that were in the defined market area whose pricing represented the high and low range of pricing. Mr. Wick averaged the two competitors' weighted average sale prices. The result was an average sale price of $18.14 per ton FOB in 2016.

[50] Mr. Wick relied on the GDOT, Office of Planning, I–75 South Corridor and Subarea Master Planning Study dated June 30, 2015, for population projections in the market. GDOT projected that from 2010 through 2014, the population in Bibb County (the county adjacent to and southwest of Jones County) and Jones County would increase by 9% from 168,657 to 184,037.

[*44] b. *Wick JSN Report*[51]

Mr. Wick performed a DCF analysis for the JSN Property in which he determined that, as of the Donation Date, the net present value of the mineral reserves underlying the JSN Property that would be extracted from a mine operating on the JSN Property for 30 years is $20.5 million. He determined that from the 22.6 million ROM tons[52] of probable granite reserves present on the JSN Property and after reduction for processing losses and waste, the JSN Property could produce 20,513,000 tons of aggregate granite over 30 years. Mr. Wick used the same average sale price and estimated average sales (in tons) as in the Wick JSS Report. For his cost analysis, Mr. Wick assumed that JSN would incur initial capital expenses of $11.6 million, including $5.9 million for a processing plant, $3.9 million for mining equipment, and $600,000 for initial overburden stripping and site preparation. The remaining inputs for his cost analysis were the same as those used in the Wick JSS Report. Again, he applied a discount rate of 12% to determine the net present value on a pretax, constant dollar basis.

4. *Benjamin Black*

Mr. Black is a principal engineering geologist for GeoLogic, LLC. He is a professional geologist and a professional engineer. He has over 25 years of experience in geological, hydrogeological, and geotechnical analysis and design. He holds licenses for both disciplines in various states. He is a registered member of SME. We recognized him as an expert in mining feasibility analysis.

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[51] The determinations in the Wick JSN Report are largely the same as those in the Wick JSS Report. For simplicity, we discuss only those items that differ in the Wick JSN Report.

[52] The Wick JSN Report states inconsistent figures for the granite reserves on the JSN Property. Page 31 of the Wick JSN Report states that, based on the Stanish Report, the granite reserves are estimated to be 23.3 million ROM tons; however, page 33 states that the granite reserves are estimated to be 22.6 million ROM tons. The reference to 23.3 million ROM tons on page 31 appears to be a typographical error, as the Stanish Report states that the granite reserves for the JSN Property were estimated to be 22.6 million ROM tons. It is not clear to the Court whether this typographical error had cascading effects on the DCF analysis, but we note that the production figure of 20,513,000 ROM tons for the JSN Property is the same figure as that for the JSS Property even though Mr. Wick estimated that the JSS Property had 23.3 million ROM tons of probable granite reserves while the JSN Property had only 22.6 million ROM tons.

[*45] Petitioners engaged Mr. Black to conduct a mining feasibility analysis of the potential for permit approvals necessary to allow quarrying of crushed stone aggregate at the Subject Properties (Black Reports). In preparing the Black Reports, Mr. Black reviewed the NOVA Reports, the Capps Reports, and the survey plats for JSS and JSN. Based on interviews with a current geologist and a former manager of the EPD Surface Mining Unit (SMU), Mr. Black concluded that the LLCs would have received a permit for surface mining from the SMU provided that all of the applicable rules and regulations were followed.[53] Similarly, Mr. Black concluded that the LLCs' rezoning applications and conditional use permits likely would have been approved based on (1) interviews he conducted with a former Jones County commissioner (who served on the Jones County board of commissioners from 1984 through 2004) and a current member of the Jones County commission (who was not a commissioner in 2016) and (2) his experience rezoning property in neighboring counties.

Mr. Black did not communicate with any other current or former Jones County employees in preparing his reports. Nor did he share the specific location of either of the Subject Properties with the current and former Jones County commissioners, even though he testified that the specific location of a property is an important consideration when a county commission is weighing whether to grant a rezoning or conditional use permit. He did not communicate with Mr. Pitrowski, the Jones County planning and zoning director, in preparing his reports. Nor did he communicate with any residents who lived on Highway 18 West near the Subject Properties or in the Tumbling Shoals residential neighborhood, which is close to the Subject Properties. In 2006, the Jones County Commission denied a conditional use permit for a proposed granite mine. Mr. Black was aware of this denial but did not include it in the Black Reports. Mr. Black does not have experience with rezoning property in Jones County but has experience with rezoning and surface mine permitting in nearby counties.

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[53] Jamie Lancaster, a representative of the SMU, testified that the SMU reviews 40 to 60 surface mining permit applications in a typical year. The SMU has never expressly denied a surface mining permit application; however, not all surface mining applications receive approval and sometimes the SMU requests additional information before a plan can be approved. The fact that the SMU has never expressly denied a surface mining permit application does not mean that every surface mining application is approved.

[*46] 5. *James C. Clanton*

James C. Clanton is a founding member of MVC Consulting, Inc. He is a licensed real property appraiser in the State of Georgia. He is a member of the Appraisal Institute and holds its MAI designation. He has experience performing valuations of vacant land, conservation easements, and quarries, among other types of property. We recognized him as an expert in real estate appraisals.

Petitioners engaged Mr. Clanton to prepare a retrospective appraisal of the "after" FMV of the Easement Properties and the "after" value of the excluded tracts from the Easement Properties as of the Donation Date. In preparing the Clanton Reports, Mr. Clanton reviewed (1) tax cards and tax bills, (2) a boundary survey, (3) the Easement Deeds, (4) the baseline reports, (5) a FEMA map of Jones County, (6) the Jones County zoning ordinance Article VII Use Requirements by District, and (7) information on the demographics of Jones County.

Mr. Clanton performed an HBU analysis of the Easement Properties and the excluded tracts from the Easement Properties after the granting of the Conservation Easements. After evaluating the physically possible, legally permissible, financially feasible, and maximally productive uses of each of the Easement Properties and the excluded tracts, he concluded that the HBU of the Easement Properties after granting the conservation easement was light recreational and forestry purposes.[54] He further concluded that the HBU of the excluded tracts was to hold the tracts vacant under the same ownership as the Easement Properties.

Mr. Clanton applied the sales comparison approach to determine the FMV of the Easement Properties and the excluded tracts. He identified sales of similar encumbered land for comparison with the Easement Properties. He stated that these types of properties are rare and so he included properties that were outside of the Easement Properties' "immediate neighborhood" but had been transferred in the last 40 months before the effective date of the Clanton Reports and were restricted by similar encumbrances. Mr. Clanton made qualitative adjustments for the percentage interest conveyed, financing, conditions of sale, market conditions, location/visibility, size, zoning, and site conditions, among others. Because of the lack of transfers of perpetually

[54] For the JSN Easement Property, Mr. Clanton also determined that the HBU included agriculture.

[*47] encumbered land in the local market, he also compared the Easement Properties to large, unencumbered properties in the local market and then applied an implied discount to the sales of the comparables. The range of the implied discount was 67% to 82%.

Comparable land sale 1 involved 63 acres of rural/agricultural land in Walker County, Georgia, that sold for $1,283 per acre in February 2014. Comparable land sale 2 involved 254 acres of rural/agricultural land in Chatham County, Georgia, that sold for $2,249 per acre in April 2015. Comparable land sale 3 involved 135 acres of rural/agricultural land in Jackson County, Georgia, that sold for $866 per acre in April 2014. Comparable land sale 4 involved 210 acres of rural/agricultural land in Elbert County, Georgia, that sold for $843 per acre in August 2013. Comparable land sale 5 involved 105 acres of rural/agricultural land in Morgan County, Georgia, that sold for $1,350 per acre in February 2015. Mr. Clanton applied adjusted value indications and opined that the rounded per-acre values of the JSS Easement Property and the JSN Easement Property were $1,389 per acre and $1,265 per acre, respectively. He then applied an implied sale discount based on the sale of local unencumbered land in Jones County to reach a reconciled rounded FMV of the JSS Easement Property and the JSN Easement Property of $370,000, or $1,284 per acre, and $300,000, or $1,186 per acre, respectively, as of the Donation Date.

Mr. Clanton also applied the sales comparison approach to determine the FMV of the excluded tracts. He identified sales of similar unencumbered land in Jones County for comparison to the excluded tracts.

Comparable land sale 1 involved 20 acres of agricultural/rural land in Jones County that sold for $3,546 per acre in December 2016. Comparable land sale 2 involved 13 acres of agricultural/rural land in Jones County that sold for $3,704 per acre in January 2016. Comparable land sale 3 involved 20 acres of agricultural/rural land in Jones County that sold for $3,500 per acre in April 2016. Comparable land sale 4 involved 23 acres of agricultural/rural land in Jones County that sold for $3,277 per acre in February 2015. Mr. Clanton made adjustments for interest conveyed, financing, condition of sale, expenditure after sale, time/market conditions, location, size, zoning, and other factors. After applying the adjustments, he opined that the excluded tract from the JSS Easement Property, and the excluded tract from the JSN Easement Property, each had a rounded FMV of $50,000, or $5,000 per acre, as of the Donation Date.

[*48] B. *Respondent's Experts*

Respondent's expert Michael J. Chamberlain prepared a report (Chamberlain Report) evaluating whether the JSN Conservation Easement provides for the protection of a significant, relatively natural habitat for fish, wildlife, or plants. Raymond H. Krasinski prepared a Uniform Standards of Professional Appraisal Practice (USPAP) compliance review of the Hayter Appraisals (Krasinski Review Reports). The Krasinski Review Reports address aspects of the Hayter Appraisals that Mr. Krasinski asserts were not in conformity with USPAP and that, in Mr. Krasinski's opinion, render the Hayter Appraisals' analyses and conclusions not credible. Matthew Sullivan prepared mineral economist rebuttal reports to the Capps Reports (Sullivan Reports). Finally, Andy D. Sheppard prepared retrospective appraisal reports for the Subject Properties (Sheppard Reports). The Sheppard Reports address the HBU of the Subject Properties and the "before" and "after" values of the Subject Properties. We discuss each of these experts below.

1. *Michael J. Chamberlain*[55]

Dr. Chamberlain is the Terrell Distinguished Professor of Wildlife Ecology and Management at the University of Georgia's Warnell School of Forestry and Natural Resources. He holds a Ph.D. in forest resources with a major in wildlife ecology from Mississippi State University. He is also an adjunct professor at Louisiana State University and the University of Tennessee. We recognized him as an expert in wildlife ecology and conservation.

Dr. Chamberlain's scope of work for his report was to evaluate whether the JSN Conservation Easement that is described in the JSN Easement Deed (1) provides a habitat for threatened or endangered species of plants and animals, (2) provides protection of a significant, relatively natural habitat, (3) contributes to the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar area, (4) has reserved rights that are consistent with the conservation purposes of the conservation easement, and (5) contributes a significant public benefit. In preparing the Chamberlain Report, Dr. Chamberlain reviewed (1) the JSN Easement Deed, (2) the JSN Baseline, (3) an excerpt from an article on high

[55] As discussed *supra* Findings of Fact Part VII.A, because respondent did not challenge the declared conservation purposes for the JSS Conservation Easement, our findings of fact with respect to Dr. Chamberlain's expert report will address only the JSN Conservation Easement.

[*49] priority habitats in Georgia from the Georgia Department of Natural Resources, (4) information from the U.S. Geological Survey on watersheds in the South Atlantic Gulf Region, (5) information from the U.S. Fish and Wildlife Service on the Piedmont Refuge, (6) articles on red cockaded woodpeckers and their use of pines for foraging, (7) the JSS and JSN Forest Land Management Plans, (8) the Georgia Biodiversity Portal, (9) an article on pine plantations and wildlife in the southeastern United States, (10) an article on open forest structural characteristics for high conservation priority wildlife species in southeastern United States pine plantations, (11) an article on soil ecology, (12) an article on simulating the consequences of roads for wildlife population dynamics, and (13) Georgia biodiversity conservation data. Dr. Chamberlain visited the JSN Easement Property on September 21, 2022.

In the Chamberlain Report, Dr. Chamberlain determined that the land cover types delineated in the JSN Baseline were inaccurate. He stated that there is neither evidence of, nor suitable habitat for, state or federally listed threatened and endangered species. Specifically, after touring the JSN Easement Property, Dr. Chamberlain determined that it supported only three terrestrial land cover types: (1) pine-dominated forest, (2) bottomland hardwood forest, and (3) open fields. He also visited the approximate areas documented as photo locations in the JSN Baseline to verify the land cover types and habitats that were asserted in the JSN Baseline. After visiting the photo locations in the JSN Baseline for the mesic hardwood forest, oak-hickory-pine forest, and pine forest, Dr. Chamberlain concluded that the mesic hardwood forest and the oak-hickory-pine forest described in the JSN Baseline did not exist. Instead, the mesic hardwood forest and oak-hickory-pine forest were pine plantations that had been thinned and contained pines of varying ages. Dr. Chamberlain stated that pine forests and pine plantations are readily found in the Piedmont Ecoregion and in the southeastern United States and provide only a minimal contribution to generalist species adapted to using pine forests and pine plantations. He noted that the plant communities (overstory and understory of the trees) in the photo locations were similar, and he "failed to find any evidence that either oak-hickory-pine and/or mesic hardwood forest existed anywhere on the conservation easement."[56] Accordingly, he opined that "78.5% of the conservation easement is pine plantation and pine forest that are softwoods, rather than hardwood forests." As discussed *infra* Opinion Part II.B.5, we find as fact that mesic hardwood forests did not

[56] Dr. Chamberlain did not observe a G1, G2, or G3 habitat on the JSN Conservation Easement.

[*50] exist on the JSN Easement Property. Thus, we find that the JSN Easement Property is 14.8% bottomland hardwood forest and 78.5% pine forest and manmade pine plantation.

Dr. Chamberlain investigated the potential for state and federally listed threatened and endangered plants and animals to occur on the JSN Easement Property and reviewed rare species and species of conservation concern documented in the Piedmont Ecoregion via the Georgia Biodiversity Portal maintained by the Georgia Department of Natural Resources – Wildlife Resources Division. He found no records documenting high priority species on the JSN Conservation Easement and found no evidence during his site visit and subsequent research that any rare, threatened, or endangered species occurred on the JSN Conservation Easement. In the Chamberlain Report, he opined that the JSN Conservation Easement does not provide a habitat for threatened or protected species, but instead provides land cover types used by generalist species that are common throughout the Piedmont Ecoregion and the southeastern United States.

Additionally, Dr. Chamberlain concluded that the JSN Easement Property did not provide a significant, relatively natural habitat for two nonmutually exclusive reasons. First, the JSN Baseline was inaccurate regarding the delineation of primary habitats and land cover types; and second, the actual observed habitats and land cover types on the JSN Conservation Easement were pine-dominated forests and pine plantations that have been thinned and which are common in the Piedmont Ecoregion and the southeastern United States. He noted that, because pine plantations are planted in a way that does not mimic natural forest regeneration and succession, they are not significant natural habitats or land cover types. Dr. Chamberlain agreed with the JSN Baseline that the JSN Conservation Easement contains bottomland hardwood forests along Buttlers Creek. However, he stated that the value of the bottomland hardwood forests along Buttlers Creek was "greatly marginalized" because they are surrounded by areas of pine plantation and poorly managed pine forest.[57] Thus, "the wildlife species

[57] Dr. Chamberlain explained that pine forests and pine plantations can be beneficial to certain wildlife species if they are managed properly. Generally, this is accomplished with prescribed fire to maintain understory vegetation (vegetation that is beneath the tree canopy), which provides quality early successional vegetation (grasses and forbs) that is valuable to many wildlife species. He noted that two of the eight locations that he visited in the pine-dominated land cover types were managed with prescribed fire intensely enough to create quality early successional vegetation

[*51] that use pine forests and pine plantations such as those that dominate the conservation easement are ubiquitous to nearly every land cover type found in the Piedmont Ecoregion." Dr. Chamberlain thus concluded that the bottomland hardwood forests did not constitute a significant, relatively natural habitat.

Similarly, Dr. Chamberlain opined that the JSN Conservation Easement did not contribute to the ecological viability of other conservation lands, such as the Piedmont Refuge, because it provided only modest value to the generalist species that use the JSN Conservation Easement. He also noted that the value of the JSN Conservation Easement is diminished by the fact that, except for the bottomland hardwood forests and the streams, the property contains only pine-dominated forests and nonmanaged open areas that could just as easily be found on other properties that border the Piedmont Refuge and throughout the Piedmont Ecoregion. Dr. Chamberlain conducted research in the Piedmont Ecoregion for 11 years, on public and private lands that border the Piedmont Refuge and the other nearby state and federal lands, and concluded that pine-dominated forests and open areas similar to those on the JSN Easement Property are common on properties surrounding the Piedmont Refuge and throughout the Piedmont Ecoregion.

Finally, Dr. Chamberlain concluded that the JSN Conservation Easement provides only marginal contributions to public benefit because the land cover types and recreational activities that occur on the property are consistent with other private conservation programs in the area. He further stated that recreational hunting and timber harvesting are common in these private conservation programs. Lastly, he concluded that the property is not unique to the area and the general public has little opportunity to view the property with the exception of approximately 600 feet on Highway 18 West, and no opportunity to use it.

2. *Raymond H. Krasinski*

Mr. Krasinski is the lead appraiser for the Internal Revenue Service (IRS). He oversees and is the technical lead for other appraisers

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but that the remaining locations were dominated by woody vegetation that is less valuable to wildlife species that use early successional vegetation. His report also stated that because of poor management, the pine forest had woody understory vegetation or dense pine regeneration, with midstories that were dominated by sweetgum, poplar, and dogwood.

[*52] in the IRS in all appraisal matters. He is familiar with generally accepted appraisal standards, including SME, USPAP, and the International Valuation Standards, and how the appraisal standards work together. Mr. Krasinski is a State Certified General Real Estate Appraiser and a General Appraisal Instructor in the State of Florida. We recognized him as an expert in real property appraisal, appraisal review, and USPAP.

Mr. Krasinski does not offer independent appraisals of the Subject Properties; rather, the scope of work for his appraisal review was to provide an opinion on whether the Hayter Appraisals' valuations and assignments comply with USPAP. The scope of work for the Krasinski Review Reports was also to provide the IRS with data and analysis to help determine the reasonableness and credibility of assignment results and conclusions in the Hayter Appraisals regarding the HBU conclusion and the data used to establish the Subject Properties' "before" values. In preparing the Krasinski Review Reports, Mr. Krasinski (1) reviewed the Hayter Appraisals, (2) researched specific supply and demand factors such as competitive similar land sales and offerings in the area, (3) researched population data and market dynamics, geographic constraints, and other market factors related to the HBU conclusion, and (4) viewed the Subject Properties using Google Earth and through available satellite, aerial, and surface photography.

The Krasinski Review Reports identified what Mr. Krasinski determined to be flaws in the Hayter Appraisals and stated that, because of these flaws, the Hayter Appraisals did not comply with USPAP. Mr. Krasinski noted that the Hayter Appraisals failed to compare the Subject Properties against comparable land sales of vacant land with similar geology in the local market. Mr. Krasinski also stated that the DCF valuation was flawed because it was not supported by valid comparable land sales. Finally, Mr. Krasinski stated that the Hayter Appraisals' DCF inputs were overstated in the case of aggregate production and understated in the case of cost inputs, which resulted in an inflated valuation of the proposed quarries.

The Krasinski Review Reports found what they described as significant errors in the Hayter Appraisals and concluded that the Hayter Appraisals did not comply with generally accepted appraisal standards of appraisal practice. At the outset, the Krasinski Review Reports described the Subject Properties in their existing conditions, each as "a large vacant land parcel with a claimed mineral asset," rather

[*53] than as an operating mine. Mr. Krasinski stated that the former is how a market participant would view the Subject Properties. Mr. Krasinski noted that the Hayter Appraisals relied on the Capps Reports for market parameters and data that it should have independently developed and/or verified.

He noted that there are multiple sales of comparable land with similar geology in the local market and that the prices at which those properties sold are contrary to the Hayter Appraisals' value conclusions. Rather than rely on these comparable land sales, the Hayter Appraisals inferred that a market participant would value the property based on its possible potential future cashflow if it were to operate for 26 years as a quarry. Mr. Krasinski opined that the four properties described in the Hayter Appraisals were not representative of the Subject Properties at the time of valuation. He noted that, unlike the Subject Properties, the four comparables in the Hayter Appraisals involved working quarries that had long operating histories or, in one case, an expansion purchase of property that was adjacent to a working quarry that had a long operating history. When the Subject Properties are weighed against comparable land with similar geology in the local market, the Hayter Appraisals' value conclusions are more than 25 times, in the case of JSS, and 28 times, in the case of JSN, higher than the indication of similar local market sales data. Moreover, there were no sales of similar vacant land in the local market that sold for the value suggested by the Hayter Appraisals.

Mr. Krasinski researched sales in the local market area and found 25 recent sales of similar vacant land primarily located on the same geologic formation as the Subject Properties.[58] Of the 25 sales, 23 of the properties were located on the same biotite granite gneiss formation as the Subject Properties and the other two were located on top of a less ubiquitous type of granite, igneous granite.[59] The values ranged from $985 per acre to $4,283 per acre, with the average sale price of $2,637 per acre, and the median sales price of $2,350 per acre. Mr. Krasinski stated that Mr. Hayter should have investigated local sales in Jones County as part of his analysis because, if Mr. Hayter had done so, the observed lack of market sales at the unit value that was indicated by the

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[58] Mr. Krasinski limited his search and analysis to property sales that involved over 30 acres and that occurred within Jones County over the two years directly preceding the valuation date.

[59] Mr. Krasinski noted that the "granite formation underlying this part of Georgia is fairly ubiquitous."

[*54] Capps Reports would have been an indication that the market does not treat the Subject Properties as different from other vacant land with similar attributes in the local area and that a DCF analysis may not have been the correct model in these cases.

Mr. Krasinski also noted that the disparity between the price per acre for the comparable land sales and the unit value indicated by the Capps Reports should have signaled the need to further investigate supply and demand of the aggregate. He continued that significant issues with both the Hayter Appraisals and the Capps Reports were that they are based primarily on supply side data and the subject market area is not analyzed for supply and demand quantification for aggregate. Mr. Krasinski explained that these errors give the impression to a user of the Hayter Appraisals that the Subject Properties are unique when they are, in fact, nonunique properties for which substitutes are readily available.

Additionally, Mr. Krasinski criticized the use of a DCF analysis for the Subject Properties because it "results in an isolated analysis and business and investment value that is not directly connected to demonstrated actions of buyers and sellers of vacant land in the local market." He continued that the underlying premise of using the DCF analysis is that the Subject Properties will be used as mines, even though no mines existed when the Subject Properties were valued. He noted that Mr. Hayter's use of a DCF analysis suggests that market participants will value vacant land based on the present value of future mineral sales of an underlying mineral asset. Mr. Krasinski stated that the 25 sales of comparable land that he researched do not support that view. He determined that, if the underlying mineral was actually in demand, the market sales would demonstrate a premium for vacant land with an underlying mineral asset. Since there was no such market demand, he concluded that the HBU for the Subject Properties is not aggregate mines.

Mr. Krasinski also asserted errors in the DCF analysis. He stated that the Hayter Appraisals superseded the Capps Reports estimated production figures of 10,524,358 tons of production over a 25-year period and instead increased the estimated production figure by over 40% to 14,931,000 tons over a 26-year period. Additionally, Mr. Krasinski noted that the Hayter Appraisals superseded Dr. Capps's $8.75-per-ton cost for rock crushing, which was based on the quoted rate from Colwell, and

[*55] reduced it to $7 per ton with an annual inflation rate of 2%.[60] Mr. Krasinski stated that, although Mr. Hayter noted that the Colwell quote did not include additional costs for washing and finishing (which Mr. Colwell offered to provide for an additional $1.75 per ton) nor drilling and shooting (which Mr. Colwell offered to provide for an average cost of $1.60 per ton), neither did Mr. Hayter include these additional costs in the DCF. Instead, Mr. Hayter included only a $0.50-per-ton allowance for washing and finishing without discussing why this cost was reduced by $1.25 per ton from the Colwell quote, and did not include an allowance for drilling and shooting. Finally, Mr. Krasinski noted that Mr. Hayter used a below-average 2% inflation rate for the entire project. According to Mr. Krasinski, the result of these adjustments is a production cost that is 30% lower than the production cost that the Colwell quote should yield and the production cost quoted by Dr. Capps. He explained that this resulted in a $42 million lower production cost over 26 years. Mr. Krasinski observed that, if an $8.75 cost of harvest (as determined by Dr. Capps) is used in the Hayter DCF, the net present value for each Subject Property would decrease by $10 million.[61]

As discussed *supra*, Mr. Krasinski faulted the Hayter Appraisals for failing to quantify supply and demand in the 50-mile radius of the Subject Properties. Mr. Krasinski defined the primary market for a JSS Property mining operation as a radius of no more than 50, and the secondary market for the JSS Property as a radius over 50, miles. He estimated that annual demand for aggregate was 6,065,139 tons, which was based on a population of 1,161,904 and a per capita demand rate of 5.22 tons. In addition, he estimated that the primary market area had a primary supply of aggregate of 10,830,602 tons and a secondary market supply of 5,844,781 tons resulting in a total estimated supply of 16,675,383 tons. Mr. Krasinski's demand analysis indicated that the subject market had a significant level of existing supply; and, when

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[60] Mr. Krasinski noted that, even though the Hayter Appraisals' stated assumption for rock crushing cost was $7 per ton with an annual inflation rate of 2%, the Hayter Appraisals' DCF applied a cost of $6.75 per ton in year 2 (first year of production), then decreased it to $6.50 per ton for years 3 and 4, then increased it to $6.75 in year 5, and to $7 in year 6. Only after year 6 was the rate increased at about 2% per year from $7. This methodology resulted in $1.7 million lower production costs in the DCF calculations than what is disclosed to the reader based on the stated assumption.

[61] We adopt the phrase "cost of harvest" from the Krasinski Review Reports to describe the costs associated with rock crushing, washing and finishing, and drilling and shooting.

[*56] primary and secondary supplies[62] were considered, there was an oversupply of 10,610,244 tons.[63]

Mr. Krasinski opined that the Hayter Appraisals' conclusion that rezoning is reasonably probable was flawed and that it required a greater degree of analysis and discussion of the risks inherent in that process. For instance, Mr. Krasinski highlighted that rezoning is only the first hurdle and that, because mineral extraction is a conditional use, it requires an additional permit to be authorized by the Jones County government. Additional steps, meetings, and public notice are required to secure a conditional use permit. Moreover, a conditional use permit is not a guaranteed right and may be revoked. Mr. Krasinski opined that it was inappropriate for Mr. Hayter to ignore these issues and their potential impact on his value determinations for the Subject Properties. Finally, Mr. Krasinski stated that the four comparable properties that Mr. Hayter relied on to support his DCF analysis were not appropriate comparables because, unlike the Subject Properties, they were each working mines that had long operating histories or, in one case, an expansion purchase of property that was adjacent to a working mine that had a long operating history.

3. *Matthew Sullivan*

Mr. Sullivan is a principal consultant in mining economics with SRK Consulting, Inc. He has spent the past 13 years as a senior participant analyzing, optimizing, and valuing mining operations. He has two undergraduate degrees from the Colorado School of Mines: the first in metallurgical and materials engineering and the second in economics and business. He also has a certificate in financial management from Cornell University. Mr. Sullivan has experience related to granite and granite aggregate, mineral reserve reconciliation, and finance related to mining including due diligence exploration stage analysis. He is a registered member of SME. We recognized him as an expert in real estate appraisals, with specialized expertise in conservation easement appraisals and appraising land containing mineral deposits, including granite.

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[62] The Krasinski Review Reports defined the primary supply as the competitive mines inside the 50-mile market radius, and the secondary supply as the competitive mines with market overlap in the 50-mile radius of the Subject Properties.

[63] Even if only primary supply from the nine quarries operating inside a 50-mile radius of the Subject Properties was considered, Mr. Krasinski determined the subject market was oversupplied by nearly 4.8 million tons.

[*57] Mr. Sullivan's scope of work for his mineral expert reports was to provide an opinion on (1) what processes should be followed to assess whether a proposed mine project should be pursued and what data or analysis is necessary to evaluate the economic feasibility of a potential mine operation, and (2) whether the proposed mines were legally, physically, and economically feasible. In preparing the Sullivan Reports, Mr. Sullivan reviewed the Easement Deeds, the baseline reports, and the NOVA Reports. Additionally, he reviewed and relied on certain other documents including the (1) U.S. Geological Survey 2016 Minerals Yearbook, (2) Canadian Institute of Mining Definition Standards of Mineral Resources and Mineral Reserves, (3) SME Mining Reference Handbook, (4) Georgia Environmental Protection Division's Permitted Surface Mining Facilities, (5) Georgia Surface Mining Act of 1968, Ga. Code Ann. §§ 12-4-40 through 12-4-84 (2016), as amended, and Rules & Regulations for Surface Mining, and (6) Jones County Ordinance Appendix A—Comprehensive Land Development. He also visited the Subject Properties in September 2022.

Mr. Sullivan provided information about the mining industry's process and standards that are applicable for evaluating whether a mining project is feasible. This evaluation requires considering whether the mining project is legally, physically, and economically feasible. Mr. Sullivan was also asked to evaluate technical feasibility. In the mining industry, the conclusions of a feasibility analysis are presented in the form of a declaration of resources and reserves.

Mr. Sullivan concluded that, with the limited information that was available to him, it was impossible to determine whether the proposed mines were physically, legally, or economically feasible. With respect to legal feasibility, and specifically permitting, Mr. Sullivan explained that the mine operator would have to file an application that included a surface mining land use plan for a surface mining permit from the EPD. Additionally, he noted that the mine operator would need to apply to Jones County to rezone the Subject Properties for industrial use. Importantly, he stated that acquiring a state mining permit from EPD does not guarantee that Jones County will rezone the Subject Properties for industrial use and there are various reasons rezoning might be denied including incompatibility with surrounding land uses, groundwater impacts to adjacent or nearby water wells, visual impacts to scenic byways or nearby historical features, and significant impacts to noise, traffic, and air quality.

[*58] In Mr. Sullivan's opinion, other issues with respect to mining development on the JSS Property included that electrical transmission lines and power lines traverse the property, and additional permits may be required relating to existing drainage and watersheds. With respect to the JSN Property, Mr. Sullivan noted that it may be more challenging to acquire a permit as an aggregate mine because it is adjacent to the Piedmont Refuge.

Next Mr. Sullivan evaluated the geology component of technical feasibility of a mine on the Subject Properties. After reviewing the NOVA Reports, he concluded that the Subject Properties have high potential to contain rock acceptable for use as construction aggregate but that the drilling and geologic site assessment work that was conducted was limited and preliminary. Significant additional work would be required to assess the project as a potential source of construction aggregate. Ultimately, he concluded that the information available for review did not constitute a mineral resources declaration.

Mr. Sullivan also evaluated mining as a component of technical feasibility. After making assumptions regarding the amount of minable material present, mining rates, operating days per year, specifics regarding the size and shape of the mine pit, and the market for the material, he created a conceptual mine scoping exercise suggesting that it was possible to exploit the resources in a cost-effective manner. He evaluated processing as a component of technical feasibility and opined that each Subject Property would have an equipment cost of $2.2 million (in 2016 dollars) and would cost $1.98 per ton to operate (in 2016 dollars).

Finally, he evaluated the markets for the aggregate as part of the technical and economic feasibility of the projects. He stated that the average FOB price of crushed stone was $12.30 per ton. At the time of the Sullivan Reports, Mr. Sullivan noted that the presence of three permitted surface mining facilities in Jones County (two of which are the previously discussed large operations operated by Martin Marietta and Vulcan) and other operations in surrounding counties is problematic for the projects at issue. The fact that these mining facilities are likely balancing the supply and demand of the local aggregate market would make it challenging for a new producer to enter the market and capture market share. He opined that the two major markets for the aggregate are Macon and Atlanta. He concluded that the cost to transport the aggregate by truck to Macon is approximately $0.96 per ton and the cost of delivering the aggregate to Atlanta is approximately $5.18 per ton.

[*59] Mr. Sullivan concluded that the cost of transporting aggregate to Atlanta represented approximately 42% of the average selling price per ton of the aggregates, which is a very substantial cost, and that there are better located mines in the Atlanta market that would have a material delivered price advantage over the Subject Properties.[64]

4. *Andy D. Sheppard*

Mr. Sheppard is a principal and chief financial officer of Pritchett, Ball & Wise, Inc. He is a licensed real property appraiser in the State of Georgia and several other states. He is a member of the Appraisal Institute and holds its MAI designation. He has experience appraising various types of property including vacant land conservation easements and has experience performing market analysis impact studies involving commercial and residential values affected by quarries. We recognized him as an expert in real estate appraisals, with specialized expertise in conservation easement appraisals and appraising land containing mineral deposits, including granite.

Mr. Sheppard's scope of work was to prepare retrospective appraisals of the FMVs of the JSS Easement Property and the JSN Easement Property as of the Donation Date. In preparing the Sheppard Reports, Mr. Sheppard reviewed (1) the NOVA Reports, (2) the baseline reports, (3) the Easement Deeds, and (4) other information.

Mr. Sheppard performed an HBU analysis of the Subject Properties before the granting of the Conservation Easements. After evaluating the physically possible, legally permissible, financially feasible, and maximally productive uses of the Subject Properties, he concluded that the HBU before the granting of the conservation easements was continued agricultural/residential/recreational use with knowledge of mineral on the site and opportunity to seek entitlements allowing mining. He noted that if either the JSS Property or the JSN Property were offered for sale before the granting of the easement, it should be marketed as an "exploratory stage" mineral property. Mr. Sheppard opined that the JSS Property was an exploratory stage[65]

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[64] Mr. Sullivan also noted that existing road access was not sufficient for receiving or shipping large volumes of material and that significant infrastructure improvements in the form of road access development and turnout development may be required.

[65] The Sheppard Reports explain that mineral properties can be categorized in descending order of risk and ascending order of value as exploration stage, entitlement

[*60] mineral property because of the limited drilling and testing on the property, lack of mining entitlements (i.e., rezoning, conditional use permit, state mining permits), his observance of rock outcroppings on the property, and its proximity to an existing mine. Exploratory stage mineral properties are high risk. Mr. Sheppard explained that "as evidence of feasibility increases, risks decrease, and value subsequently increases." Mr. Sheppard opined that it is inappropriate to appraise an exploratory stage mineral property, such as the Subject Properties, using a going-concern value such as a DCF analysis, because no business exists on the property.[66]

The Sheppard Reports included information from the U.S. Geological Survey that indicates that aggregate is abundant in Jones County and in this part of Georgia. The Sheppard Reports analyzed surrounding land uses within the Subject Properties' primary market area,[67] which he found were rural, residential, agricultural, and recreational. Mr. Sheppard also considered population data, the location of existing mineral suppliers that were near the hypothetical mines on the Subject Properties, aggregate demand from new housing

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stage, pre-mining development stage, or mining stage. Mr. Sheppard's reports explain that, as a landowner discovers information about the mineral quantity and quality and market demand, and then seeks mining entitlements (zoning approvals and permits), the overall risk decreases and value increases.

[66] Mr. Sheppard analogized using a DCF analysis to value a hypothetical quarry on the JSS Property as follows:

> [C]onsider a "$50,000" residential lot being considered for encumbrance with a Conservation Easement deed prohibiting residential development. Suppose that this residential lot has the potential to host a "$400,000" house and the owner will net "$100,000" in profit following the construction and sale of the home. The "$400,000" home price less "$100,000" in profit ("$300,000") encapsulates the value of the lot ($50,000) and the cost of materials and skilled labor needed to construct the home ($250,000). The "$400,000" home price less "$300,000" in costs ("$100,000") reflects the coordination of labor and materials, time, and risk expressed or commonly referred to as profit or incentivization. If the owner of the lot wished to donate the "$50,000" lot, the donation is simply "$50,000." The donation is neither "$400,000" (home price) nor "$150,000" ("$50,000" lot plus "$100,000" in profit the Donor could have made from building on the lot), but simply and logically "$50,000." Conversely, no buyer would pay "$150,000" (lot cost + potential or foregone profit) to obtain a "$50,000" lot.

[67] Mr. Sheppard defined the primary market area as the area within a five-mile radius of the Subject Properties. He considered the area within a 15-mile distance as the maximum hauling distance by mineral operators.

[*61] construction in the Macon MSA, and demand from major infrastructure projects. In analyzing each of these items, he concluded that there was no market demand for increased aggregate supply and that any increases in demand would most likely have been met by the existing suppliers that were locationally advantaged over a hypothetical aggregate mine on either of the Subject Properties.

Mr. Sheppard observed that a hypothetical aggregate mine on either of the Subject Properties would appear to be locationally disadvantaged relative to other existing mines that were closer to demand sources. One of their potential competitors, Vulcan Florida Rock Industries' Macon Quarry (Vulcan Macon), is five miles closer to I–75, has a more direct route to I–75, and has rail service. Another competitor, the Hanson-Monroe Quarry, is also very close to I–75 and supplies material to Bolingbrooke and Forsyth in Monroe County (which is adjacent to Jones County) and Macon in Bibb County (which is immediately south of Jones County). Because they are closer to I–75, both of these mines would have a locational advantage over a hypothetical aggregate quarry on either of the Subject Properties. Vulcan also operates two relevant mines, one in Henry County (which is north of Butts County and Monroe County, and northwest of Jones County) and another in Spalding County (which is west of Butts County, and southwest of McDonough, Georgia) that would be locationally advantaged over hypothetical quarries on the Subject Properties with respect to McDonough and the I–75 corridor south of McDonough towards Forsyth. Moreover, most of the housing and commercial development in the Macon area is closer to both the Martin Ruby mine and the Vulcan Postell mine. Mr. Sheppard analyzed the location of a hypothetical mine on the Subject Properties relative to existing mines and used an aggregation database[68] to calculate and map the 15-mile driving range from each of the existing mines that are near the Subject Properties. He paired this analysis with population and employment center data, as well as known or pending construction projects, to understand whether the market was served or underserved. His analysis indicated that most of the population centers were already served by existing supply and the unserved areas including the area to the north of the JSS Property (i.e., the Piedmont Refuge) did not need aggregate products. He concluded that, because of the Subject Properties' locational disadvantage relative to competitor mines, a buyer

[68] Mr. Sheppard reviewed data from the Site to Do Business, which is a subscription-based aggregator of historic and projected population estimates, as well as income and housing data throughout the United States.

[*62] of each of the Subject Properties would anticipate capturing less than a pro rata share of the area's static demand.

Mr. Sheppard applied the sales comparison approach to determine the FMVs of the JSS Easement Property and the JSN Easement Property.[69] He searched for sales of relatively similar sites in Jones, Monroe, and Bibb counties whose primary use would be agricultural/residential/recreational with knowledge of mineral on the site and opportunity to seek entitlements allowing mining. Mr. Sheppard analyzed over 420 tax parcel transactions in Jones, Monroe, and Bibb counties, where properties greater than 25 acres sold between January 2015 and December 2017. Mr. Sheppard identified three properties as comparable,[70] one in Jones County and two in Monroe County. The sales occurred between March 2 and August 8, 2016, and involved properties ranging between 69 and 124 acres.[71] They were similar to the before-easement Subject Properties in their legal, locational, and physical characteristics. The most a known mineral operator paid for a property greater than 25 acres with an operating mine, between January 1, 2015, and December 31, 2017, in the three-county area was $4,738[72] per acre.[73]

Comparable land sale 1 is 69 acres of rural land in Monroe County that sold for $3,691 per acre in August 2016. Comparable land sale 2 is

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[69] Mr. Sheppard concluded that the income-based approach to valuation was not appropriate because there was not enough objective information about either of the Subject Properties' mineral potential and because neither property was an operating mine as of the Donation Date.

[70] Mr. Sheppard defined "comparable" sales as a narrowed subset of transactions which both are market based and mirror the physical and legal characteristics of the Subject Properties.

[71] There were many reasons Mr. Sheppard did not consider the other transactions as comparable to those involving the Subject Properties including that they were potentially nonmarket transactions, government transactions, foreclosures, or liquidation or estate transactions, or because they lacked characteristics similar to those of the Subject Properties.

[72] As part of a 31-facility transaction, Vulcan purchased from Aggregates USA a 573-acre operating mine for $4,738 per acre. However, Mr. Sheppard did not consider the transaction a comparable to the Subject Properties because of the timing of the sale, the size and scale of the property, different zoning, and different HBU.

[73] The most a property greater than 25 acres sold for between January 1, 2015, and December 31, 2017, in the three-county area was $31,607 per acre. This property was purchased for development of an apartment community. Mr. Sheppard excluded it as an outlier because the 21 other examples of properties greater than 25 acres that were sold in this timeframe and were also residential development land transactions averaged $3,934 per acre.

[*63] 101 acres of rural land in Jones County that sold for $3,974 per acre in April 2016. Comparable land sale 3 is 124 acres of rural land in Monroe County that sold for $3,439 per acre in March 2016. All three properties are irregularly shaped, with similar zoning and current use, and near an existing aggregate mine.

For these comparable land sales, Mr. Sheppard analyzed various characteristics of the properties sold, including parcel size, shape, location, natural amenities, zoning, access and visibility to roads and highways, positive or negative surrounding land uses and characteristics, floodplain areas on the parcel, differences in topography and grading, access to utilities, easements or restrictions, existing infrastructure or improvements contributing towards the sites' HBU, contamination, and existing known, proven, and marketable mineral reserves. He made adjustments for differences in access, natural amenities, and residential use considerations. On the basis of a qualitative analysis, he classified each property as inferior, similar, or superior to the Easement Properties.

Mr. Sheppard ranked the Comparables #1 and #3 as similar and Comparable #2 as superior to the Easement Properties. He concluded that Comparable #1 and Comparable #3 did not require any adjustments but that the market value of Comparable #2 required a downward adjustment of 10% because it was superior to the Subject Properties. After he made an adjustment to Comparable #2, the sales data indicated that each Easement Property had a range of $3,439 to $3,691 per acre. In addition, Mr. Sheppard considered other transactions that he categorized as noncomparable and noted that many of the categories of these noncomparable properties exhibited sales per acre averages that affirm the comparables' price range. He noted that, while not comparable to the Easement Properties, this data reflected graduated per-acre rates being paid for land that was of increasing quality, location, zoning, and HBU.

Within the three-county area, he considered the only two known transactions that included a known mineral operator as the buyer or seller. Those properties sold for $2,563 per acre for a depleted mineral site, and $4,738 per acre for a 573-acre operating mine that Vulcan purchased from Aggregates USA as part of a 31-facility transaction. He further noted that there were two older sales in Jones County involving 172 and 609 acres of land with a similar level of exploratory information, without mining entitlements, and without rail, that were purchased in

[*64] December 2013 and December 2010 for $2,619 and $3,000 per acre, respectively.

Outside the three-county region, he examined a November 2018 transaction in Butts County, which is northwest of Jones County and immediately north of Monroe County. The property was a large agriculturally zoned site that lacked rail but was proposed for mining that sold for $2,100 per acre. Mr. Sheppard noted that this property was larger than each Easement Property, and farther from the interstate, but that it had a lower overburden removal cost, and lacked the Easement Properties' nearby competitive supply. Mr. Sheppard noted that despite better overall market conditions in 2018, and large obvious rock outcroppings indicating potential subsurface minerals, the property transacted for only $2,100 per acre.

Based on these sales of comparable land, Mr. Sheppard determined the rounded FMV of the JSS Easement Property before the easement was $3,500 per acre, or $1,010,000. Additionally, he determined that the rounded FMV of the JSN Easement Property before the easement was $3,500 per acre, or $885,000.

Mr. Sheppard identified three sales of encumbered land with similar reserved rights to determine the FMV of each Easement Property after the granting of the easement.[74] Comparable "after" land sale 1 involved 261.05 acres in rural Jones County that sold for $1,915 per acre in July 2017. Comparable "after" land sale 2 involved 1,192.4 acres in rural Jefferson County that sold for $1,650 per acre in September 2014. Comparable "after" land sale 3 involved 186.2 acres in rural Bryan County that sold for $1,208 per acre in September

[74] Mr. Sheppard did not opine as to the "after" value of the excluded tracts from the Easement Properties. Additionally, he noted that there was no reliable market evidence that supported a value enhancement for the excluded tracts as a result of the Conservation Easements. He analyzed several hundred transactions in the three-county region and did not find any clear evidence that the excluded tracts would benefit from the donations of the Easement Properties. Additionally, he noted that the Subject Properties are already near a large, protected area to the north (i.e., the Piedmont Refuge), and the excluded tracts are large enough to provide the flexibility of where to host one or two homes to mitigate views of neighboring homes. In other words, in his view, the before and after values of the excluded tracts did not change, and thus would not affect the before and after values of the Easement Properties. We find as a fact that the before and after values of the excluded tracts did not change, and thus they would not affect the before and after values of the Easement Properties.

[*65] 2011.[75] All three properties are irregularly shaped, with similar zoning, current use, easement restrictions, reserved rights, and HBU.

Based on these sales of comparable land, Mr. Sheppard determined that the rounded FMV of the JSS Easement Property after the easement was $1,900 per acre, or $550,000. Additionally, he determined that the rounded FMV of the JSN Easement Property after the easement was also $1,900 per acre, or $480,000.

OPINION

I. *Burden of Proof*

Ordinarily, the taxpayer bears the burden of proving that the Commissioner's determinations are erroneous.[76] Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933); *Crescent Holdings, LLC v. Commissioner*, 141 T.C. 477, 485 (2013). That burden includes proving entitlement to any deductions claimed. *See INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934). A taxpayer therefore generally bears the burden of proving its entitlement to the charitable contribution deduction for qualified conservation contributions under the applicable provisions of section 170, as well as the burden of proving the value of a conservation easement. *See Buckelew Farm, LLC v. Commissioner*, T.C. Memo. 2024-52, at *39, *aff'd*, No. 24-13268, 2025 WL 2502669 (11th Cir. Sept. 2, 2025); *Mill Road 36 Henry, LLC v. Commissioner*, T.C. Memo. 2023-129, at *26.

In order to establish each partnership's entitlement to the charitable contribution deduction it claimed, each petitioner must show (1) that the LLC made a qualifying contribution, (2) that it satisfied (or is excused from) the substantiation requirements for such a

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[75] Jefferson County, Georgia, is several counties east of Jones County and southwest of Augusta, Georgia. Bryan County, Georgia, is along Georgia's Atlantic coast and southwest of Savannah, Georgia.

[76] As to the burden of production, section 7491(c) provides that the Commissioner "shall have the burden of production in any court proceeding with respect to the liability of any individual for any penalty, addition to tax, or additional amount." However, section 7491(c) does not apply to TEFRA partnership-level proceedings, such as these cases. *See Dynamo Holdings Ltd. P'ship v. Commissioner*, 150 T.C. 224, 234 (2018). Therefore, petitioners bear the burden of proof, including the burden of production, as to every item at issue except for respondent's arguments regarding section 170(e) discussed *infra* Opinion Part V, which are "new matter." *See* Rule 142(a)(1).

[*66] contribution, and (3) the value of the contribution. *See Mill Road*, T.C. Memo. 2023-129, at *26–27; *Murfam Enters. LLC v. Commissioner*, T.C. Memo. 2023-73, at *15.

II. *Charitable Contribution Deduction*

Section 170(a)(1) allows a deduction for any charitable contribution made within the tax year. The Code generally restricts a taxpayer's charitable contribution deduction for donations of "an interest in property which consists of less than the taxpayer's entire interest in such property." § 170(f)(3)(A). That is, someone who owns property and donates to charity only a partial interest in that property may not claim a charitable contribution deduction for that donation. However, the statute provides an exception—and allows a deduction—for a "qualified conservation contribution." § 170(f)(3)(B)(iii). Section 170(h)(1) defines a "qualified conservation contribution" to be (1) the contribution of a "qualified real property interest" (2) to a "qualified organization" (3) "exclusively for conservation purposes."[77]

As a threshold matter, respondent argues that the LLCs' charitable contribution deductions should be denied in their entirety because the LLCs lacked the donative intent requisite to a "charitable contribution" within the meaning of section 170(a)(1) and (c). Additionally, respondent argues that the JSN charitable contribution deduction should be denied in its entirety because the JSN Conservation Easement failed the requirement in section 170(h)(1)(C) to be exclusively for conservation purposes as defined in section 170(h)(4). Finally, respondent argues that JSN's Baseline Report is inaccurate and therefore fails to protect a conservation purpose where the taxpayer has reserved rights as required under Treasury Regulation § 1.170A-14(g)(5). Accordingly, we address whether (1) the LLCs had the donative intent to make charitable contributions under section 170(a)(1) and (c), (2) the JSN Conservation Easement satisfies one of the conservation purposes under section 170(h)(4), and (3) JSN's Baseline Report is inaccurate and therefore fails to meet the requirements of Treasury Regulation § 1.170A-14(g)(5).

[77] The parties agree that ORLT is a qualified organization for purposes of section 170(h)(1)(B), and respondent is not challenging that donation of the JSS Conservation Easement was exclusively for the declared conservation purpose that was stated in the JSS Easement Deed.

[*67] A. *Whether the LLCs Had the Required Donative Intent*

Respondent argues that the LLCs lacked the requisite donative intent for deductible charitable contributions under section 170(a)(1) and (c), and he contends that the contributions were made only because Mr. Jackson, his family, and the other investors in the LLCs knew that the tax benefits claimed would be greater than the value of the donations. Additionally, respondent argues that Mr. Jackson's, Mr. Wingate's, and Mr. Schill's conduct demonstrates that donation of the Conservation Easements was motivated solely by the donors' desire to receive economic benefits greater than the value of their contributions. He also argues that the conservation easement deals were priced so that the investors' returns in tax savings would substantially exceed the amounts that they would have to contribute, and without the return in tax savings the investors would not have invested. Finally, respondent argues that we should give no weight to Mr. Jackson's testimony that he was equally motivated by his desire for financial gain and his desire to conserve his property. As a result, respondent contends that we must find that the LLCs lacked any charitable intent and deny the deductions in full.

We rejected similar donative intent arguments made by the Commissioner in *J L Minerals, LLC v. Commissioner*, T.C. Memo. 2024-93, at *28, *Buckelew Farm*, T.C. Memo. 2024-52, at *42, *Oconee Landing Property, LLC v. Commissioner*, T.C. Memo. 2024-25, at *37–38, *supplemented by* T.C. Memo. 2024-73, and *Mill Road*, T.C. Memo. 2023-129, at *28, and we reject them again in these cases. In *Mill Road*, T.C. Memo. 2023-129, at *28, we found the objective fact that a perpetual conservation easement was donated to a charitable organization defeated the Commissioner's contention as to the donor's subjective intent. Here, the investors in each of the LLCs were given the opportunity to vote on two options for the Subject Properties: an investment proposal that could include developing the Subject Properties into mines, and a conservation easement proposal. A majority of investors in each of the LLCs voted in favor of the conservation easement proposal, opting for present tax benefits over potential future appreciation and/or earnings from the operation of a mine.

As we have before, we reject respondent's reliance on two Supreme Court cases, *Hernandez v. Commissioner*, 490 U.S. 680, 682 (1989), and *United States v. American Bar Endowment*, 477 U.S. 105 (1986). Respondent relies on these cases to contend that the members of the LLCs received privileges or other benefits in exchange for the

[*68] easement donations, i.e., receipt of a quid pro quo, and therefore lacked the requisite donative intent. As we previously explained in *Buckelew Farm*, T.C. Memo. 2024-52, at *43:

> We find these cases to be distinguishable since there is no evidence in the record of the members' receiving a financial return commensurate with the amount of charitable contribution, other than a tax deduction. *Hernandez v. Commissioner*, 490 U.S. at 690–91. Congress long ago decided to incentivize charitable contributions by allowing deductions for those contributions, and it would be improper for us to deny a deduction to a donor simply because he has received a tax benefit in exchange. Moreover, we are aware of no case in which the tax benefits associated with a charitable contribution deduction have been deemed a "quid pro quo" that negates the donor's charitable intent. *See Oconee Landing Prop., LLC*, T.C. Memo. 2024-25, at *38.

We hold that the LLCs had the requisite donative intent as required under section 170(a)(1) and (c) when each of JSS and JSN made a charitable contribution of property to ORLT.

B. *Whether the JSN Baseline Satisfied the Requirements of Treasury Regulation § 1.170A-14(g)(5)*

1. *Treasury Regulation § 1.170A-14(g)(5)*

Charitable contributions shall be allowable as deductions only if verified under regulations prescribed by the Secretary. § 170(a)(1). "When the donor reserves rights the exercise of which may impair the conservation interests of the property, the donor must provide documentation [that is] sufficient to establish the condition of the property." *Brooks v. Commissioner*, T.C. Memo. 2022-122, at *13 (citing Treas. Reg. § 1.170A-14(g)(5)(i)), *aff'd*, 109 F.4th 205 (4th Cir. 2024). "Such documentation is designed to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights." Treas. Reg. § 1.170A-14(g)(5)(i). Treasury Regulation § 1.170A-14(g)(5)(i) provides a list of suggested documentation which includes survey maps, maps of the area drawn to scale, aerial photographs, and on-site photographs. Additionally, Treasury Regulation § 1.170A-14(g)(5)(i)(D) provides:

[*69] If the terms of the donation contain restrictions with regard to a particular natural resource to be protected, such as water quality or air quality, the condition of the resource at or near the time of the gift must be established.

The documentation provided to establish the condition of the property at the time of the donation must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and stating in substance that the "natural resources inventory is an accurate representation of [the protected property] at the time of the transfer." *Id.* We must therefore address whether the JSN Baseline is sufficient under Treasury Regulation § 1.170A-14(g)(5)(i).

As discussed *supra* Findings of Fact Part IV.C, the JSN Easement Deed reserved 12 rights that could impair the JSN Conservation Easement's conservation values. The rights included vegetation management, planting, burning, thinning, and harvesting of trees necessary for the sale of forest products, and agricultural activities such as planting crops and livestock grazing operations. Therefore, JSN was required to provide sufficient documentation to establish the condition of the property at the time of the donation. The JSN Baseline states that JSN and ORLT acknowledge that the "report is an accurate representation of the property as of the date of the conveyance of the conservation easement referenced in this report by the landowner ('Grantor') to the Oconee River Land Trust, Inc. ('Grantee')." Mr. Jackson signed the JSN Baseline as the managing member of JSN, and Smith Wilson signed it as the chair of ORLT. Petitioner JN Investments relies exclusively on the JSN Baseline to satisfy the requirements of Treasury Regulation § 1.170A-14(g)(5)(i). Thus, the JSN Baseline was the only document used to establish the condition of the JSN Easement Property at the time of the donation.

Respondent argues that the JSN Baseline was inaccurate because several land types that were listed in the JSN Baseline are not present on the JSN Easement Property. Petitioner JN Investments argues that the JSN Baseline complies with Treasury Regulation § 1.170A-14(g)(5)(i) because the regulation does not require any particular documentation and that respondent's argument "to invalidate the [JSN Baseline is] based on a couple of habitat types being misidentified." Petitioner also argues that the JSN Baseline was not inaccurate and did not contain the errors that respondent suggests. For the reasons

[*70] discussed below, we hold that the JSN Baseline was inaccurate and did not comply with Treasury Regulation § 1.170A-14(g)(5)(i).

2. *JSN Baseline*

The parties' experts differ on the type, quantity, and quality of the habitat/land types that exist on the JSN Easement Property. The origin of these disagreements lies in the JSN Baseline dated October 14, 2016, that was drafted by Mr. Rushing. Mr. Rushing visited the JSN Easement Property on September 13, 2016. JSN attached the JSN Baseline to its return to establish the condition of the JSN Easement Property at the time of the donation.

The JSN Baseline states that Mr. Rushing observed only common wildlife species from the Piedmont Ecoregion on the JSN Easement Property during his site visit. As discussed *supra* Findings of Fact Part IV.D, the JSN Baseline identified five land cover types on the JSN Easement Property in the following amounts and percentages: (1) 100.9 acres of oak-hickory-pine forest that cover 39.8%, (2) 73.16 acres of planted pine forest that cover 28.9%, (3) 37.46 acres of bottomland hardwood forest that cover 14.8%, (4) 24.59 acres of mesic hardwood forest that cover 9.8%, and (5) 16.81 acres of open fields that cover 6.7%. These habitat and land cover types were also identified on the ecological features map included as Attachment 10 to the JSN Baseline. The JSN Baseline also separates the JSN Easement Property into four sections: (1) a 200' riparian buffer, (2) special natural areas, (3) forestry envelopes, and (4) fields.

Mr. Rushing created multiple drafts of the JSN Baseline and shared them with Laura Hall, a representative of ORLT. Mr. Rushing and Ms. Hall exchanged several emails regarding Ms. Hall's proposed revisions to the JSN Baseline. An ecological features map dated September 22, 2016, in a draft JSN Baseline did not reference any mesic hardwood forest on the JSN Easement Property. Instead, the ecological features map in the draft JSN Baseline indicated that the property had four land types: (1) bottomland hardwood forest, (2) oak-hickory-pine forest, (3) pine forest, and (4) open fields.[78] Additionally, the

[78] We note that mesic hardwood forest was also absent from the types of forest stands listed in the Georgia Forestry Commission's 2010 Forest Stewardship Plan for the land that became the JSN Easement Property and the 2021 Forest Stewardship Plan for the JSN Easement Property.

[*71] photographs that were included in that draft report did not include any captions about the existence of mesic hardwood forest.

In October 2016, Ms. Hall provided Mr. Rushing feedback on the draft JSN Baseline and directed him to change the bottomland hardwood forest that was described in the draft report to a mesic hardwood forest because some of the species described were not typical of bottomland hardwood forests and, in Ms. Hall's view, the topography of the land suggested that it was mesic hardwood forest. She also provided him with photos from the JSN Easement Property that Mr. Schill sent to her of supposed bottomland hardwood forest. Additionally, she directed him to include other pictures that she indicated were of mesic hardwood forest. She directed Mr. Rushing to include these photos in the draft report and to change the captions for certain photos. The caption changes were to state that picture 17 that appears on page 36 of the JSN Baseline is a view of a mesic hardwood forest and that pictures 15 and 16 that appear on page 35 of the JSN Baseline were of a future duck impoundment location in the bottomland hardwood forest.

Additionally, Mr. Jackson noticed that the JSN Baseline's description of the land cover types, amounts, and percentages were incorrect. In December 2016, Mr. Jackson communicated to ORLT that the special natural areas listed in the JSN Baseline were inaccurate. The areas in question were delineated as oak-hickory-pine forest, but Mr. Jackson informed ORLT that the areas were actually pine forests. On December 16, 2016, ORLT raised this discrepancy about the special natural areas and pine forests with Mr. Rushing. Mr. Rushing agreed that he had made a mistake in the JSN Baseline about the distribution of the special natural areas and pine forest on the JSN Easement Property. He also acknowledged to ORLT that the JSN Baseline should be revised for Mr. Jackson's corrections. Nonetheless, the JSN Baseline was not revised.

3. *Echols Report Discussion of Land Types*

The unrevised JSN Baseline was a foundational document that Mr. Echols reviewed and relied on in forming his expert report. Specifically, Mr. Echols developed a preliminary list of potentially occurring species on the JSN Easement Property based on the habitat data that was provided in the JSN Baseline. After touring the property, Mr. Echols narrowed the list to include only potentially occurring species where he observed a suitable habitat. The Echols Report also

[*72] discussed the presence of the two land types in dispute between Mr. Echols and Dr. Chamberlain, mesic hardwood forest and oak-hickory-pine forest. Mr. Echols stated that he observed mesic hardwood forest on the JSN Easement Property but that it is more limited in extent than as described in the JSN Baseline. He also stated that the mesic hardwood forest was adjacent to Buttlers Creek but did not pinpoint it on a map in his report. However, at trial he identified the location of the mesic hardwood forest on a map of the JSN Easement Property. He stated that he observed 6–8 acres of mesic hardwood forest. Similarly, in his report Mr. Echols stated that he observed an oak-hickory-pine forest on the side slopes that were adjacent to bottomland forest within the southeast corner of the JSN Easement Property. However, he did not pinpoint it on a map in the report. At trial, Mr. Echols stated that he observed approximately 15–20 acres of oak-hickory-pine forest on the JSN Easement Property.

4. *Chamberlain Report Discussion of Land Types*

On the other hand, Dr. Chamberlain visited the JSN Easement Property and determined that the land cover types delineated in the JSN Baseline were inaccurate. Specifically, after touring the JSN Easement Property, Dr. Chamberlain determined that it supported only three terrestrial land cover types: (1) pine-dominated forest, (2) bottomland hardwood forest, and (3) open fields. He also visited the approximate areas documented as photo locations in the JSN Baseline to verify the land cover types and habitats that were asserted in the JSN Baseline. After visiting the photo locations in the JSN Baseline for the mesic hardwood forest, oak-hickory-pine forest, and pine forest, Dr. Chamberlain concluded that the mesic hardwood forest and the oak-hickory-pine forest described in the JSN Baseline did not exist. Instead, the mesic hardwood forest and oak-hickory-pine forest were pine plantations that had been thinned and contained pines of varying ages. He noted that the plant communities (overstory and understory of the trees) on the Ecological Features Map attached to the Baseline Report were similar, and he "failed to find any evidence that either oak-hickory-pine and/or mesic hardwood forest existed anywhere on the conservation easement."[79] Accordingly, he opined that "78.5% of the conservation easement is pine plantation and pine forest that are softwoods, rather than hardwood forests."

[79] Dr. Chamberlain did not observe a G1, G2, or G3 habitat on the JSN Conservation Easement.

[*73] 5. *Analysis*

The evidence refutes the land cover types, amounts, and percentages stated in the JSN Baseline. The parties' experts disagree on the type, quantity, and quality of the habitat/land cover types that exist on the JSN Easement Property. The evidence supports Dr. Chamberlain's determination that mesic hardwood forest and oak-hickory-pine forest do not exist on the JSN Easement Property.[80] While Mr. Echols and Dr. Chamberlain disagree on whether these land types existed, the testimony of Mr. Rushing supports Dr. Chamberlain's determination. Specifically, Mr. Rushing acknowledged errors in the JSN Baseline regarding areas that were delineated as special natural areas and oak-hickory-pine forest but were actually pine forests, as reported by Mr. Jackson to ORLT on December 16, 2016.

Additionally, we find it significant that an ecological features map dated September 22, 2016, in a draft JSN Baseline did not reference any mesic hardwood forest on the JSN Easement Property. Instead, the ecological features map on the draft JSN Baseline indicated that the property had four land types: (1) bottomland hardwood forest, (2) oak-hickory-pine forest, (3) pine forest, and (4) open fields. However, when Mr. Rushing sent Ms. Hall at ORLT the draft JSN Baseline, she directed him to modify the draft and include photos that were sent to her by Mr. Schill of purported bottomland hardwood forest, to include other pictures that she indicated were of mesic hardwood forest, and to change certain picture captions to reference them as such. We find this sequence curious. This is especially so since ORLT hired Mr. Rushing and his company to prepare the JSN Baseline, and because Mr. Rushing had extensive experience in land conservation and land management and was the person physically present on the property documenting his observations of the condition of the property.[81] While we would expect some communication among the donee, the donor, and the drafter of the JSN Baseline, the level and substantive nature of feedback ORLT provided to Mr. Rushing on the draft JSN Baseline (including providing him with photos that ORLT received from Mr. Schill to support the

[80] We note that Dr. Chamberlain's testimony was compelling and showed that he was very knowledgeable about the subject matter.

[81] Ms. Hall's professional qualifications are not in the record. However, we note that petitioners' counsel elicited testimony from Mr. Rushing that Ms. Hall had "a fair amount of experience behind her" and "significant experience in conservation." We are not persuaded by this testimony as a plausible explanation for her direction to Mr. Rushing to revise the draft JSN Baseline for the reasons already discussed.

[*74] existence of certain habitats on the property and directing him to change the identification and description of certain habitats and types of vegetation) is notable.

Moreover, the absence of mesic hardwood forest in the 2010 Forest Stewardship Plan for the land that became the JSN Easement Property and the 2021 Forest Stewardship Plan for the JSN Easement Property also support Dr. Chamberlain's determination that mesic hardwood forest does not exist on the JSN Easement Property.[82] Accordingly, we find that mesic hardwood forest and oak-hickory-pine forest did not exist on the JSN Easement Property at the time the JSN Easement Deed was signed. When the mesic hardwood forest and oak-hickory-pine forest are removed from the JSN Baseline, just under 50% of the land cover types and amounts are wrongly identified. The fact that the JSN Baseline misidentified just under 50% of the land cover types and amounts is significant and calls into question the credibility, accuracy, and utility of the JSN Baseline in establishing the condition of the JSN Easement Property at the time of the donation.

Petitioner JN Investments frames the inaccuracies in the JSN Baseline as "a couple of habitat types being misidentified" or more limited than shown in the JSN Baseline mapping and argues that the JSN Baseline satisfies Treasury Regulation § 1.170A-14(g)(5)(i) in establishing the condition of the JSN Easement Property at the time of the donation. We disagree with petitioner's characterization of the inaccuracies in the JSN Baseline. They are not foot-faults lacking effect. These inaccuracies are significant because they misstate the condition of the property and the land types that existed on it at the time of the donation. ORLT relies on the JSN Baseline to monitor the property and ensure that no reserved rights, such as forestry activities or agricultural activities, adversely affect the conservation values that are to be protected in perpetuity. *See Belk v. Commissioner*, 774 F.3d 221, 226–27 (4th Cir. 2014) ("Not only does [Treasury Regulation § 1.170A-14(g)(5)(i)] confirm that a conservation easement must govern a defined and static parcel, it also makes clear that holding otherwise would deprive donees of the ability to ensure protection of conservation interests by, for instance, examination of maps and photographs of 'the protected property.'"), *aff'g* 140 T.C. 1 (2013). The reserved rights in the JSN Easement Deed include forestry activities such as timber harvesting and agricultural activities such as planting and cultivating crops. If either of those activities were conducted in the wrong location

[82] *See supra* note 30.

[*75] on the property, it would risk jeopardizing the conservation values that were supposed to be protected in perpetuity. ORLT would have an impossible task to accurately monitor compliance with the deed restrictions on the JSN Easement Property when almost 50% of the land types reported in the JSN Baseline are inaccurate. Moreover, ORLT, Mr. Jackson, and Mr. Rushing were aware of inaccuracies in the JSN Baseline but never amended it.

These cases are similar to *Brooks*, T.C. Memo. 2022-122, at *14–15, where we held that a baseline report that provided no specifics about the size and location of timber, open fields, special plant life, and habitats at or near the time of the donation failed to comply with Treasury Regulation § 1.170A-14(g)(5). We explained that the deficiencies in the baseline report undermined the protection of the conservation interests associated with the easement because it would be difficult to impossible to identify any changes that fell within the reserved rights. *Brooks*, T.C. Memo. 2022-122, at *15. Similarly, because the JSN Baseline misidentified just under 50% of the land cover types and amounts, it would be difficult to establish whether any changes to the JSN Easement Property fell within JSN's reserved rights or to delineate JSN's reserved rights from the rights conveyed to ORLT in the JSN Conservation Easement. *See Brooks v. Commissioner*, 109 F.4th at 217.[83] Finally, even if we were to construe petitioner JN Investments'

[83] In *BC Ranch II, L.P. v. Commissioner*, 867 F.3d 547, 555 (5th Cir. 2017), *vacating and remanding* T.C. Memo. 2015-130, the U.S. Court of Appeals for the Fifth Circuit held that the use of the word "may" rather than "shall" in Treasury Regulation § 1.170A-14(g)(5)(i) indicates that the list of documents to be included "is flexible and illustrative rather than rigid." The Fifth Circuit rejected the Tax Court's holding that the baseline documentation was insufficient for purposes of Treasury Regulation § 1.170A-14(g)(5)(i) because the documentation was untimely, some documents were created too early before the transfer, others were created too late after the transfer, and some of the documents were inaccurate. *BC Ranch II, L.P. v. Commissioner*, 867 F.3d at 555–56; *Bosque Canyon Ranch, L.P.*, T.C. Memo. 2015-130, at *13–14. The Fifth Circuit held that, notwithstanding the timeliness issues and inaccuracies in the site report that was included in the baseline report, there was "documentation before [the donee] that was more than sufficient to establish the condition of the property prior to the donation of the conservation easement." *BC Ranch II, L.P. v. Commissioner*, 867 F.3d at 556. We find the facts of *Bosque Canyon Ranch* distinguishable from this case because the inaccuracies as to the land types and amounts prevented JSN from establishing the condition of the property at the time of the donation and petitioner did not point to documents before ORLT other than the JSN Baseline to establish the condition of the JSN Easement Property before the donation of the conservation easement. We find that the facts of these cases more closely resemble those of *Brooks* with respect to the issue of baseline documentation.

[*76] characterization of the inaccuracies in the JSN Baseline as an argument that JSN substantially complied with the regulatory requirements in Treasury Regulation § 1.170A-14(g)(5), it has not provided any "good excuse" for its noncompliance. *Brooks v. Commissioner*, 109 F.4th at 217 (citing *Volvo Trucks of N. Am., Inc. v. United States*, 367 F.3d 204, 210 (4th Cir. 2004)).

In short, the information in the JSN Baseline and the JSN Baseline ecological features map is insufficient to allow ORLT to evaluate whether changes to the JSN Easement Property fall within the reserved rights of the JSN Easement Deed. *See Brooks*, T.C. Memo. 2022-122, at *15. Accordingly, because JSN failed to comply with Treasury Regulation § 1.170A-14(g)(5)(i), its claimed deduction is disallowed. *See Brooks v. Commissioner*, 109 F.4th at 217 ("Because the baseline report was a mandatory condition — indeed essential — for defining and claiming a conservation easement as a charitable contribution, the Tax Court properly treated the inadequacy of the Brookses' Baseline Report as a basis for disallowing the deductions.").[84]

Next, we discuss whether the JSN Conservation Easement satisfied a conservation purpose under section 170(h)(4)(A).

C. *Whether the JSN Conservation Easement Satisfied an Enumerated Conservation Purpose*

As discussed above, for a contribution of property to constitute a "qualified conservation contribution" it must be donated "exclusively for conservation purposes." § 170(h). A contribution is made "exclusively for conservation purposes" if it meets the requirements of section 170(h)(4) and (5). Section 170(h)(4)(A) provides that a contribution is for conservation purposes only if it serves one of four specific conservation purposes:

> For purposes of this subsection [i.e., section 170(h)], the term "conservation purpose" means—

We further note that petitioners' principal place of business was in South Carolina when they filed the Petitions so, absent a stipulation to the contrary, these cases are appealable to the U.S. Court of Appeals for the Fourth Circuit. *See* § 7482(b)(1)(E); *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

[84] This holding is in addition to our holding *infra* Opinion Part II.C that the donation did not have a conservation purpose under section 170(h)(4)(A)(ii) and (iii)(II), and is a separate basis for denying JSN's claimed charitable contribution deduction.

[*77]

> (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
>
> (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
>
> (iii) the preservation of open space (including farmland and forest land) where such preservation is—
>
> (I) for the scenic enjoyment of the general public, or
>
> (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,
>
> and will yield a significant public benefit, or
>
> (iv) the preservation of an historically important land area or a certified historic structure.

Thus, the statute provides four separate qualifying purposes, and the third (preservation of open space) has two variants. "Under the statute, each of these four prongs is a conservation purpose in and of itself, and a taxpayer's satisfaction of one of these prongs suffices to establish the requisite conservation purpose." *Herman v. Commissioner*, T.C. Memo. 2009-205, 98 T.C.M. (CCH) 197, 200 (citing S. Rep. No. 96-1007, at 10 (1980), *as reprinted in* 1980-2 C.B. 599, 604).

As we explained in *Murphy v. Commissioner*, T.C. Memo. 2023-72, at *42–43, in determining whether an easement satisfies a conservation purpose provided in section 170(h)(4)(A), we consider only those conservation purposes that are stated in the easement deed. The JSN Easement Deed for the JSN Easement Property states the following conservation purposes: first, the "protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," under section 170(h)(4)(A)(ii); and second, the "preservation of open space" that is pursuant to a clearly delineated governmental conservation policy and "will yield a significant public benefit" under section 170(h)(4)(A)(iii)(II). Below we address whether the JSN Conservation Easement satisfied a conservation purpose under section 170(h)(4).

[*78] 1. *Protection of a Relatively Natural Habitat*

a. *Section 170(h)(4)(A)(ii)*

To satisfy the conservation purpose requirement by the "protection of a relatively natural habitat" pursuant to section 170(h)(4)(A)(ii), the regulations require that the donation "protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives." Treas. Reg. § 1.170A-14(d)(3)(i). A "habitat" is an "area or environment where an organism or ecological community normally lives or occurs" or the "place where a person or thing is most likely to be found." *Glass v. Commissioner*, 124 T.C. 258, 281–82 (2005) (quoting *Habitat*, *American Heritage Dictionary of the English Language* (4th ed. 2000)), *aff'd*, 471 F.3d 698 (6th Cir. 2006). Additionally, the habitat must be "significant." Treasury Regulation § 1.170A-14(d)(3)(ii) provides the following standards for determining what constitutes a significant habitat:

> Significant habitats and ecosystems include, but are not limited to, habitats for rare, endangered, or threatened species of animal, fish, or plants; natural areas that represent high quality examples of a terrestrial community or aquatic community, such as islands that are undeveloped or not intensely developed where the coastal ecosystem is relatively intact; and natural areas which are included in, or which contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area.

In *Champions Retreat Golf Founders, LLC v. Commissioner*, 959 F.3d 1033, 1036 (11th Cir. 2020), *vacating and remanding* T.C. Memo. 2018-146, the U.S. Court of Appeals for the Eleventh Circuit explained its view regarding the meaning of the addition of the word "significant" in the regulation vis-a-vis the statutory requirement of a "relatively natural habitat":

> [E]ven without the regulation, the Code would not be construed to apply to a completely trivial habitat—a few commonly occurring ants plainly would not do, nor would many other species not in need of conservation. Requiring some level of significance thus is unobjectionable. So long as the regulation's use of this term is not construed to mean

[*79] more than the Code will support, there is no reason to doubt the regulation's validity.

Thus, the Eleventh Circuit construes the Code and the regulation as requiring a nontrivial level of significance. *See Mill Road*, T.C. Memo. 2023-129, at *33–34.

Additionally, Treasury Regulation § 1.170A-14(d)(3)(i) expounds on the meaning of "relatively natural habitat" from section 170(h)(4)(A)(ii):

> The donation of a qualified real property interest to protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives will meet the conservation purposes test of this section. The fact that the habitat or environment has been altered to some extent by human activity will not result in a deduction being denied under this section if the fish, wildlife, or plants continue to exist there in a relatively natural state. For example, the preservation of a lake formed by a man-made dam or a salt pond formed by a man-made dike would meet the conservation purposes test if the lake or pond were a nature feeding area for a wildlife community that included rare, endangered, or threatened native species.

Therefore, the regulation allows for alteration of the habitat or environment "to some extent" and human activity will not result in the denial of a deduction "if the fish, wildlife, or plants continue to exist there in a relatively natural state." Treas. Reg. § 1.170A-14(d)(3)(i).

b. *The Parties' Arguments*

As a threshold matter, JN Investments appears to challenge the addition of the word "significant" in Treasury Regulation § 1.170A-14(d)(3), to the statutory phrase "relatively natural habitat" and question whether this change imposes a higher burden on taxpayers than is required under section 170(h)(4)(A)(ii). Petitioner JN Investments also argues that section 170(h)(4)(A)(ii) requires only that a rare, threatened, or endangered species' habitat be present on the property and that neither the statute nor its accompanying regulations require that a rare, threatened, or endangered species be actually observed on the property. Additionally, petitioner JN Investments' ecology expert, Mr. Echols, identified 25 rare, endangered, or threatened

[*80] species or species of conservation concern that are known to occur in areas that have the same habitat as is present on the JSN Easement Property. Petitioner further argues that the JSN Easement Property protects five high priority habitats in the Piedmont Ecoregion as identified by the Georgia SWAP that can be used by high priority, vulnerable, or conservation concern plant and animal species. Petitioner JN Investments also argues that the JSN Easement Property, and in particular its vegetative riparian buffer that extends 200 feet in each direction from the Buttlers Creek banks, contributes to the ecological viability of the surrounding conservation areas because it connects the Piedmont Refuge with other conservation lands, including the JSS Easement Property, the Ocmulgee River to the West, and the Oconee National Forest. JN Investments asserts that the JSN Easement Property contains some of the same habitats that exist in the Piedmont Refuge and the Oconee National Forest including oak-hickory-pine forest, mesic hardwood forest, and bottomland hardwood forest and that because of the connectivity of the JSN Easement Property to these other protected lands, the rare, threatened, endangered, or conservation concern species can use and benefit from all of these habitats.

Respondent counters that JN Investments did not have a conservation purpose under section 170(h)(4)(A)(ii) because none of Mr. Rushing, petitioners' expert Mr. Echols, nor respondent's expert Dr. Chamberlain observed the presence of any rare, threatened, or endangered species on the JSN Easement Property during their separate visits. Moreover, Dr. Chamberlain opined that no federally or state protected animals or plants could exist on the property because it lacks the proper habitats. Respondent also argues that there are no high-quality examples of any habitat on the JSN Easement Property. He continues that the mesic hardwood forest and the oak-hickory-pine forests alleged to have been identified on the JSN Easement Property do not exist, and instead those areas are manmade pine plantation. Respondent further argues that the remaining bottomland hardwood forests and streams on the JSN Easement Property are surrounded by pine forest, which dulls their significance. Finally, respondent argues that even though the JSN Easement Property abuts the Piedmont Refuge, the habitats that are on the JSN Easement Property do not significantly contribute to the ecological viability of the Piedmont Refuge or to any other conservation area because over 78% of the JSN Easement Property consists of pine forests and pine plantations that serve as a habitat only for common, generalist animal or plant species.

[*81] c. *Echols Report*

As discussed *supra* Opinion Part II.B.3, Mr. Echols developed a preliminary list of potentially occurring species on the JSN Easement Property based on the habitat data provided in the JSN Baseline and then narrowed the list to include only potentially occurring species where he observed a suitable habitat. Although Mr. Echols created a list of 25 animals and plants that he characterized as "species of conservation concern" that potentially could exist within the property, he acknowledged that some of the species are not rare but instead common; nevertheless, he concluded that they are experiencing significant enough population declines that they are of conservation concern. The phrase "species of conservation concern" as used by Mr. Echols included any rare, threatened, or endangered species tracked by the State of Georgia that had the potential to occur on the JSN Easement Property. Nonetheless, Mr. Echols did not observe or hear any species on the list of species of conservation concern, or any rare, threatened, or endangered species, while he was on the JSN Easement Property. Additionally, Mr. Echols stated that he observed a G1 habitat, a G2 habitat, and a G3 habitat on the JSN Easement Property. However, his report does not include (1) a map indicating where a G1, G2, or G3 habitat occurs or (2) any photographs of a G1, G2, or G3 habitat on the JSN Easement Property. Notably, he did not report his habitat findings to the EPD or any other reporting body.

d. *Chamberlain Report*

Dr. Chamberlain investigated the potential for state and federally listed threatened and endangered plants and animals to occur on the JSN Easement Property and reviewed rare species and species of conservation concern documented in the Piedmont Ecoregion via the Georgia Biodiversity Portal. He found no records documenting high priority species on the JSN Conservation Easement and found no evidence during his site visit and subsequent research that any rare, threatened, or endangered species occurred on the JSN Conservation Easement. He opined that the JSN Conservation Easement does not provide a habitat for threatened or protected species, but instead provides land cover types used by generalist species that are common throughout the Piedmont Ecoregion and the southeastern United States.

Additionally, Dr. Chamberlain concluded that the JSN Conservation Easement did not provide a significant, relatively natural

[*82] habitat, for two nonmutually exclusive reasons. First, as discussed *supra* Opinion Part II.B.5, the JSN Baseline was inaccurate regarding the delineation of primary habitats and land cover types and, second, the actual observed habitats and land cover types on the JSN Conservation Easement were pine-dominated forests and pine plantations that have been thinned and which are common in the Piedmont Ecoregion and the southeastern United States. He noted that because pine plantations are planted in a way that does not mimic natural forest regeneration and succession, they are not significant natural habitats or land cover types. Although Dr. Chamberlain acknowledged that the JSN Conservation Easement contains bottomland hardwood forests along Buttlers Creek, he stated that their value was greatly undermined because they are surrounded by areas of pine plantation and poorly managed pine forest.[85] Thus, "the wildlife species that use pine forests and pine plantations such as those that dominate the conservation easement are ubiquitous to nearly every land cover type found in the Piedmont Ecoregion." Dr. Chamberlain thus concluded that the bottomland hardwood forests did not constitute a significant, relatively natural habitat.

Similarly, Dr. Chamberlain opined that the JSN Conservation Easement did not contribute to the ecological viability of other conservation lands, such as the Piedmont Refuge, because it provided only modest value to the generalist species that use the JSN Conservation Easement. As discussed immediately above, he further opined that the value of the JSN Conservation Easement is also diminished by the fact that except for the bottomland hardwood forests and the streams, the property contains only pine-dominated forests and nonmanaged open areas that could just as easily be found on other properties that border the Piedmont Refuge and throughout the Piedmont Ecoregion.

Finally, Dr. Chamberlain concluded that the JSN Conservation Easement provides only marginal contributions to public benefit because the land cover types and recreational activities that occur on the property are consistent with other private conservation programs in the area. He further stated that recreational hunting and timber harvesting are common on these private conservation programs. Lastly, he concluded that the property is not unique to the area and the general

[85] His report also stated that the pine forest on the JSN Easement Property was poorly managed and had woody understory vegetation or dense pine regeneration, with midstories that were dominated by sweetgum, poplar, and dogwood.

[*83] public had little opportunity to view the property with the exception of approximately 600 feet on Highway 18 West, and no opportunity to use it.

e. *Analysis*

i. *Habitat for Rare, Endangered, or Threatened Species*

After careful consideration of the experts' reports, we find that Dr. Chamberlain's report and opinion more closely align with the facts on the ground. As discussed *supra* Opinion Part II.B.2, the experts disagree on the type, quantity, and quality of the habitat that exists on the JSN Easement Property. The evidence supports Dr. Chamberlain's determination that mesic hardwood forest and oak-hickory-pine forest do not exist on the JSN Easement Property.

As discussed *supra* Opinion Part II.B, when the land cover percentages in the JSN Baseline that were allocated to mesic hardwood forest and oak-hickory-pine forest are reallocated to pine forests, the JSN Easement Property comprises 14.8% bottomland hardwood forest, 6.7% open fields, and 78.5% pine forests or pine plantation. We find credible Dr. Chamberlain's opinion that because pine forests and pine plantations are common in the Piedmont Ecoregion and in the southeastern United States, they provide only a minimal contribution to generalist species adapted to using pine forests and pine plantations. Habitats for generalist species are not sufficient to constitute a relatively natural habitat for purposes of section 170(h)(4)(A)(ii) much less a significant one under Treasury Regulation § 1.170A-14(d)(3)(i). *See Champions Retreat Golf Founders, LLC v. Commissioner*, 959 F.3d at 1036. Therefore, we find that pine forests and pine plantations are not relatively natural habitats on the JSN Easement Property. Moreover, neither Mr. Echols nor JN Investments allege that the open fields on the JSN Easement Property provide a habitat for species of conservation concern, or any rare, threatened, or endangered species. Accordingly, we find that open fields are also not relatively natural habitats on the JSN Easement Property.

Thus, we are left to consider whether the bottomland hardwood forest that makes up 14.8% of the JSN Easement Property constitutes a significant relatively natural habitat for purposes of section 170(h)(4)(A)(ii) and Treasury Regulation § 1.170A-14(d)(3)(i). As discussed *supra* Opinion Part II.C.1.a, the Eleventh Circuit interpreted

[*84] the addition of the regulatory adjective "significant" to the statutory phrase "relatively natural habitat" as requiring a nontrivial level of significance.[86] *Champions Retreat Golf Founders, LLC v. Commissioner*, 959 F.3d at 1036. The Eleventh Circuit held that an easement that was placed on a private golf course and undeveloped land protected a significant relatively natural habitat and therefore satisfied the conservation purpose requirement of section 170(h)(1)(C). *Champions Retreat Golf Founders, LLC v. Commissioner*, 959 F.3d at 1039.

There were several facts that were critical to the Eleventh Circuit's analysis and holding. First, the record established that the easement property was home to rare birds, a regionally declining southern fox squirrel, and a rare plant species, the denseflower knotweed. *Id.* at 1037. The taxpayer's expert observed 61 species of birds on the property, including 26 species that were listed as priority by one or more conservation organizations. *Id.* Additionally, while the golf course was primarily nonnative grasses, the remainder of the easement property was natural and included the denseflower knotweed. *Id.* at 1039. The denseflower knotweed existed on 7–17% of the easement. *Id.* The court stated that the knotweed that existed on the property, whatever its proportion, was worthy of protection. *Id.* Thus, the Eleventh Circuit's analysis focused on the observed presence on the easement property of birds that were listed as priority by one or more conservation organizations, the regionally declining southern fox squirrel, and the denseflower knotweed. *Id.*

Similarly, we have relied in part on the existence or presence of rare, endangered, or threatened species on an easement property to hold that the property protected a significant, relatively natural habitat. In *Glass*, we held that the taxpayer's property, which had a community of different threatened plant species and bald eagles (among other species of plants and wildlife), was contributed to protect a significant relatively natural habitat in which the wildlife normally live. *Glass*, 124 T.C. at 282. However, in *Atkinson v. Commissioner*, T.C. Memo. 2015-236, at *35, we held that the presence of a rare plant that was found on 24%

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[86] On appeal the taxpayer in *Champions Retreat Golf Founders, LLC v. Commissioner*, 959 F.3d at 1036, argued for the first time that Treasury Regulation § 1.170A-14(d)(3)(ii) was invalid for the same reasons petitioners assert here, that the inclusion of the word "significant" impermissibly departed from the requirements set forth in 170(h)(4)(A)(ii). The Eleventh Circuit did not consider this validity challenge and held that, provided the habitat was nontrivial, it would satisfy the regulation and the Code.

[*85] of the easement area was "too insignificant" for the Court to conclude that the entire easement area was a significant relatively natural habitat. Thus, the existence or presence of rare, endangered, or threatened species on an easement property is important in analyzing whether the property protects a relatively natural habitat; but we must also consider the quantum of the habitat relative to the overall size of the easement property in determining whether the property protects a relatively natural habitat.

Here, unlike in *Champions Retreat* and *Glass*, Mr. Rushing, Mr. Echols, and Dr. Chamberlain agree that they did not observe or hear any rare, threatened, or endangered species while they were each separately on the JSN Easement Property. Mr. Rushing, Mr. Echols, and Dr. Chamberlain observed only common, generalist, wildlife species. Mr. Echols asserts only that the habitats that are present on the JSN Easement Property can provide natural environments for high priority species that are known to occur in the area.

We briefly address one plant species that petitioner JN Investments asserts Mr. Echols observed on the JSN Easement Property. The Appendix to the Echols Report has a section labeled "Additional Photography" containing four pictures of different plant species and one photo of what is described as "maintained open pine woodland." However, none of the plant species in the photos are included in Mr. Echols's list of species of conservation concern. Mr. Echols testified that one of the plant species in one photo, the liatris virgata (Wand Blazing Star), should have been, but was not, included in his list of species of conservation concern because it is a Georgia watchlist species. Additionally, in the Echols Report, Mr. Echols did not document where he saw the plant species, including the liatris virgata, that were in the Additional Photography section of his report.

The inconsistency between the Echols Report and Mr. Echols's testimony regarding the existence of liatris virgata on the JSN Easement Property undermines petitioner JN Investments' claim that it exists on the JSN Easement Property. Mr. Echols's list of species of conservation concern consisted of species that *potentially* occurred within the JSN Easement Property. It stands to reason that if he had observed such a species on the JSN Easement Property, that significant discovery would have merited some level of discussion in the body of the Echols Report. This is especially so since the list of species of conservation concern included only species that could potentially occur on the JSN Easement Property. The absence of a discussion about the

[*86] observed presence of liatris virgata, a species of conservation concern, in the report is curious. Accordingly, petitioner JN Investments has not met its burden to show, by a preponderance of the evidence, that the liatris virgata exists on the JSN Easement Property. Thus, we find that there were no rare, threatened, endangered species, or a species of conservation concern on the JSN Easement Property.[87] Absent a rare, threatened, endangered species, or a species of conservation concern,[88] we are left to determine whether the existence of bottomland hardwood forest, covering 14.8% of the JSN Easement Property, by itself provides a relatively natural habitat under section 170(h)(4)(A)(ii).[89]

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[87] We note that even if the liatris virgata existed on the JSN Easement Property, the fact that it is not discussed in the Echols Report suggests that it was never JSN's purpose to conserve the liatris virgata when granting the JSN Conservation Easement to ORLT. Its subsequent discovery cannot form the basis for JSN's conservation purpose ex post facto.

[88] In *Mill Road*, the Court considered whether a 33-acre easement property provided for the "protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem." The Court determined that the easement protected a relatively natural habitat that consisted of four habitats designated as high priority habitats by the Georgia SWAP, even though the easement property did not have rare or threatened fish, wildlife, plants, or similar ecosystems on it. *Mill Road*, T.C. Memo. 2023-129, at *34. The Court also rejected the Commissioner's argument that the easement property was too small to have a conservation purpose. *Id.* at *36–37. There are several facts that distinguish *Mill Road* from the present cases. First, the easement property in *Mill Road* was in Henry County, which is within the southern portion of the Atlanta metropolitan area. *Id.* at *10. Additionally, there were "intensely developed subdivisions on the north and east sides" of the easement property. *Id.* The Court's analysis of the relatively natural habitat requirement emphasized the ongoing development in Henry County and around the easement property. In discussing the Commissioner's argument regarding the size of the easement property, the Court noted that while the easement area was relatively small, it was "hardly negligible" when considered in the context of its suburban setting. *Id.* at *37. Thus, the Court considered the relatively natural habitat issue in the context of the suburban setting and the development risk surrounding the easement property. In this case, by contrast, the land surrounding the JSN Easement Property is primarily agricultural with some houses on small acreage lots. There are very few traditional residential subdivisions nearby, and there is no public water or sewer service in this area. Also, the JSN Easement Property is 90 miles from Atlanta. The threat of development and suburban sprawl that was important to our analysis in *Mill Road* is absent here. Our conclusion is supported by the views of Mr. Hayter, who considered and rejected single-family residential use on the Subject Properties as a financially feasible use because it was "not likely to be financially viable due to very limited demand" and the surrounding area had "virtually no residential subdivision development."

[89] In *J L Minerals* and *Mill Road*, the Court considered whether the habitats at issue constituted relatively natural habitats for purposes of section 170(h)(4)(A)(ii).

[*87] We find Dr. Chamberlain's credible testimony and expert report helpful in assessing the quality of the bottomland hardwood forest. Dr. Chamberlain testified that the ecological value and significance of a habitat depends on the area that surrounds it. Here, the bottomland hardwood forest is surrounded by or adjacent to nonnatural pine land cover types that were poorly managed. We find as credible and accept Dr. Chamberlain's opinion that the value of the bottomland hardwood forest is "greatly marginalized" by the surrounding nonnatural pine that is primarily used as a habitat by common generalist species. After considering (1) the quantum of the bottomland forest habitat (14.8%) as established in the JSN Baseline, (2) the quality of the bottomland forest habitat as credibly explained by Dr. Chamberlain, and (3) the absence of any rare, threatened, or endangered species on the JSN Easement Property, we conclude that it does not provide a relatively natural habitat under section 170(h)(4)(A)(ii).[90]

ii. *Contributes to Ecological Viability*

For similar reasons as those discussed *supra* Opinion Part II.C.1.e.i, we hold that the JSN Conservation Easement does not contribute to the ecological viability of the adjacent Piedmont Refuge or

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In *J L Minerals*, the Court held that mesic hardwood forest and bottomland hardwood forest which made up two-thirds of the 64.7-acre easement property constituted a relatively natural habitat for purposes of section 170(h)(4)(A)(ii). *J L Mins.*, T.C. Memo. 2024-93, at *32–33. Similarly, in *Mill Road*, T.C. Memo. 2023-129, at *10, the Court found that a "tributary stream to Birch Creek runs inside the property's southern border and establishes a wetland area and riparian buffer that covers approximately 27% of the property . . . [and] [t]he interior of the Mill Road Tract is 61% oak-hickory forest." While the Commissioner in *Mill Road* focused on the small size of the piece of land subject to the conservation easement, we emphasized the large percentage of the land that supported the conservation purpose: "[The taxpayer] shows . . . that this Special Natural Area is in fact 61% of the easement area (i.e., 20 acres)." *Id.* at *37 n.24. We further noted that "the 39% of the tract outside the Special Natural Area supports the conservation values of that area." *Id.* The present cases are distinguishable from *J L Minerals* and *Mill Road*, where large percentages of the easements' acreage that were at issue could act as a habitat for fish, wildlife, or plants. Here, after analyzing the experts' reports we are left with a bottomland forest habitat that makes up 14.8% of the JSN Easement Property that could act as such a habitat. Thus, we must examine whether a habitat covering 14.8% of the JSN Easement Property is nontrivial. *See Atkinson*, T.C. Memo. 2015-236, at *35.

[90] We do not address petitioner JN Investments' challenges to the validity of Treasury Regulation § 1.170A-14(d)(3)(ii) because the habitat that exists on the JSN Conservation Easement does not constitute a relatively natural habitat under section 170(h)(4)(A)(ii), much less a significant habitat or ecosystem as described in Treasury Regulation § 1.170A-14(d)(3)(ii). In other words, we reach the same conclusion regardless of the validity of the regulation.

[*88] the other state and federal properties nearby such as the Oconee National Forest, Cedar Creek Wildlife Management and B.F. Grant Wildlife Management Area. As we have discussed, except for streams and the small bit of bottomland hardwood forest, the JSN Conservation Easement contains only poorly managed pine-dominated forests and nonmanaged open areas. Dr. Chamberlain conducted research in the Piedmont Ecoregion for 11 years and on public and private lands that border the Piedmont Refuge and the other nearby state and federal lands. We accept Dr. Chamberlain's opinion from his 11 years of research on these areas that pine-dominated forests and nonmanaged open areas are common on properties surrounding the Piedmont Refuge and throughout the Piedmont Ecoregion.[91] Therefore, because the JSN Conservation Easement contributes only to generalist species that are adapted to pine forests and pine plantations, which are common throughout the Piedmont Ecoregion and surrounding the Piedmont Refuge, we hold that the JSN Conservation Easement does not contribute to the ecological viability of the Piedmont Refuge or the other state or federal conservation properties nearby.

2. *Preservation of Open Space*

a. *Section 170(h)(4)(A)(iii)(II)*

As discussed *supra* Opinion Part II.C, section 170(h)(4)(A)(iii)(II) provides that the conservation purpose requirement is met where the donation of a qualified real property interest preserves open space (including farmland and forest land) and where the preservation is pursuant to a clearly delineated federal, state, or local governmental conservation policy, and will yield a significant public benefit. Treasury Regulation § 1.170A-14(d)(4)(iii)(A) explains what a clearly delineated governmental conservation policy is:

> The requirement . . . is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation. A general declaration of conservation goals by a single official or legislative body is not sufficient. However, a governmental conservation policy need not be a certification program that identifies particular lots or small parcels of individually owned property. This requirement will be met by donations

[91] Dr. Chamberlain opined that the JSN Easement Property provided only modest value to the generalist species that use the JSN Conservation Easement.

[*89] that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; the preservation of a wild or scenic river, the preservation of farmland pursuant to a state program for flood prevention and control; or the protection of the scenic, ecological, or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites. . . . A program need not be funded to satisfy this requirement, but the program must involve a significant commitment by the government with respect to the conservation project. For example, a governmental program according preferential tax assessment or preferential zoning for certain property deemed worthy of protection for conservation purposes would constitute a significant commitment by the government.

Additionally, contributions made for the preservation of open space must yield a "significant public benefit." § 170(h)(4)(A)(iii) (flush text); Treas. Reg. § 1.170A-14(d)(4)(iv)(A). Treasury Regulation § 1.170A-14(d)(4)(iv)(A) explains that public benefit is evaluated by considering all pertinent facts and circumstances that are relevant to the contribution. Treasury Regulation § 1.170A-14(d)(4)(iv)(A) provides 11 nonexclusive factors to be considered, and no single factor is determinative:

> (1) The uniqueness of the property to the area;
>
> (2) The intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);
>
> (3) The consistency of the proposed open space use with public programs (whether Federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area;
>
> (4) The consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land, protected by easement or fee

[*90] ownership by organizations referred to in § 1.170A-14(c)(1), in close proximity to the property;

(5) The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural, or historic character of the area;

(6) The opportunity for the general public to use the property or to appreciate its scenic values;

(7) The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;

(8) The likelihood that the donee will acquire equally desirable and valuable substitute property or property rights;

(9) The cost to the donee of enforcing the terms of the conservation restriction;

(10) The population density in the area of the property; and

(11) The consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

b. *The Parties' Arguments*

Petitioner JN Investments argues that the JSN Conservation Easement protects open space pursuant to the Georgia SWAP, which is a statewide strategy developed by the Georgia Department of Natural Resources pursuant to a congressional directive. Additionally, JN Investments states that the current version of the Georgia SWAP was funded with State Wildlife Grants administered by the U.S. Fish and Wildlife Service with matching funds from Georgia's Nongame Wildlife Conservation Fund administered through the Wildlife Resources Division. JN Investments further argues that the JSN Conservation Easement protects open space pursuant to a conservation objective set out in the Joint Comprehensive Plan for Jones County and the City of Gray, as well as the Piedmont Refuge goals, and the Georgia Best Management Practices for Forestry published by the Georgia EPD and the Georgia Forestry Commission. Finally, petitioner JN Investments argues that the JSN Conservation Easement yields a significant public benefit because (1) it is unique to the area, (2) the proposed open space use is consistent with public programs for conservation in the region, (3) the proposed open space use is consistent with existing private conservation programs in the area, and (4) it is likely that development

[*91] of the property would lead to or contribute to the degradation of the scenic, natural, or historic character of the area.

Respondent argues that there is no clearly defined governmental conservation policy that applies to the JSN Easement Property. He continues that JSN did not apply for, and did not participate in, the GCTCP and there was no evidence that the JSN Easement Property was accepted into the GCTA program. Finally, respondent argues that the JSN Easement Property provides no significant public benefit because it is not unique to the area, the general public can view the property only for 623 feet on Highway 18 West, and the general public has no right of access. For the reasons discussed below we agree with respondent and hold that the JSN Conservation Easement does not preserve open space pursuant to a clearly delineated governmental conservation policy that yields a significant public benefit.

c. *Analysis*

i. *Clearly Delineated Governmental Policy*

As we explained in *Murphy v. Commissioner*, T.C. Memo. 2023-72, at *42–43 (first citing *PBBM-Rose Hill, Ltd. v. Commissioner*, 900 F.3d 193, 202 (5th Cir. 2018); then citing *Turner v. Commissioner*, 126 T.C. 299, 309, 313–17 (2006); then citing *Champions Retreat*, T.C. Memo. 2018-146, at *7–8, *22; and then citing *Atkinson*, T.C. Memo. 2015-236, at *7, *24–56), in determining whether an easement satisfies a conservation purpose provided in section 170(h)(4)(A), we consider only those conservation purposes that are stated in the easement deed.[92] The specific provisions of the JSN Easement Deed that address the open space conservation purpose state that the JSN Conservation Easement ensures the preservation of open space pursuant to two specific governmental conservation policies: the GCTCP and the GCTA program. As respondent correctly points out, JSN did not apply for, and therefore did not participate in, the GCTCP. Additionally, aside from a self-serving statement in the JSN Easement Deed that the JSN

[92] The four policies that petitioner now relies on—the Georgia SWAP, the Joint Comprehensive Plan for Jones County and the City of Gray, the Piedmont Refuge goals, and the Georgia Best Management Practices for Forestry published by the Georgia EPD and Georgia Forestry Commission—were not stated in the JSN Easement Deed as being the basis for JSN's open space conservation purpose, and we do not consider them ex post facto. *See J L Mins.*, T.C. Memo. 2024-93, at *29–30; *Murphy*, T.C. Memo. 2023-72, at *45.

[*92] Easement Property was enrolled in the GCTA, petitioners do not argue, and have not presented other evidence, that the JSN Easement Property was accepted into the GCTA. On brief, petitioners suggest that JSN did not participate in the GCTA. Nonetheless, we need not decide whether JSN must have affirmatively participated in or was accepted into the GCTCP or the GCTA to qualify as the preservation of open space that was "pursuant to a clearly delineated Federal, State, or local governmental conservation policy"[93] because, as discussed below, we hold that the JSN Conservation Easement did not provide a significant public benefit.

ii. *Significant Public Benefit*

Even if the JSN Easement was granted pursuant to a clearly delineated governmental conservation policy, we conclude that the JSN Conservation Easement does not yield a significant public benefit. We address below some of the nonexclusive factors listed in Treasury Regulation § 1.170A-14(d)(4)(iv)(A). As discussed *supra* Opinion Part II.C.1.d, the JSN Easement Property is not unique to the area. We found as fact and accepted Dr. Chamberlain's opinion from his 11 years of research on the areas surrounding the JSN Easement Property that pine-dominated forests and nonmanaged open areas are common on properties surrounding the Piedmont Refuge and throughout the Piedmont Ecoregion. Additionally, the intensity of development (both existing and in the foreseeable future) in the vicinity of the JSN Easement Property is very low because (1) the area surrounding the JSN Easement Property is primarily agricultural with some homes on small acreage parcels, (2) there is no public water or sewer service in this area, (3) in 2016 Jones County had a population of approximately 28,500, and (4) from 2010 through 2015, Jones County's population decreased by 0.6%. All of these facts indicate that there is a very remote chance that the existing development pattern surrounding the JSN Easement Property will change or intensify.

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[93] Respondent suggests that the JSN Conservation Easement cannot preserve open space pursuant to a clearly delineated governmental policy unless JSN affirmatively participated in the GCTCP or the GCTA program. Petitioners do not address this specific point. Instead, petitioners argue that JSN's failure to participate in the GCTA is not dispositive because the JSN Conservation Easement protects open space pursuant to the four policies discussed *supra* note 92 that were not listed in the JSN Easement Deed. We do not decide this issue because the preservation of open space conservation purpose provided in section 170(h)(4)(A)(iii)(II) is a conjunctive test, and as discussed below, petitioner JN Investments does not satisfy the second prong, which requires that the JSN Conservation Easement yield a significant public benefit.

[*93] Moreover, there is no right of physical access for the general public, and visual access to the 252.92-acre property is limited to the portion of the JSN Easement Property that is visible along approximately 600 feet of Highway 18 West. In addition, we do not believe that it is likely that development of the JSN Easement Property would lead to or contribute to degradation of the scenic, natural, or historic character of the area. The property, similar to other properties in the area and in proximity to the Piedmont Refuge, is a pine plantation and pine forest. It is difficult to see how any currently permissible potential development of the JSN Easement Property would degrade the scenic, natural, or historic character of the area.

We briefly address petitioner JN Investments' reliance on *Mill Road* as support for its position that the JSN Easement Deed preserves an undeveloped, forested viewshed along 623 feet of Highway 18 West for the scenic enjoyment of the general public and therefore yields a significant public benefit. Unlike the easement in *Mill Road*, where the easement property was in an area of heavy commercial and residential development and had "intensely developed subdivisions" on two sides, *Mill Road*, T.C. Memo. 2023-129, at *36, the JSN Easement Property is in an area that is primarily agricultural with some homes on small lots but very few traditional residential subdivisions. The potential threat of residential or commercial development that existed in *Mill Road* is not present here. Mr. Hayter's analysis provides further support for this view. As part of the Hayter Appraisals, Mr. Hayter considered the financial feasibility of developing single-family homes on the JSN Easement Property and determined that it was "not likely to be financially viable due to very limited demand." The forested viewshed is not at risk of being replaced by subdivisions and strip malls. As a result, we hold that the forested viewshed on approximately 600 feet of Highway 18 West does not provide a significant public benefit or contribute to the scenic or natural character of the area.[94] In short, we conclude that the JSN Conservation Easement does not yield a significant public benefit.

Accordingly, we hold that petitioner JN Investments has failed to establish that the JSN Conservation Easement was a contribution that was exclusively for conservation purposes as defined in section 170(h)(4) and, therefore, JSN did not make a qualified conservation contribution

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[94] Petitioner JN Investments has not alleged or argued that the area surrounding the JSN Easement Property has any historic character. Thus, we have limited our discussion to scenic and natural characteristics.

[*94] as defined in section 170(h)(1)(C). Below, we discuss petitioners' compliance with substantiation requirements.

III. *Compliance with the Substantiation Requirements*

"A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary." § 170(a)(1). We briefly summarize the statutory and regulatory substantiation requirements before addressing respondent's argument that the petitioners failed to satisfy the qualified appraiser and qualified appraisal requirements set forth therein.

A. *Statutory and Regulatory Requirements*

Section 170(f)(11) imposes, for charitable contribution deductions, heightened substantiation requirements on taxpayers, depending on the value of the contribution. Section 170(f)(11)(A)(i) provides that, for deductions greater than $500,000, a taxpayer must include "a description of such property," § 170(f)(11)(B), obtain "a qualified appraisal of such property," § 170(f)(11)(C), and "attach[] to the return for the taxable year a qualified appraisal of such property," § 170(f)(11)(D).

Treasury Regulation § 1.170A-13(c)(3)(ii) provides that a "qualified appraisal" must contain, among other things, the following information: (1) a description of the property, (2) the date(s) on which the property was appraised, (3) the property's FMV on the date, or expected date, of contribution, (4) the method used to value the property, and (5) the specific basis for the valuation and a justification of that basis.

Treasury Regulation § 1.170A-13(c)(3)(i)(B) provides that a qualified appraisal must be "prepared, signed, and dated by a qualified appraiser." Pursuant to Treasury Regulation § 1.170A-13(c)(5)(i), a "qualified appraiser" must (1) hold himself out to the public as an appraiser or perform appraisals on a regular basis, (2) be qualified to make appraisals of the type of property being valued, and (3) acknowledge that aiding and abetting an understatement of tax liability may subject him to a penalty pursuant to section 6701. Moreover, with exceptions that are not relevant here, a qualified appraiser cannot be one who (1) claims or reports a deduction under section 170 for the contribution of the property that is being appraised, (2) was a party to the donor's acquisition of the property being appraised, (3) is the donee of the property, (4) was a person employed by any of the

[*95] aforementioned, (5) is related to any of the aforementioned within the meaning of section 267(b) (not applicable here), or (6) is an appraiser regularly engaged by any of the aforementioned who does not make a majority of his appraisals for other persons during the tax year. Treas. Reg. § 1.170A-13(c)(5).

B. *Whether Mr. Hayter Was a Qualified Appraiser*

Respondent does not challenge that Mr. Hayter satisfies the requirements of Treasury Regulation § 1.170A-13(c)(5)(i) and (iv). Instead, he seeks to disqualify Mr. Hayter as a qualified appraiser under Treasury Regulation § 1.170A-13(c)(5)(ii) because "Mr. Jackson had knowledge of facts that would cause a reasonable person to expect [Mr. Hayter] to falsely overstate the value of the donated property." For the reasons discussed below, we conclude that Mr. Hayter was a qualified appraiser.

Treasury Regulation § 1.170A-13(c)(5)(ii) provides, in relevant part, that

> [a]n individual is not a qualified appraiser with respect to a particular donation . . . if the donor had knowledge of facts that would cause a reasonable person to expect the appraiser falsely to overstate the value of the donated property . . . .

The regulation also gives an illustration: "[T]he donor and the appraiser make an agreement concerning the amount at which the property will be valued and the donor knows that such amount exceeds the fair market value of the property . . . ." *Id.* As we have explained before, we read the regulation's use of the term "a reasonable person" "to mean a reasonably informed person without specific knowledge or experience in generally accepted appraisal practices." *Buckelew Farm*, T.C. Memo. 2024-52, at *45. Thus, the question is whether the LLCs held specific knowledge of facts that would cause a reasonable person to expect Mr. Hayter's opinion of value to be falsely overstated. We find that no such facts exist in these cases.

To determine a partnership's "knowledge," we look to the knowledge of the person(s) with the ultimate authority to manage the partnership. *See, e.g.*, *CNT Invs., LLC v. Commissioner*, 144 T.C. 161, 222 (2015) (examining the general partner's knowledge in order to assess "good faith"); *Superior Trading, LLC v. Commissioner*, 137 T.C. 70, 91–92 (2011) (stating that partnership-level defenses take "into

[*96] account the state of mind of the general partner"), *supplemented by* T.C. Memo. 2012-110, *aff'd*, 728 F.3d 676 (7th Cir. 2013). Additionally, we have explained that the phrase "'falsely to overstate' is intended to convey a sense of collusion and deception as to the value of the property." *Kaufman v. Commissioner*, T.C. Memo. 2014-52, at *70–71, *aff'd*, 784 F.3d 56 (1st Cir. 2015); *see also Mill Road*, T.C. Memo. 2023-129, at *42–43. In *Mill Road*, T.C. Memo. 2023-129, at *42, the Court concluded that the regulatory text of Treasury Regulation § 1.170A-13(c)(5)(ii) requires a taxpayer-donor's knowledge of an appraiser's deception.

In order to show that Mr. Jackson, as the manager[95] and TMP of the LLCs, had knowledge of facts that would cause a reasonable person to expect Mr. Hayter to falsely overstate the value of the donated property, respondent directs us to three broad categories of facts. First, respondent asserts that Mr. Jackson had prior knowledge of the FMV of the Subject Properties. Second, respondent asserts that the Jackson-Wingate Agreement required a specific valuation to complete the transactions. And finally, respondent asserts that Mr. Hayter's relationship with Mr. Wingate impacted his independence.

Treasury Regulation § 1.170A-13(c)(5)(ii), however, is focused on whether the donor and the appraiser had an agreement as to the valuation amount and whether the taxpayer-donor had knowledge of the appraiser's deception as to the value of the property. We note that the first and third categories of facts that respondent points us to are facts that tend to undermine Mr. Hayter's valuation conclusion and the claimed deduction amount. These facts include that (1) Mr. Jackson as a builder and real estate developer in Jones County bought and sold vacant land and was aware of the prices at which real estate was bought and sold in Jones County, (2) Mr. Jackson was generally aware of whether a property in Jones County sold for market value or was overvalued, (3) Mr. Jackson was not aware of any property in Jones County selling for $19 million, (4) Mr. Jackson was aware that the Stroup Appraisal appraised the JSN Property at an FMV of $460,000, or $2,300 per acre, as of July 25, 2013, (5) the ad valorem tax notice for the two parcels making up the JSS Property in the 2017 tax year reflected FMVs of $95,000 and $507,592, (6) Mr. Wingate had experience in conservation easement transactions, was knowledgeable about zoning in southern Georgia, and had knowledge of the local area, (7) Mr. Hayter

[95] For purposes of this analysis, we consider Mr. Jackson's status as manager and TMP of the LLCs as equivalent to general partner of the LLCs.

[*97] completed more than 20 appraisals for Mr. Wingate between 2014 and 2018, (8) Mr. Wingate compensated Mr. Hayter for his appraisals and therefore Mr. Hayter had a "significant financial incentive" to give Mr. Wingate his desired result, (9) no conservation easement on the Subject Properties would have been donated in 2016 unless the target amount of money was raised from third-party investors, (10) Mr. Wingate cabined and influenced Mr. Hayter's access to information, (11) Mr. Wingate made his personal attorney available to Mr. Hayter for purposes of determining zoning as well as other legal issues, and (12) Mr. Wingate provided most, if not all, the information upon which Mr. Hayter relied, including a survey and engineering reports. However, the facts asserted for the first and third categories are not indicative of any agreement between JSS or JSN and Mr. Hayter as to the valuation amount and do not show any falseness or deception by Mr. Hayter. *See Mill Road*, T.C. Memo. 2023-129, at *43.

While the facts asserted in the second category more directly suggest that Mr. Wingate and Mr. Jackson sought to obtain a high appraisal value, they also do not indicate an agreement between JSS or JSN and Mr. Hayter as to the valuation amount and do not show any falseness or deception by Mr. Hayter. Respondent points out that Mr. Jackson negotiated with Mr. Wingate that the Jackson Family Partnership would receive $1 million per transaction upon closing. Respondent also relies on the fact that Mr. Jackson and Mr. Wingate discussed that investors would provide the money that would ultimately pay the Jackson Family Partnership $1 million per transaction. Further, respondent emphasizes the fact that WCS had the option to cancel the Jackson-Wingate Agreement if WCS did not receive a satisfactory return, and that Mr. Jackson did not know or ask what a satisfactory return meant. Other facts that respondent relies on include the following: (1) Mr. Wingate viewed the properties' having a mining HBU as related to WCS's ability to obtain a satisfactory return, (2) Mr. Wingate's testimony suggested that, if the HBU was not what he envisioned, Mr. Jackson and WCS would not proceed with the transactions, and (3) Mr. Wingate identified all of the professionals to be retained, including NOVA for drilling, Mr. Colwell for a mining services quote, and Dr. Capps for a mineral report, whose data and information was used by Mr. Hayter in preparing his appraisal. In other words, respondent alleges that Mr. Wingate selectively chose professionals who would supply information or reports that would ensure that the valuation opinion was as high as they needed.

[*98] As with the first and third categories of facts discussed above, the second category of facts does not indicate that there was an agreement between JSS or JSN and Mr. Hayter as to the valuation amount and does not show any falseness or deception by Mr. Hayter. However, these facts may indicate that Mr. Jackson and Mr. Wingate expected that the transactions would be abandoned if Mr. Wingate's view of the HBU and the potential of the Subject Properties was unrealized by the subject matter professionals. The fact that the Jackson Family Partnership would receive $1 million per transaction at closing, or that WCS could cancel the transactions if they did not receive a satisfactory return, is beside the point if Mr. Hayter was unaware of those facts and did not agree with the donor to tailor his valuation opinion high enough so that the $1 million fee could be achieved or so that WCS could achieve a satisfactory return. While these facts may undermine the probative values of the appraisal, they do not show, and there is no other evidence in the record to indicate, that there was an agreement between JSS or JSN and Mr. Hayter concerning the values of the Subject Properties and do not show any falseness or deception by Mr. Hayter.[96] *See J L Mins.*, T.C. Memo. 2024-93, at *37–39; *Buckelew Farm*, T.C. Memo. 2024-52, at *44–47. *But see Oconee Landing Prop., LLC*, T.C. Memo. 2024-25 (holding that appraisers were not "qualified appraisers" because donor knew the fair market value of property and (through use of intermediaries) reached an implicit agreement with appraisers as to appraised value of easement property that donor knew to be false).

Mr. Hayter is a professional appraiser who holds the MAI designation from the Appraisal Institute, held himself out to the public as such, and was qualified to perform an appraisal of the Subject Properties with the proposed mining development plan. Moreover, he

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[96] We note that in the Hayter Appraisals, after the conclusion of FMV of the JSS Conservation Easement and the JSN Conservation Easement at the time of the donation, the Hayter Appraisals specifically stated:

> Employment of the appraiser was not conditional upon the appraiser producing a specific value or a value within a given range, or a result that is favorable to the client. Future employment prospects are not dependent upon the appraiser producing a specified value or a result that favors the client. Employment of the appraiser and payment of the fee are not based upon the outcome of a loan application, upon the completion of a purchase/sale transaction, or any outcome that favors the client, or any future event.

The Hayter Appraisals also stated: "No portion of the appraisal fee was based on a percentage of the appraised value of the property or the amount allowed as a deduction." There is no evidence in the record that contradicts these statements.

[*99] signed Form 8283, which was attached to the LLCs' Forms 1065, acknowledging that he could personally be subject to penalties under the Code, including sections 6701(a) and 6695A. Mr. Hayter did not have a personal interest in the Subject Properties, nor does it appear from the record that he received a tax deduction under section 170 for the contribution of the Conservation Easements being appraised. *See* Treas. Reg. § 1.170A-13(c)(5)(iv)(A).

Accordingly, we find that the exception in Treasury Regulation § 1.170A-13(c)(5)(ii) does not apply and hold that Mr. Hayter was a "qualified appraiser." *See* Treas. Reg. § 1.170A-13(c)(5).

C. *Whether the Hayter Appraisals Were Qualified Appraisals*

To be a qualified appraisal under section 170(f)(11)(E), an appraisal of property must be (1) treated as a qualified appraisal under regulations or other guidance prescribed by the Secretary and (2) conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

Respondent argues that the Hayter Appraisals are not "qualified appraisals" because they were not prepared in accordance with USPAP, nor did they conform with generally accepted appraisal standards. For the reasons discussed below, we hold that the Hayter Appraisals are qualified appraisals under section 170(f)(11)(E).

Section 170(f)(11)(E)(i)(II) specifies, in relevant part, that a qualified appraisal must be "conducted by a qualified appraiser in accordance with generally accepted appraisal standards." The Department of the Treasury provided guidance in I.R.S. Notice 2006-96, 2006-2 C.B. 902. According to that Notice, an appraisal will meet the specifications of section 170(f)(11)(E) "if, for example, the appraisal is consistent with the substance and principles of the [USPAP]." Notice 2006-96, § 3.02(2), 2006-2 C.B. at 902.[97]

[97] Effective January 1, 2019, Treasury Regulation § 1.170A-17(a)(2) defines "generally accepted appraisal standards" for purposes of section 170(f)(11)(E) to mean "the substance and principles" of USPAP. In adopting this standard, the Department of the Treasury observed: "The Treasury Department and the IRS agree that it is beneficial to provide some flexibility by requiring conformity with appraisal standards that are consistent with the substance and principles of USPAP rather than requiring that all appraisals be prepared strictly in accordance with USPAP." Substantiation

[*100] Respondent broadly argues that the Hayter Appraisals were not prepared in accordance with generally accepted appraisal standards because they do not comply with USPAP. In other words, respondent argues that an appraisal must be consistent with USPAP to be treated as meeting generally accepted appraisal standards.[98] Nevertheless, respondent does not make any specific arguments about the Hayter Appraisals' failure to comply with generally accepted appraisal standards and instead focuses his arguments on their asserted failure to comply with USPAP. Therefore he argues that they failed to comply with generally accepted appraisal standards.

Respondent additionally states that Mr. Hayter "outright failed to comply with USPAP" and argues that "his departures from USPAP are significant, serious, and seemingly intentionally designed to create reports justifying the values needed by the Petitioners." Specifically, respondent alleges that the Hayter Appraisals (1) used a DCF valuation model that was misleading and flawed and that the analyses in the Hayter Appraisals have many mathematical errors including using the wrong input costs for crushing stone, reducing (without explanation) the estimated cost from the Colwell estimate for washing and finishing, and inaccurately applying the average annual aggregate production cost increase, (2) misapplied the definition of value and do not reflect an amount that would be exchanged between a willing buyer and a willing seller, (3) used inappropriate and misleading comparables of properties that were established mines, or adjacent to active mines, outside of Jones County, and (4) failed to analyze demand for aggregate and absorption in Jones County. Respondent's assertions can be reduced to a substantive challenge to Mr. Hayter's methodology and valuation.

"Appraising is not an exact science and has a subjective nature." *Gorra v. Commissioner*, T.C. Memo. 2013-254, at *48. USPAP is widely recognized and accepted as establishing standards applicable to the appraisal profession. Adherence to those standards is evidence that the appraiser is applying methods that are generally accepted within the appraisal profession. Therefore, at a minimum, compliance with USPAP

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and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions, 83 Fed. Reg. 36,417, 36,420 (July 30, 2018) (to be codified at 26 C.F.R. pts. 1, 602). Although the tax year at issue precedes the effective date of this regulation, it nonetheless provides that "[t]axpayers may rely on the rules of this section for appraisals prepared for returns or submissions filed after August 17, 2006." Treas. Reg. § 1.170A-17(c).

[98] Respondent further states: "[I]t is doubtful that an appraisal could comply with generally accepted appraisal standards without also complying with USPAP."

[*101] is an indication that the appraiser's valuation report is reliable. However, full compliance with USPAP is not the sole measure of reliability. *See J L Mins.*, T.C. Memo. 2024-93, at *36 n.16; *Buckelew Farm*, T.C. Memo. 2024-52, at *48; *see also Whitehouse Hotel Ltd. P'ship v. Commissioner*, 131 T.C. 112, 127–28 (2008),[99] *vacated and remanded*, 615 F.3d 321 (5th Cir. 2010). We accept Mr. Krasinski's expert opinion that the Hayter Appraisals do not fully comply with USPAP; however, we find that these failures go more to the credibility and weight of the appraisals and not to whether they comply with generally accepted appraisal standards. *See J L Mins.*, T.C. Memo. 2024-93, at *37; *Buckelew Farm*, T.C. Memo. 2024-52, at *49. Despite their many flaws, we find that the Hayter Appraisals satisfy the requirements of section 170(f)(11)(E)(i)(II) and hold that the Hayter Appraisals were qualified appraisals for purposes of section 170(f)(11).

IV. *Valuation of the Conservation Easements*

We have held that JSN for 2016 is not entitled to a charitable contribution deduction because it failed to comply with Treasury Regulation § 1.170A-14(g)(5)(i) and it failed to satisfy the conservation purpose requirement. However, the proper valuation of the JSN Conservation Easement is relevant in determining the penalties to which JSN may be subject. On its 2016 return, JSN valued the JSN Conservation Easement at $19,044,000. It based that valuation on the assertion that the "before" value of the JSN Easement Property was $19,360,000, or $76,545 per acre.

Additionally, JSS is entitled to a charitable contribution deduction for the JSS Conservation Easement donation. On its 2016 return, JSS valued the JSS Conservation Easement at $19,480,000.[100] It based that valuation on the assertion that the "before" value of the JSS Easement Property was $19,840,000 (or $68,870 per acre). While JSS is entitled to a deduction, we must determine the correct amount of the deduction. Below, we consider the reasonableness of both JSN's and JSS's valuations.

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[99] We note that this case addressed the admissibility of an expert report rather than whether it was a qualified appraisal; however, the case illustrates the subjective nature of appraisals and is in contrast to the strict standard of compliance with USPAP respondent seeks.

[100] As noted above, even though Mr. Hayter concluded that the FMV of the JSS Conservation Easement was $19,480,000, JSS claimed a deduction of only $19,044,000 on the return.

[*102] A. *Valuation Principles*

If a taxpayer makes a gift of property other than money, the amount of the contribution is generally equal to the FMV of the property at the time of the gift. *See* Treas. Reg. § 1.170A-1(c)(1).[101] The regulations define FMV as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts." *Id.* subpara. (2). Valuation is not a precise science, and the value of property on a given date is a question of fact to be resolved on the basis of the entire record. *See Kaplan v. Commissioner*, 43 T.C. 663, 665 (1965).

The parties retained experts to testify about the value of the Conservation Easements. We evaluate the experts' opinions in the light of their qualifications and the evidence in the record. *See Parker v. Commissioner*, 86 T.C. 547, 561 (1986). When experts offer competing opinions about FMV, we decide how to weigh the opinions by examining the factors that the experts considered in reaching their conclusions. *See Casey v. Commissioner*, 38 T.C. 357, 381 (1962). We are not bound by an expert opinion and may accept it in its entirety or accept it in part in the exercise of our sound judgment. *Helvering v. Nat'l Grocery Co.*, 304 U.S. 282, 294–95 (1938); *Estate of Newhouse v. Commissioner*, 94 T.C. 193, 217 (1990); *Laureys v. Commissioner*, 92 T.C. 101, 127 (1989). We may determine FMV on the basis of our own examination of the evidence in the record. *Emanouil v. Commissioner*, T.C. Memo. 2020-120, at *50–51 (citing *Silverman v. Commissioner*, 538 F.2d 927, 933 (2d Cir. 1976), *aff'g* T.C. Memo. 1974-285).

"Market prices" typically do not exist for conservation easements. *See Symington v. Commissioner*, 87 T.C. 892, 895 (1986). As a result, courts usually value easements indirectly using a "before and after" approach, seeking to determine the reduction in property value attributable to the easement. *See* Treas. Reg. § 1.170A-14(h)(3)(i); *cf. Browning v. Commissioner*, 109 T.C. 303, 320–24 (1997); *Hughes v. Commissioner*, T.C. Memo. 2009-94, 97 T.C.M. (CCH) 1488, 1490. Under that approach, the value of the easement is deemed equal to the FMV of the real estate before the easement was granted ("before" value), minus

[101] Deductions generally are not allowed for gifts of property consisting of less than the donor's entire interest, but there is an exception for a "qualified conservation contribution." *See* § 170(f)(3)(B).

[*103] the FMV of the real estate as encumbered by the easement ("after" value).

B. *Determination of FMV*

1. *Approaches for Determining FMV*

The parties agree that we should value the Conservation Easements using the "before and after" valuation method. However, the parties' experts used two different approaches to determine the "before" value. Petitioners' expert Mr. Hayter used an income approach, valuing the Subject Properties based on their future cashflow generation from the operation of an aggregate quarry on each property. Respondent's expert Mr. Krasinski does not offer independent appraisals of the Subject Properties but, as part of his compliance review of the Hayter Appraisals, states that the Hayter Appraisals erred in using an income approach (i.e., the DCF method) and instead should have used the comparable property sales method. Determining which method to apply is a question of law. *See Chapman Glen Ltd. v. Commissioner*, 140 T.C. 294, 325–26 (2013).

The comparable property sales method is "generally the most reliable method" for valuing vacant, unimproved land. *Estate of Rabe v. Commissioner*, T.C. Memo. 1975-26, 34 T.C.M. (CCH) 117, 119, *aff'd*, 566 F.2d 1183 (9th Cir. 1977) (unpublished table decision); *see also United States v. 320.0 Acres of Land*, 605 F.2d 762, 798 (5th Cir. 1979) ("Courts have consistently recognized that, in general, comparable sales constitute the best evidence of market value."); *Estate of Giovacchini v. Commissioner*, T.C. Memo. 2013-27, at *50 ("Sales of comparable properties are credible evidence of real estate's fair market value."); *Talkington v. Commissioner*, T.C. Memo. 1998-412, 76 T.C.M. (CCH) 868, 874 (explaining that the sales comparison method is generally the most reliable method of valuation). The comparable property sales method values property by comparing it to similar properties sold in arm's-length transactions around the valuation date. *See Estate of Spruill v. Commissioner*, 88 T.C. 1197, 1229 n.24 (1987); *Wolfsen Land & Cattle Co. v. Commissioner*, 72 T.C. 1, 19 (1979). Because no two properties are ever identical, the appraiser must adjust the sale prices of the comparables to account for differences between the properties (e.g., parcel size, location, and physical features) and the terms of the sales (e.g., proximity to valuation date and conditions of sale). *Wolfsen Land & Cattle Co.*, 72 T.C. at 19. The reliability of a comparable property sales analysis depends on the comparability of the properties selected as

[*104] comparables and the reasonableness of the adjustments made to the prices to establish comparability. *Id.* at 19–20.

The income method values a property by computing the present value of projected future income from the property. *See, e.g.*, *Chapman Glen Ltd.*, 140 T.C. at 327; *Marine v. Commissioner*, 92 T.C. 958, 983 (1989), *aff'd*, 921 F.2d 280 (9th Cir. 1991) (unpublished table decision); *Crimi v. Commissioner*, T.C. Memo. 2013-51, at *64. The theory behind an income approach is that an investor would be willing to pay no more than the present value of a property's anticipated future net income. *See Trout Ranch, LLC v. Commissioner*, T.C. Memo. 2010-283, 100 T.C.M. (CCH) 581, 583, *aff'd*, 493 F. App'x 944 (10th Cir. 2012). "Income valuation methods are not favored when valuing vacant land with no income-producing history because they are inherently speculative and unreliable." *Savannah Shoals, LLC v. Commissioner*, T.C. Memo. 2024-35, at *36; *see also Ranch Springs, LLC v. Commissioner*, No. 11794-21, 164 T.C., slip op. at 55 (Mar. 31, 2025) (citing *Whitehouse Hotel Ltd. P'ship v. Commissioner*, 139 T.C. 304, 324–25 (2012), *supplementing* 131 T.C. 112 (2008), *aff'd in part, vacated and remanded in part*, 755 F.3d 236 (5th Cir. 2014)); *Ambassador Apartments, Inc. v. Commissioner*, 50 T.C. 236, 243–44 (1968), *aff'd per curiam*, 406 F.2d 288 (2d Cir. 1969); *Excelsior Aggregates, LLC v. Commissioner*, T.C. Memo. 2024-60, at *33. Additionally, the Court has rejected taxpayers' application of the DCF method when valuing vacant land that also contained minerals. *See Ranch Springs, LLC*, 164 T.C., slip op. at 55–62; *J L Mins.*, T.C. Memo. 2024-93, at *62–65.

We pause briefly to discuss the Krasinski Review Reports because we find that they are particularly helpful in understanding the flaw in petitioners' argument for applying the DCF method to the Subject Properties in this case. Mr. Krasinski stated that a DCF is predicated on the use of each of the Subject Properties as a mine, which they were not at the time of the valuation. Use of a DCF suggests that a market participant would value vacant land in the area according to the net present value of future mineral sales of an underlying mineral asset. He noted that observable sales do not support that view and that, if there was demand for the underlying mineral, market sales would demonstrate a premium for the vacant land. He further explained that the lack of market sales at a premium also indicates that the HBU is not an aggregate mine.

This analysis is logical and persuasive to us and explains the inadequacy of using a DCF in this manner to value the Subject

[*105] Properties. *See Ranch Springs, LLC*, 164 T.C., slip op. at 55–62. It is not credible to posit that a buyer would pay the net present value of a hypothetical business merely to acquire the raw land on which to operate that business. *Id.* at 56–57 (noting that taxpayer's experts "both equated the value of the land with the going concern value of a limestone mining business conducted on the land" and finding the "equation defies economic logic and common sense"); *see also Van Zelst v. Commissioner*, 100 F.3d 1259, 1263 (7th Cir. 1996) (reasoning that when a resource is plentiful and "financing and entrepreneurship are the scarce ingredients . . . [financing and entrepreneurship] will capture the economic return"), *aff'g* T.C. Memo. 1995-396; *Ga. Kaolin Co. v. United States*, 214 F.2d 284, 285–86 (5th Cir. 1954) (where "the best and most valuable purpose for which the land[] could be used . . . was the mining of kaolin," determining "the market value of the land . . . taken as a whole and with due consideration of all the components that tend to make its market value" accounts for "the existence of valuable mineral deposits"). Below, we discuss the determination of the HBU of the Subject Properties, and specifically, whether the hypothetical mines were legally permissible and financially feasible.

2. *Determination of HBU*

When using the before and after valuation method, the FMV of a property before the contribution of a conservation restriction must take into account not only the current use of the property but its HBU. *See Stanley Works & Subs. v. Commissioner*, 87 T.C. 389, 400 (1986); Treas. Reg. § 1.170A-14(h)(3)(i) and (ii). Accordingly, before we determine the "before" value in each case, we must first determine the unencumbered property's HBU. Petitioners argue that the HBU of each of the Subject Properties was as an aggregate mine. Respondent argues that the HBU was continued agricultural, residential, or recreational use with knowledge of mineral on the site and opportunity to seek entitlements allowing mining.

We have defined HBU as "[t]he reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value." *See Whitehouse Hotel Ltd. P'ship*, 139 T.C. at 331 (quoting Appraisal Institute, *The Appraisal of Real Estate* 277–78 (13th ed. 2008)). A property's HBU is the most profitable use for which it is adaptable and needed or likely to be needed in the reasonably near future. *Olson v. United States*, 292 U.S. 246, 255 (1934); *Symington*, 87 T.C. at 897. It can be any realistic, objective potential use of the

[*106] property. *Symington*, 87 T.C. at 896–97; *Hilborn v. Commissioner*, 85 T.C. 677, 689 (1985).

"Because property owners have an economic incentive to put their land to its most productive use, a property's HBU is presumed to be its current use absent proof to the contrary." *Ranch Springs, LLC*, 164 T.C., slip op. at 41 (first citing *United States v. Buhler*, 305 F.2d 319, 328 (5th Cir. 1962); and then citing *Mountanos v. Commissioner*, T.C. Memo. 2013-138, at *7, *supplemented by* T.C. Memo. 2014-38, *aff'd*, 651 F. App'x 592 (9th Cir. 2016)). If the proposed HBU is different from the property's current use, the taxpayer must demonstrate the "closeness in time" and "reasonable probability" of the proposed use. *Hilborn*, 85 T.C. at 689. We exclude from consideration any proposed uses that "depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable." *Olson*, 292 U.S. at 257. HBU is a question of fact and requires an objective assessment of the likelihood that the property would have been put to such use absent the easement. *Stanley Works & Subs.*, 87 T.C. at 408. In cases such as these, we undertake "an objective assessment of how immediate or remote the likelihood is that the property, absent the [conservation] restriction, would in fact be developed, as well as any effect from zoning . . . laws that already restrict the property's potential highest and best use." Treas. Reg. § 1.170A-14(h)(3)(ii).

We note, however, as we have before:

> The HBU concept "is an element in the determination of fair market value." *Boltar*, 136 T.C. at 336. But it is simply one element. It does not supersede or eliminate the most important prerequisite in determining FMV, namely, that "a hypothetical willing buyer would purchase the subject property for the indicated value." *Ibid.*; *see Corning Place*, T.C. Memo. 2024-72, at *41; Treas. Reg. § 1.170A-1(c)(2).

Ranch Springs, LLC, 164 T.C., slip op. at 41–42.

We will consider the parties' disagreement regarding whether a quarry was legally permissible and financially feasible as elements in determining fair market value. The parties presented expert testimony on the HBU of the unencumbered easement properties. Both petitioners' expert Mr. Hayter and respondent's expert Mr. Sheppard began their respective HBU analyses by considering whether the potential use of the

[*107] Subject Properties was (1) legally permissible, (2) physically possible, (3) financially feasible, and (4) maximally productive. "All four criteria are required to be met, and it does not matter that a potential use is physically possible, financially feasible, and maximally productive if it is not legally permissible." *Buckelew Farm*, T.C. Memo. 2024-52, at *52.

Mr. Hayter determined that an aggregate mine was the HBU. He did so by using Dr. Capps's DCF analysis of a proposed mine to evaluate whether the aggregate could be economically mined. Mr. Sheppard determined that the HBU was continued agricultural, residential, or recreational use with knowledge of mineral on the site and opportunity to seek entitlements allowing mining. Additionally, respondent's expert Mr. Krasinski performed an appraisal review of the Hayter Appraisals and identified what he determined to be flaws in Dr. Capps's DCF analysis. Mr. Krasinski concluded that the HBU stated in the Hayter Appraisals was unsupported and that the errors in Dr. Capps's DCF rendered Mr. Hayter's valuation conclusion not reasonable or credible. Moreover, as discussed below, the Krasinski Review Reports explain that the errors in Dr. Capps' DCF analysis undermine the financial feasibility of a proposed aggregate quarry on either of the Subject Properties.

For the reasons explained below we do not accept Mr. Hayter's determination of the Subject Properties' HBU and therefore do not adopt his opinion of value. Conversely, we find Mr. Sheppard's determination of the Subject Properties' HBU to be compelling, and therefore we adopt his opinion of value. We begin our HBU analysis by determining whether a mine was legally permissible on the Subject Properties and then addressing whether a mine was financially feasible on the Subject Properties.

a. *Whether the Proposed Developments Were Legally Permissible*

Petitioners assert that the proposed mine development on each of the Subject Properties was a legally permissible use of the Subject Properties despite their zoning classification of AG–1, which permitted uses including single-family dwellings and agricultural, forestry, livestock, and poultry production. Under this zoning classification the proposed aggregate mine would not be a legally permissible use of the Subject Properties.

[*108] i. *Zoning Ordinance Standards for Rezoning and Conditional Use Permit Approval*

Notwithstanding the Subject Properties' AG–1 zoning classification, petitioners contend that the proposed mines would be a legally permissible use on the basis of their contention that it was reasonably probable under the Zoning Ordinance that the Subject Properties would have received approval for rezoning and conditional use permitting to operate a mine in 2016. Specifically, petitioners argue that JSS and JSN would have satisfied the six-standard balancing test that the Zoning Commission and the Jones County Commission use to evaluate rezoning a property. The test balances the property owner's free use of its property against the existing zoning's relation to public health, safety, morality, or general welfare. *Barrett v. Hamby*, 219 S.E.2d 399, 402 (Ga. 1975). The Zoning Ordinance establishes six standards by which a rezoning request is evaluated by the Zoning Commission and the ones County Commission. The standards have been the same since at least 2006. As discussed *supra* Findings of Fact Part III.B.2, Mr. Pitrowski (as the Jones County Zoning director) applied the six standards during 2016 and 2017 when he prepared staff reports and recommendations on approval or denial of a rezoning application.

In effect, petitioners ask us to surmise what five members of the Jones County Commission would have decided about rezoning and conditional use permits in 2016, and to do so without testimony from any past or present Jones County Commissioners. Below, we discuss each of the Zoning Ordinance standards and our view as to whether petitioners met their burden of proof to show that it is reasonably probable that JSS and JSN would have received rezoning and conditional use permitting approval from the Jones County Commission.

a) *Suitable Use Standard*

The Suitable Use Standard requires the Jones County Commission to evaluate "[w]hether the proposed zoning decision will permit a use of property that is suitable in view of the use and development of adjacent and nearby property." Under the 2007 FLU Map, the JSS Property was categorized as Rural Residential and the JSN Property was categorized as Agricultural Forestry. The 2007 Comprehensive Plan listed site-built dwellings and manufactured homes on individual lots (with a two-acre minimum), agricultural and

[*109] forestry uses, and light commercial uses as recommended uses for property located in the Rural Residential category on the 2007 FLU Map. Additionally, the 2007 Comprehensive Plan listed land dedicated to farming, agriculture, commercial timber, or pulpwood harvesting uses as recommended uses for property located in the Agricultural Forestry category on the 2007 FLU Map. Potential adverse effects from a granite mine on each of the Subject Properties would have included noise, vibrations, dust, excessive light, increased heavy truck traffic, and negative impacts on water wells. Mr. Pitrowski would have considered these adverse effects when making staff recommendations on the application to the Jones County Commission. Residents that lived near the Subject Properties testified that they were concerned about many of the adverse effects of mining stated above and that they would have been publicly opposed to a granite mine being built on the Subject Properties. We also expect that there would be negative effects of noise, vibrations, dust, excessive light, increased heavy truck traffic, and negative impacts on water wells on the neighboring Piedmont Refuge.

Petitioners argue that the Subject Properties are in sparsely populated areas with an operating mine nearby in Monroe County and therefore mining is suitable in this area. This argument ignores that the mine would have had potentially adverse effects on nearby residents. It also ignores the cumulative impacts of adding two mines nearby to the existing mine in Monroe County. Assuming arguendo that additional mining has lesser impacts in an area with an existing mine, the new mines nonetheless will have some additional (albeit potentially less) impact that is cumulative to the existing mine. Given that there are nearby mines already operating, we are not persuaded that the Jones County Commission would conclude that placing two more mines on the Subject Properties, which were categorized as Rural Residential and Agricultural Forestry on the 2007 FLU Map, would be a suitable use of the properties.

b) *Adverse Effect Standard*

For the same reasons as discussed above with respect to the Suitable Use Standard, we think it is unlikely that the Jones County Commission would conclude that a mine on each of the Subject Properties would not adversely affect the existing use or usability of adjacent or nearby land. A mine on each of the Subject Properties would likely have generated the potential adverse effects discussed above, and as a result, impacted the existing use or usability of adjacent property, including the Piedmont Refuge and nearby protected lands. The adverse

[*110] effects would be particularly acute to wildlife on the Piedmont Refuge and to residents who lived in homes near the proposed mines.

Petitioners argue that the proposed mines would not adversely affect the existing use of nearby properties because they are in sparsely populated areas and are already near an existing mine. Petitioners argue that any adverse impact would be minimal. They say that any groundwater issues would be addressed through the Jones County Groundwater Recharge Area Protection Ordinance. They also rely on Mr. Black's testimony that the sound from mining operations is short-lived and soft. They further argue that this is consistent with a study from Aggregates USA involving homes nearest to their mine, which stated that, even with the doors open, noise and vibrations from the blast were not detected. While this assertion may be true in the case of the homes that were close to the Aggregates USA mine, the study that petitioners cite does not indicate the approximate distance between the homes that were evaluated and the Aggregates USA mine. We cannot determine that it would also be true for the homes that are nearby to the JSS Property or the JSN Property. We don't find Mr. Black's general testimony regarding mine blasting or the Aggregates USA study probative.

c) *Reasonable Economic Use Standard*

The Reasonable Economic Use standard requires the Jones County Commission to evaluate "[w]hether the property to be affected by the proposed zoning decision has a reasonable economic use as currently zoned." The Subject Properties are in the AG–1 zoning district, which permits real property in that district to be used for agriculture, forestry, livestock and poultry production, and single-family residential housing. We agree with respondent that each of these uses is a reasonable economic use of the Subject Properties. The Jackson Family Partnership cultivated timber on the real property that became the JSS Property and the JSN Property. Notably, as a real estate developer Mr. Jackson also had the knowledge and ability to develop single-family housing on the Subject Properties.

Despite the history of cultivating timber on the Subject Properties and Mr. Jackson's specialized knowledge as a developer to develop raw land into residential housing, petitioners argue that the Subject Properties do not have a reasonable economic use under the AG–1 zoning district. Petitioners argue that analyzing reasonable economic

[*111] use requires more than identifying uses under the current zoning and that the analysis requires comparing the economic use of current zoning against the economic use of proposed zoning. In petitioners' view, if the proposed economic use has a higher value than the current economic uses permitted under the existing zoning, then the proposed economic use must prevail.

We think this argument improperly transposes an HBU concept on the Reasonable Economic Use standard. The Zoning Ordinance only states that the consideration is whether the subject property "has a reasonable economic use as currently zoned." We do not see how this phrase or the use of the word "reasonable" to modify the phrase "economic use" can be interpreted to suggest that an HBU concept is embedded in the Reasonable Economic Use standard. It appears, based on the evidence in the record, that the Subject Properties had a reasonable economic use as zoned under the AG–1 zoning district.

d) *Negative Infrastructure Impacts Standard*

Under the Negative Infrastructure Impacts standard the Jones County Commission must evaluate "[w]hether the proposed zoning decision will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools." Respondent argues that because granite mines negatively affect infrastructure by causing increased wear and tear on roads and ground water levels which may require extending public water access to offset ground water and water wells, these impacts are significant enough that the Jones County Commission would not have found in JSS's or JSN's favor with respect to this standard. Respondent further argues that these effects are compounded by the fact that, before 2016, Highway 18 West did not experience heavy truck traffic as a result of the nearby granite mine in Monroe County and that all of the homes in the area surrounding the Subject Properties relied on wells for their water supply.

Conversely, petitioners argue that no mining operation could satisfy respondent's view of this standard. They further argue that the increase in truck use of Highway 18 West would have a marginal impact on the road because it is already heavily used. They then state that we can assume that transportation planners accounted for road use data when constructing roads, and therefore higher traveled roads are constructed heavier duty. Pivoting from the issue at hand, petitioners

[*112] argue that any negative impacts to Highway 18 West are "more than offset by the benefits" and that the aggregate produced from the mines would have helped Jones County meet its economic and transportation initiatives.

Our view of this standard is murky. The Negative Infrastructure Impacts Standard requires that the commissioners consider whether the proposed zoning decision could result in a use that could cause an excessive or burdensome use of infrastructure. The qualitative conditions in the latter part of this standard (excessive or burdensome) are difficult to evaluate. It is not clear that a new granite mine would automatically require extending public water access to offset impacts to ground water and water wells simply because every resident in the area relies on wells for their water supply.

On the other hand, we agree with respondent that granite mines could cause excessive or burdensome wear and tear on local roads and highways, and specifically on Highway 18 West, which would be the egress point from the mines. Mr. Wick determined that each of the Subject Properties could produce 20,513,000 ROM tons of aggregate granite over 30 years. Mr. Hayter projected that each mine could produce 13,135,793 ROM tons over 26 years. Dr. Capps determined that each mine could produce 10,524,358 ROM tons over 25 years. We decline petitioners' invitation to assume that Highway 18 West was designed and constructed "heavier duty" simply because it was highly traveled. Petitioners did not present any evidence on the road design and construction and whether it could withstand the wear and tear from fully loaded heavy trucks leaving the mine. Nor did they present evidence of how much it would cost to upgrade or replace Highway 18 West with a "heavier duty" road. Regardless of how highly traveled Highway 18 West was in 2016, there is no evidence to support the suggestion that it was constructed to withstand the constant wear and tear of heavy trucks hauling 20,513,000, 13,135,793, or even 10,524,358 ROM tons of material over a decades-long period. Additionally, contrary to petitioners' argument, we do not think that any benefits from the granite mine are relevant to our evaluation of the Negative Infrastructure Impacts standard. Petitioners have not convinced us that granite mines on the Subject Properties would not cause an excessive or burdensome use of existing roads.

[*113] e) *Future Land Use Plan Standard*

The Future Land Use Plan Standard requires the Jones County Commission to evaluate "[w]hether the proposed zoning decision is in conformity with the policy and intent of the land use plan." Respondent argues that a granite mine on either of the Subject Properties was directly at odds with the 2007 and 2017 FLU Maps and Comprehensive Plans. Petitioners argue that the 2017 Comprehensive Plan indicates that Jones County was preparing for an expansion of industrial and residential land use in the future by rezoning some agricultural land.

The Jones County FLU Map is a planning document used in rezoning decisions that is used to guide potential land use changes over time. The Jones County FLU Map is a component of a larger Jones County comprehensive plan. In 2007, the Jones County Commission adopted the 2007 Comprehensive Plan, and it was used from 2007 through mid-2017. Similarly, in 2007 the Jones County Commission adopted the 2007 FLU Map, and it was used from 2007 through mid-2017. On the 2007 FLU Map, the Subject Properties were categorized as Rural Residential and Agricultural Forestry. The 2007 Comprehensive Plan listed recommended land uses for the categories listed on the 2007 FLU Map. A granite mine was not a recommended land use in the Rural Residential or Agricultural Forestry categories on the 2007 FLU Map. In mid-2017 the Jones County Commission adopted a new comprehensive plan (2017 Comprehensive Plan) and FLU Map (2017 FLU Map). Respectively, the JSS Property was again categorized as Rural Residential and the JSN Property as Agricultural Forestry on the 2017 FLU Map. It is notable that there was community input while the 2007 Comprehensive Plan, 2007 FLU Map, 2017 Comprehensive Plan, and 2017 FLU Map were being created.

After reviewing the 2007 and 2017 FLU Maps and Comprehensive Plans, we agree with respondent that a granite mine on either of the Subject Properties was inconsistent with the policies envisioned in these land use plans. As discussed above, the 2007 FLU Map and the 2017 FLU Map both categorized the JSS Property as Rural Residential and the JSN Property as Agricultural Forestry, and a granite mine was inconsistent with these categories. While petitioners may be correct that in the 2017 Comprehensive Plan the Jones County Commission was preparing a future policy shift regarding potential rezoning of agricultural lands, the Economic Development section of the Short-Term Work Program in the 2017 Comprehensive Plan does not list mining or mineral extraction. We also find it persuasive that the

[*114] Economic Development section of the Short-Term Work Program explicitly called for the development of a targeted tourism strategy that promotes the ecological assets of Jones County. Additionally, paragraph 5 of the Land Use section in the Short-Term Work Program established a goal of preventing "the intrusion of incompatible development" along the periphery of national and state forests, wildlife management areas, and public lands in Jones County. The purpose of this goal was to protect public lands. The effect of this goal was to give additional weight and consideration to the negative impact of development on public lands. It appears that the Jones County Commission was preparing for future land use but did not envision mining as an economic development priority and instead focused on targeted ecological tourism and protecting public lands.

f) *Changing Conditions Standard*

Finally, the Jones County Commission would have to evaluate "[w]hether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposed zoning decision." Respondent asserts that there is no testimony or other evidence regarding then-existing or changing conditions that affected the use and development of the Subject Properties that provided a basis for approval of a rezoning or a conditional use permit. Petitioners assert that the changing condition was the discovery of a vast amount of granite aggregate.

As with of the Zoning Ordinance standards, it is difficult for us to determine how the Jones County Commission would view this changed condition. We note, however, that the granite aggregate is only as useful as any demand for it. And as we discuss *infra* Opinion Part IV.B.2.b, we believe that petitioners did not examine the potential demand for aggregate from the proposed granite mine. The discovery of a vast amount of granite by itself is not that significant because as we discussed *supra* Findings of Fact Part III.A, granite aggregate is abundant in Jones County and in this part of Georgia. Because granite aggregate is abundant here, many properties have similar geologic formations. If we apply petitioners' view, any property where a mineral resource is discovered is a changing condition that should support granting a rezoning or a conditional use permit. We think that the Jones County Commissioners would want additional information or analysis on how the market was going to absorb the increased supply before agreeing to a rezoning or a conditional use permit for one or many new

[*115] mines. We also note that the discovery of granite aggregate in this region is not novel. The Krasinski Review Reports state that the subsurface aggregate beneath the Subject Properties is known to be abundant in Jones County and in this part of Georgia, and the Sheppard Reports included information from the U.S. Geological Survey that corroborates this fact. We find that the identification of granite aggregate on the Subject Properties is not by itself a changing condition affecting the use and development of the properties that gives supporting grounds for approving the zoning change.

We are asked to anticipate what the five members of the Jones County Commission (none of whom testified) would decide about rezoning and conditional use permits, an unusual request for fact-finding. In considering the testimonial and documentary evidence, we conclude that the Zoning Ordinance standards as applied to petitioners' facts do not readily support a rezoning or a conditional use permit. At a minimum, we are comfortable that petitioners have not shown by a preponderance of the evidence that the Jones County Commission would approve the rezoning and conditional use permits. Below, we discuss several additional arguments that petitioners present in support of their view that the proposed developments were a legally permissible use of the Subject Properties.

ii. *Petitioners' Reliance on the History of Rezonings and Mr. Black's Opinion*

Petitioners present several additional points to support their contention that it was reasonably probable that the Subject Properties could be rezoned and receive the necessary permits to operate a mine in 2016. For the reasons discussed below we again conclude that petitioners have not met their burden of proof.

First, petitioners rely on testimony from Mr. Pitrowski, the Director of Planning and Zoning for Jones County, who guessed that 90% to 95% of zoning applications applied for in Jones County are approved, and Jamie Lancaster, a representative of the SMU, who testified that the agency reviews 40 to 60 surface mining permit applications in a typical year and has never rejected one. They also rely on Mr. Pitrowski's testimony that, since 2000, the Zoning Department received three applications for rezoning and one application for a conditional use permit related to mining and that it recommended approval of all three rezoning applications. In an attempt to distinguish the denial of the fourth mining application for a conditional use permit,

[*116] petitioners rely on the Jones County Zoning Staff Report, which stated that the fourth mining application, submitted by A Mining Group, was denied because it was directly adjacent to a residential community and located along a Historic Scenic Byway.[102]

However, the evidence in the record contradicts petitioners' position that it was reasonably probable that the Subject Properties would receive a rezoning to M–1 and a conditional use permit to operate an aggregate mine. Petitioners' arguments are unconvincing and the facts they cite as support are separated from important context. Petitioners state as fact that 90 to 95% of zoning applications in Jones County are approved but the record shows that Mr. Pitrowski stated that figure was his guess. This guestimate has little, if any, value to the case at hand because a zoning application to rezone a property to operate an aggregate mine is qualitatively much different than a routine zoning application to build a home or a commercial retail property. We attach no significance to this guestimate.

Next, petitioners state as fact that the SMU has never rejected a surface mining permit application. The record contradicts this statement. Petitioners seem to suggest that, because the SMU has never expressly denied a surface mining permit application, every surface mining application is approved. That is not so. The testimony of Ms. Lancaster, an SMU representative, was that not all surface mining applications receive approval and that sometimes the SMU requests additional information before a plan can be approved. There was no guarantee that petitioners' surface mining application would have been granted just because it was submitted to the SMU.

Petitioners' reliance on the history of rezonings and conditional use permit requests "relating to mining" that the Jones County Planning and Zoning Department received since 2000 is misleading and lacks context. As an initial matter, we observe that whether the Jones County Planning and Zoning Department recommended approval of a rezoning and conditional use permit is only the first step in the process and that the ultimate authority to approve or reject the application lies with the Jones County Commission. Additionally, petitioners frame the

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[102] Petitioners suggest an additional reason for the application denial is that the proposed location of A Mining Group's quarry was within 200 feet of The Big O Ranch, a "historical site memorializing the legacy of performer and songwriter Otis Redding." However, Mr. Pitrowski testified that the proximity of this property owned by one of Otis Redding's relatives was not a factor and did not affect his staff report recommending that the conditional use permit be denied.

[*117] applications as "related to mining"; however, the record shows that of the three rezoning applications for which the Jones County Planning and Zoning Department recommended approval, two of the applications were for the storage of overburden and the other application was a rezoning request to expand an existing granite mine. Again, these applications to store overburden and expand an existing granite mine are qualitatively different from an application to open a new mine. The fourth application that the Jones County Planning and Zoning Department recommended denying, the A Mining Group application, was the only conditional use request that sought to create a brand-new granite mine. Thus, of the four applications "related to mining" since 2000, the Jones County Planning and Zoning Department recommended denying the only application to establish a new granite mine.[103]

Finally, petitioners' attempt to distinguish the Jones County Planning and Zoning Department's recommendation denying the A Mining Group application is contrary to the record. The property for which A Mining Group sought a conditional use permit to operate a granite mine was, like the Subject Properties, zoned AG–1. Jones County residents broadly opposed A Mining Group's application. They expressed concerns about increased truck traffic, rail traffic, and dust resulting from the proposed granite mine. The Jones County Planning and Zoning Department's staff report regarding the A Mining Group's conditional use permit identifies several factors that led to the denial including negative effects on infrastructure, the inconsistency of a granite mine with the FLU Map, and the inconsistency of a granite mine with nearby properties. Mr. Pitrowski confirmed that (1) a granite mine on either of the Subject Properties was inconsistent with the FLU Map, (2) conformity or lack thereof of a proposed land use with the FLU Map was a significant factor in determining whether he recommended a proposed rezoning and conditional use permit for approval, (3) a proposed granite mine anywhere in Jones County would have negative infrastructure impacts from increased heavy truck traffic and on water wells, and (4) the inconsistency and adverse impacts of a granite mine on nearby properties are concerns for a proposed granite mine. The factors that the Jones County Planning and Zoning Department

[103] This recommendation is consistent with Mr. Pitrowski's statement that it was more difficult to receive a rezoning for a new quarry as opposed to an existing quarry that sought to expand.

[*118] considered in recommending the denial[104] of A Mining Group's application would have been equally applicable to JSS or JSN if they had submitted an application for rezoning and a conditional use permit to operate a mine.

Petitioners' reliance on its mining feasibility expert, Mr. Black, to support its position that the proposed aggregate mine on either of the Subject Properties was legally permissible is also unavailing. Mr. Black concluded that the LLCs would have received a permit for surface mining from the SMU and that the LLCs' rezoning application and conditional use permit likely would have been approved by the Jones County Commission. There is little support for these conclusions in the Black Reports. Mr. Black's conclusions were based on interviews with (1) a current geologist of the SMU, (2) a former manager of the SMU, (3) a former Jones County Commissioner who had served on the Jones County Board of Commissioners from 1984 through 2004, (4) a current member of the Jones County Commission (but who was not a commissioner in 2016), and (5) Mr. Black's experience rezoning property in nearby counties.

Mr. Black did not communicate with any other current or former Jones County employees in preparing his reports. Importantly, neither did he share the specific location of either of the Subject Properties with the current and the former Jones County Commissioners, a significant omission given his own statement that the specific location of a property is an important and likely critical consideration when a county commission is weighing whether to grant a rezoning or conditional use permit. In preparing his reports, he did not communicate with Mr. Pitrowski, or any residents who resided on Highway 18 West near the Subject Properties or in the Tumbling Shoals residential neighborhood, which is close to the JSS Property. Although Mr. Black was aware of the 2006 conditional use permit denial for A Mining Group, he did not address it in the Black Reports as a potential risk to rezoning the Subject Properties or attempt to differentiate the characteristics of that property from the Subject Properties. Finally, Mr. Black does not have experience rezoning property in Jones County, although he has experience with rezoning and surface mine permitting in nearby counties. In short, the absence of underlying data and reasoned analysis

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[104] A Mining Group unsuccessfully appealed the Jones County Commission's denial of a conditional use permit to operate a granite mine.

[*119] in the Black Reports to support their conclusions renders them of little value.[105]

iii. *Changes to Land Use Policy and Public Sentiment*

Finally, we think it is notable that the Jones County Commission and public sentiment appear to have turned negative towards mining. The two existing mines in Jones County began operations before Jones County adopted its first zoning ordinance in 1970. Both were located in southern Jones County with other industrial land uses. Since at least 1996, no rezonings have been applied for in Jones County, and no rezonings have been approved by the Jones County Commission, for a proposed brand-new granite mine. A Mining Group's denied application for a conditional use permit for a proposed brand-new granite mine was the only conditional use permit applied for since 1996.

On May 2, 2006, the Jones County Commission amended the Zoning Ordinance by a unanimous vote, to remove mining as a conditional use in the AG–1 zoning district. Members of the general public filed the application for an amendment to the Zoning Ordinance. Residents who lived near the Subject Properties, including those in the Tumbling Shoals residential neighborhood, testified that they would have been publicly opposed to a granite mine being built on either of the Subject Properties. They were concerned about dust, noise, the lights at nighttime, and increased heavy truck traffic on nearby roads, including Highway 18 West. These residents testified that they would have spoken in opposition to a granite mine at a public meeting. It appears to us that mining had become a disfavored land use to members of the public and the Jones County Commission. These facts further support our conclusion that petitioners failed to meet their burden to prove that it was reasonably probable that Subject Properties could be rezoned and receive a conditional use permit.[106]

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[105] Petitioners also rely on Mr. Wick to support their legally permissible argument. In the Wick Reports, Mr. Wick stated that there were no impediments to timely receipt of regulatory permits and approvals that are required for operating a granite mine on either of the Subject Properties, but these statements were the result of his general assumptions and were not the product of his independent analysis of that issue.

[106] While public opposition to mining is not by itself a determinative factor on whether the proposed developments were legally permissible, it is a factor that influences whether the Jones County Commission would approve or deny a rezoning

[*120] iv. *Conclusion*

In 2016, mining was not a legally permissible use of either of the Subject Properties under their AG–1 zoning classification. Additionally, petitioners have not shown by a preponderance of the evidence that it was reasonably probable that the Subject Properties could be rezoned and receive a conditional use permit to operate a mine on either of the Subject Properties. As discussed *supra* Opinion Part IV.B.2.a.i, on the basis of the evidence in the record, it does not appear that the Zoning Ordinance standards as applied to petitioners' facts would readily support a rezoning or a conditional use permit. We cannot conclude, on the basis of the preponderance of the evidence, that it is reasonably probable that the Jones County Commission would have approved the rezoning or conditional use permit for either of the Subject Properties.

Moreover, the history of rezonings and conditional use permits in Jones County does not bridge that gap. The evidence shows that since 2000, Jones County has not approved a rezoning or a conditional use permit for a new mine, and in fact it has rejected the single instance where an applicant, A Mining Group, sought to open a new mine. Mr. Black's interviews with a current and former member of the Jones County Commission (but who were not members of the commission in 2016) where he did not provide them with the specific location of the Subject Properties, and his personal experience with rezonings in other counties, are insufficient to support the conclusions in the Black Reports that (1) the LLCs would have received a permit from the SMU and (2) the LLCs' rezoning application and conditional use permit likely would have been approved by the Jones County Commission. Finally, the actions of the general public and the Jones County Commission indicate that mining had become a disfavored land use. If JSS or JSN had submitted an application for rezoning or a conditional use permit, it would have been met with public opposition. Accordingly, petitioners have failed to carry their burden of proving that mining was a legally

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or conditional use. When combined with the other considerations previously discussed, it undermines petitioners' argument that it is reasonably probable that the Subject Properties could be rezoned and receive a conditional use permit. However, even if we did not consider public opposition to the proposed developments, the fact remains that petitioners did not have an unqualified legal right to develop the Subject Properties as mines. Petitioners' asserted HBU was not permitted under present law absent a rezoning and the issuance of a conditional use permit. *Cf. Symington*, 87 T.C. at 897 (holding that community opposition to subdivision of a property was not a consideration in determining whether the subdivision was a "probable use" for purposes of determining its HBU where such a subdivision was permitted under existing zoning laws).

[*121] permissible use of the Subject Properties.[107] However, even if we were to accept that the proposed mines were legally permissible, we determine below that they were not financially feasible.

b. *Whether the Proposed Developments Were Financially Feasible*

i. *Market Analysis*

Mr. Sheppard and Mr. Krasinski analyzed petitioners' asserted HBU of an aggregate mine on the Subject Properties. The Krasinski Review Reports state that the subsurface aggregate beneath the Subject Properties, biotite granite gneiss, is known to be abundant in Jones County and in this part of Georgia. The Sheppard Reports included information from the U.S. Geological Survey that corroborates this fact. Additionally, the Sheppard Reports analyzed surrounding land uses within the Subject Properties' primary market area, which he found were rural, residential, agricultural, and recreational. Mr. Sheppard also considered population data, the location of existing mineral suppliers near the hypothetical mines on the Subject Properties, aggregate demand from new housing construction in the Macon MSA, and demand from major infrastructure projects. In analyzing each of these items, he concluded that there was no market demand for increased aggregate supply and that any increases in demand would most likely have been met by the existing suppliers that were locationally advantaged over a hypothetical aggregate mine on either of the Subject Properties.

Mr. Sheppard observed that the hypothetical aggregate mine on either of the Subject Properties appears to be locationally disadvantaged relative to existing mines closer to demand sources. One of its potential competitors, Vulcan Macon, is 5 miles closer to I–75, has a more direct route to I–75, and has rail service. Another competitor, the Hanson-Monroe Quarry, is also very close to I–75 and supplies material to Bolingbrooke, Forsyth, and Macon. Because they are closer to I–75, both of these mines would have a locational advantage over a hypothetical aggregate mine on either of the Subject Properties. Moreover, most of the housing and commercial development in the Macon area is closer to

[107] We further note that, if petitioners' expert Mr. Echols was correct that there were G1 (Globally Critically Imperiled; five or fewer instances of it worldwide), G2 (Globally Imperiled; 6–20 instances of it worldwide), and G3 (Globally Vulnerable, 20–80 instances of it worldwide) areas on the Subject Properties, it would seem most unlikely that a mining permit would be approved.

[*122] both the Martin Ruby mine and the Vulcan Postell mine. Mr. Sheppard analyzed the location of a hypothetical mine on each of the Subject Properties relative to existing mines and used an aggregation database to calculate and map the 15-mile driving range from each of the existing mines that are near the Subject Properties. He paired this analysis with population and employment center data, as well as known or pending construction projects, to understand whether the market was served or underserved. His analysis indicated that most of the population centers were already served by existing supply and the unserved areas including the area to the north of the Subject Properties (i.e., the Piedmont Refuge) did not need aggregate products. He concluded that because of the Subject Properties' locational disadvantage relative to competitor mines, a buyer of either of the Subject Properties would anticipate capturing less than a pro rata share of the area's static aggregate demand.

In his report, Mr. Krasinski concluded that neither of the Subject Properties is unique and that numerous substitutes were available because (1) the "granite formation underlying this part of Georgia is fairly ubiquitous" and (2) there was a lack of similar market sales at the price per acre indicated by the Capps Reports. As a result, Mr. Krasinski opined that a DCF analysis was an inappropriate method to value the Subject Properties. Mr. Sheppard opined that each of the Subject Properties was an exploratory-stage mineral property because of the limited drilling and testing on the property, lack of mining entitlements (i.e., rezoning, conditional use permit, state mining permits), his observance of rock outcroppings on the property, and its proximity to an existing mine. Mr. Sheppard's report explained that exploratory-stage mineral properties are high risk. Like Mr. Krasinski, Mr. Sheppard opined that it is inappropriate to appraise an exploratory-stage mineral property, such as the Subject Properties, using a going-concern value such as a DCF analysis, because no business exists on the property.

We agree with Mr. Sheppard's and Mr. Krasinski's well-reasoned opinions and find that the HBU of each of the unencumbered Subject Properties was continued agricultural/residential/recreational use with knowledge of mineral on the site and opportunity to seek entitlements allowing mining. It was not reasonably probable that the Subject Properties would have been needed as aggregate mines in the reasonably near future. Additionally, as discussed below, we find significant flaws in the DCF analysis performed by petitioners' expert, and we conclude that the proposed mines were not financially feasible.

[*123] ii. *DCF Analysis*

Mr. Hayter performed a DCF analysis in which he concluded that a hypothetical aggregate mine could have produced aggregate over 26 years with a net present value of $19,840,000. Mr. Hayter's DCF analysis relied in part on the Capps Reports. Respondent's expert Mr. Krasinski identified errors in Mr. Hayter's DCF analysis including errors with respect to demand, production and sales projections, operating costs, and capital costs. Below, we examine some of the identified errors in Mr. Hayter's DCF analysis and the Capps Reports on which it relied.

a) *Demand, Production, and Sales*

The Hayter Appraisals and the Capps Reports focus on supply side data (to establish production estimates from hypothetical mines on the Subject Properties) and fail to objectively analyze demand for any additional aggregate. The Hayter Appraisals and the Capps Reports do not quantify supply and demand in the primary market area. Mr. Hayter, relying on the Capps Reports, estimated that annual demand for aggregate was 5,085,423 tons based on a population of 1,130,094 and a per capita demand rate of 4.5 tons. Mr. Hayter did not perform an analysis to estimate supply in the primary market area. The Krasinski Review Reports estimated that annual demand for aggregate was 6,065,139 tons based on a population of 1,161,904 and a per capita demand rate of 5.22 tons. In addition, the Krasinski Review Reports estimated that the primary market area had a primary supply of aggregate of 10,830,602 tons and a secondary market supply of 5,844,781 tons resulting in a total estimated supply of 16,675,383 tons.[108] After subtracting the estimated demand of 6,065,139 tons, he estimated that there was a market oversupply of 10,610,244 tons. Even if the secondary market supply is set aside and only primary market supply is considered, there is an estimated annual oversupply of 4,765,463 tons.

Mr. Hayter estimated that a hypothetical mine on each of the Subject Properties should sell about 500,000 tons of commercial grade granite aggregate and 100,000 tons of specialty product per year, on a stabilized basis. Mr. Hayter's DCF analysis projected that over the LOM, each mine would produce an estimated 13,135,793 tons of

[108] Mr. Krasinski defined the primary market for either of the Subject Properties as a radius of 50 miles and under and the secondary market as a radius of over 50 miles.

[*124] aggregate. Mr. Hayter's production estimate was based on two studies of other mines. The first study was of four aggregate mines in the eastern I–20 corridor that sold in the range of 450,000 to 550,000 tons per mine per year. The second study was of aggregate sales at several mines in north and central Georgia. Based on the second study, he estimated that a mine on each of the Subject Properties would sell about 450,000 to 800,000 tons once it reached stabilized operations. He also considered Dr. Capps's estimate that the hypothetical mine on each of the Subject Properties would sell 300,000 tons per year. After taking the various sales estimates into account, Mr. Hayter concluded that a hypothetical mine on each of the Subject Properties would sell about 500,000 tons of aggregate and 100,000 tons of specialty products per year.

The Hayter Appraisals' production estimate of 500,000 tons of aggregate per year appears to be based solely on the two studies of other mines, and Mr. Hayter did not provide any other explanation why his estimate significantly deviated from Dr. Capps's estimates of what could be sold. Moreover, as Dr. Capps explained, demand for aggregate is highly dependent on population growth and construction activity. Jones County residents and businesses would have been the potential customers of the increased aggregate supply from hypothetical aggregate mines on the Subject Properties. However, in 2016, Jones County had a population of approximately 28,500, and from 2010 through 2015, Jones County's population decreased by 0.6%. This population decline also undermines Mr. Hayter's estimate that each hypothetical mine on the Subject Properties would sell about 500,000 tons of aggregate and 100,000 tons of specialty products per year. We also think it unlikely that mines on the Subject Properties would capture sales in neighboring counties and population centers along the I–75 corridor because the Subject Properties were locationally disadvantaged relative to competitor mines with respect to these locations. "Where the asserted HBU of property is the extraction of minerals, the proponent must show the presence of minerals in commercially exploitable volumes and the existence of a market 'that would justify [mineral] extraction in the reasonably foreseeable future.'" *Excelsior Aggregates*, T.C. Memo. 2024-60, at *35 (first quoting *United States v. 69.1 Acres of Land*, 942 F.2d 290, 292 (4th Cir. 1991); and then citing *Cloverport Sand & Gravel Co. v. United States*, 6 Cl. Ct. 178, 198–99 (1984)). "There must be some objective support for the future demand, including volume and duration. Mere physical adaptability to a use does not establish a market." *United States v. Whitehurst*, 337 F.2d 765, 771–72 (4th Cir. 1964) (footnote omitted); *see also United States v. 494.10 Acres of Land*, 592 F.2d 1130,

[*125] 1132 (10th Cir. 1979) ("[I]f the 'future' is beyond or very much beyond the 'near future,' the use becomes speculative."). Mr. Hayter does not explain how the additional 1 million tons of aggregate and 200,000 tons of specialty product per year from the two hypothetical mines on the Subject Properties, could be absorbed by the already-oversupplied market.

The Wick Reports offer a potential solution, but we do not find it reasonable. The Wick Reports posited that the primary competitors to hypothetical mines on the Subject Properties are mines that are operated by Vulcan and Martin Marietta. Vulcan operates four of the six mines. The Wick Reports opined that JSS or JSN as a truck-only local supplier would capture 15% of the target local market over a five-year period and that the majority of their respective tonnage would displace Vulcan Postell and Martin Ruby. The Wick Reports stated that a hypothetical mine on either of the Subject Properties would have an advantage over the large rail mines Vulcan Postell and Martin Ruby for the Forsyth to McDonough I–75 growth corridor. Moreover, they posited that, because Vulcan Postell and Martin Ruby are predominantly rail focused, they would just ship their tonnage to Florida and markets to the south instead of selling it locally.

We think that Mr. Wick's projection regarding capturing market share from Vulcan Postell and Martin Ruby on the I–75 growth corridor is blindly optimistic. We disagree with his assessment that a hypothetical mine on each of the Subject Properties would have an advantage over Vulcan Postell and Martin Ruby. He ignored that there are other mines in the area that are closer and capable of serving these customers and markets. The Vulcan Macon quarry is closer to I–75 than the Subject Properties, and the Hanson-Monroe Quarry is also very close to I–75 and the latter already supplies material to Forsyth. Vulcan also operates two mines, one in Henry County and another in Spalding County, that would be locationally advantaged over hypothetical mines on the Subject Properties with respect to McDonough and the I–75 corridor south of McDonough towards Forsyth.

The Wick Reports also assumed that Vulcan Postell and Martin Ruby would simply shift their locally lost tonnage to rail and sell them in export markets in Florida or farther south. We do not think that it is reasonable to assume that Vulcan and Martin Marietta, which are both large publicly traded companies, would simply cede their local market sales to an upstart mine rather than lower their prices to compete and retain market share. Petitioners have not met their burden of proving

[*126] that the market could absorb anything close to Dr. Capps's reserve estimate of 20 million short tons of minable material or Mr. Hayter's production estimate of 13,135,793 tons per mine.

b) *Operating Costs*

The Hayter Appraisals understated operating costs and thereby artificially increased the net present value of each of the Subject Properties. Dr. Capps estimated a cost of $8.75 per ton for rock crushing, which was based on Colwell's quote.[109] The Hayter Appraisals reduced that cost to $7 per ton with an annual inflation rate of 2%.[110] Although Mr. Hayter noted that the Colwell quote did not include washing and finishing for $1.75 per ton nor drilling and shooting (which average $1.60 per ton), Mr. Hayter did not include these amounts in the DCF. Instead, Mr. Hayter included only $0.50 per ton allowance for washing and finishing without discussing why this cost was reduced by $1.25 per ton from the Colwell quote and did not include an allowance for drilling and shooting. Finally, Mr. Krasinski noted that Mr. Hayter used a below average 2% inflation rate for the entire project. According to Mr. Krasinski, the result of these adjustments is a 30% lower production cost than the Colwell quote and the production cost quoted by Dr. Capps. He explained that for each hypothetical mine this results in a $42,000,000 lower production cost over 26 years. Mr. Krasinski observed that if an $8.75 cost of harvest (as determined by Dr. Capps) is used in the Hayter DCF, the net present value for each of the Subject Properties would decrease by $10 million. We find that these understated costs are significant and that they undermine the credibility of Mr. Hayter's DCF analysis.

iii. *Conclusion*

On the basis of the record before us, we find that petitioners' appraiser overestimated annual sales of aggregate from each hypothetical mine on the Subject Properties and overstated their potential profitability. Based on the body of evidence presented, we conclude it is highly unlikely that each hypothetical mine would have sold 500,000 tons of commercial grade granite aggregate and 100,000

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[109] We note that the Capps Reports also likely underestimated operating costs. The Capps Reports omit rehandle costs, costs associated with loading customer trucks, and costs for weighing trucks.

[110] See *supra* note 60 for discussion of the Hayter Appraisals' input errors resulting in lower production costs than what is disclosed to the reader of the Hayter Appraisals.

[*127] tons of specialty products per year. Instead, we find that there is a substantial risk that production and sales estimates that Mr. Hayter and Dr. Capps used in their DCF analyses would not be realized. As we have discussed, aggregate is abundant in Jones County and in this part of Georgia. Before consideration of the additional aggregate supply that would have become available from the JSN and JSS Properties, there was a market oversupply of 4,765,463 tons. Moreover, customers and markets in population centers near the hypothetical mines were already being served by existing mines that were locationally advantaged over the Subject Properties. We find that Mr. Hayter's production figures were unreasonable.

Accordingly, we reject Mr. Hayter's conclusion that aggregate mining was the HBU of the Subject Properties. *See Ranch Springs, LLC*, 164 T.C., slip op. at 42–48 (finding the taxpayer's proposed HBU of limestone quarry was neither (1) legally permissible considering that rezoning the property was not reasonably probable because of community opposition, nor (2) financially feasible considering market demand that was already satisfied by existing supply from other mines); *Savannah Shoals*, T.C. Memo. 2024-35, at *39–41 (finding the taxpayer's proposed HBU of an aggregate mine was not financially feasible considering the market demand and existing supply); *cf. Excelsior Aggregates*, T.C. Memo. 2024-60, at *35–38 (finding the taxpayer's proposed HBU of an aggregate mine was not financially feasible considering the market demand, existing supply, volume of recoverable materials, pricing, capital costs, and the costs of extraction). Rather, the evidence supports Mr. Sheppard's determination that the HBU of the Subject Properties, before granting the easements, was continued agricultural/residential/recreational use with knowledge of mineral on the site and opportunity to seek entitlements allowing mining.

3. *Sales Comparison Methodology*

a. *"Before" Value*

i. *Mr. Sheppard's Comparables*

The Easement Properties at the time of the donations were each vacant, unimproved properties (except for the Jacksons' family home that was in the middle of the JSS Easement Property, i.e., surrounded by the JSS Easement Property on all sides, but was not owned by JSS or subject to the easement). For vacant, unimproved properties, the

[*128] sales comparison methodology is "generally the most reliable method of valuation." *Estate of Spruill*, 88 T.C. at 1229 n.24 (quoting *Estate of Rabe* 34 T.C.M. at 119). Given his HBU determination for these parcels, Mr. Sheppard searched for sales of relatively similar sites in Jones, Monroe, and Bibb Counties whose primary use would be agricultural/residential/recreational use with knowledge of mineral on the site and opportunity to seek entitlements allowing mining.

After considering 420 transactions in Jones, Monroe, and Bibb counties where property greater than 25 acres was sold between January 2015 and December 2017, Mr. Sheppard selected three properties as comparable,[111] one in Jones County and two in Monroe County. The sales occurred between March 2 and August 8, 2016, and involved properties ranging between 69 and 124 acres.[112] These properties were similar to the before-easement Subject Properties in their physical characteristics, zoning, and conditions of sale.

Comparable #1 was a 69-acre parcel in Monroe County that sold for $3,691 per acre in August 2016. The property is one mile southwest of the Vulcan Macon mine on Highway 23/87.

Comparable #2 was a 101-acre parcel in Jones County that sold for $3,974 per acre in April 2016. The property is 2.5 miles northwest of the Vulcan Lite-n-Tie mine.

Comparable #3 was a 124-acre parcel in Monroe County that sold for $3,439 per acre in March 2016. The property is two miles southwest of the Hanson-Monroe Quarry.

For these transactions, Mr. Sheppard analyzed various characteristics of the property sold, including parcel size, shape, location, natural amenities, zoning, access and visibility to roads and highways, positive or negative surrounding land uses and characteristics, floodplain areas on the parcel, differences in topography and grading, access to utilities, easements or restrictions, existing

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[111] Mr. Sheppard defined comparable as a narrowed subset of transactions which both are market-based and mirror the physical and legal characteristics of the Subject Properties.

[112] There were many reasons Mr. Sheppard did not consider the other properties as comparable to the Easement Properties, including that they were sold in potentially nonmarket transactions, government transactions, foreclosures, liquidations, or estate transactions or because they lacked similar characteristics to the Easement Properties.

[*129] infrastructure or improvements contributing towards the site's HBU, contamination, and existing known, proven, and marketable mineral reserves. He made adjustments for differences in access, natural amenities, and residential use considerations. On the basis of a qualitative analysis, he classified each property as inferior, similar, or superior to the Easement Properties.

Mr. Sheppard ranked Comparables #1 and #3 as similar and Comparable #2 as superior to the Easement Properties. He concluded that transactions involving Comparable #1 and Comparable #3 did not require any adjustments but that the market value of Comparable #2 required a downward adjustment of 10% because it was superior to the Subject Properties. After he made an adjustment to the market value of Comparable #2, the sales data indicated that each Easement Property had a range of $3,439 to $3,691 per acre. Mr. Sheppard then considered other transactions involving properties that he categorized as noncomparable and noted that many of the categories of these noncomparable properties exhibited sales per acre averages that affirmed the range of $3,439 to $3,691 per acre. He noted that, while the properties were not comparable to the Easement Properties, the data reflected graduated per-acre rates being paid for land that was of increasing quality, location, zoning, and HBU. Within the three-county area, he also considered the only two known transactions that included a known mineral operator as the buyer or seller. Those properties sold for $2,563 per acre for a depleted mineral site, and $4,738 per acre for a 573-acre operating quarry that Vulcan purchased from Aggregates USA as part of a 31-facility transaction. He further noted that there were two older sales in Jones County involving 172 and 609 acres of land with a similar level of exploratory information, without mining entitlements and without rail, that were purchased in December 2013 and December 2010 for $2,619 and $3,000 per acre, respectively. Outside of the three-county region, he examined a November 2018 transaction in Butts County. The property was a large, agriculturally zoned site that lacked rail but was proposed for mining, which sold for $2,100 per acre. Mr. Sheppard noted that this property was larger than each Easement Property and farther from the interstate, but that it had a lower overburden removal cost and lacked each Easement Property's nearby competitive supply. Mr. Sheppard noted that, despite better overall market conditions in 2018 and large obvious rock outcroppings indicating potential subsurface minerals, the property transacted for only $2,100 per acre. On the basis of these facts and the sales data, he determined each of the Easement Properties to have a rounded "before" value of $3,500 per acre (or $1,010,000 in the case of the JSS Easement

[*130] Property, and $885,000 in the case of the JSN Easement Property) as of December 15, 2016.[113]

ii. *Mr. Hayter's Comparables*

On the other hand, Mr. Hayter's "before" value conclusion is based on the use of a DCF analysis and sales data from four mining properties that he deemed comparable to the Easement Properties. Three of the comparables were in Clayton County and Hall County, and one was in Talladega County, Alabama. All of the selected comparable mining properties were either working mines with long operating histories, or in one case, an expansion purchase of property that was adjacent to a working mine that had a long operating history. The range of prices per acre for the comparables was $12,575 to $133,929. On the basis of these sales and his DCF analysis, he determined the JSS Easement Property to have a "before" value of $68,870 per acre as of December 15, 2016. Additionally, he determined the JSN Easement Property to have a "before" value of $76,545 per acre as of December 15, 2016. Petitioners' primary argument against Mr. Sheppard's comparables is that they do not account for the mining HBU and ignore the presence and value of the subsurface mineral on the Easement Properties.

We reject Mr. Hayter's selected comparables because we have already determined that aggregate mining was not the HBU of the Easement Properties. However, even if we were to accept petitioners' asserted HBU of aggregate mining, Mr. Hayter's comparables do not share the same attributes or level of exploratory information regarding the subsurface mineral as the Easement Properties. As Mr. Sheppard explained, mineral properties can be categorized in descending order of risk and ascending order of value as exploration-stage, entitlement stage, pre-mining development stage, or mining stage. He further explained that as a landowner discovers information about the mineral quantity and quality, and market demand, and then seeks mining entitlements (zoning approvals and permits), the overall risk decreases and value increases. Mr. Hayter's comparables were working mines and an expansion purchase of a working mine. Consequently, the market for these properties had a significant amount of information related to the subsurface mineral properties that is not on par with the limited

[113] The Jones County Tax Commissioner assessed the 2017 FMV of the two parcels making up the JSN Property at $454,379 and $99,228, respectively. The Jones County Tax Commissioner assessed the 2017 FMV of the two parcels making up the JSS Property at $95,000 and $507,592, respectively.

[*131] information that was available for the Easement Properties. The four properties that Mr. Hayter selected as comparables had already navigated the descending risk and ascending value continuum because the operating mines were in the mining stage and the expansion purchase of property that was adjacent to a working mine likely had considerably less risk than an exploratory-stage property such as the Easement Properties.

Mr. Hayter did not provide information to support his view that mine operators would pay $68,870, or $76,545 per acre, for a vacant parcel of raw land, that had very limited drilling on it, and that lacked mining entitlements. Mr. Sheppard explained that "as evidence of feasibility increases, risks decrease, and value subsequently increases." This suggests that the price per acre for Mr. Hayter's comparables was the result of the value generation from exploring, drilling, securing mining entitlements, and then operating a mine, and not for the raw land itself. Finally, we note that Mr. Hayter did not provide information regarding market conditions in the counties where his comparables were located nor any analysis of how they were similar to, or different from, Jones County.

iii. *Mr. Krasinski's Research*

We note that Mr. Krasinski researched sales in the local market area and found 25 similar recent vacant land sales that were primarily located on the same geologic formation as the Easement Properties.[114] The values of these 25 sales ranged from $985 per acre to $4,283 per acre, with an average sale price of $2,637 per acre and a median sale price of $2,350 per acre. We agree with Mr. Krasinski that these market sales and the fact that they did not transact at the unit value indicated by the Capps Reports is an indication that the market does not treat the Easement Properties differently from other vacant land with similar attributes in the local area. This conclusion is also emphasized by the principle of substitution, i.e., that "a prudent man will pay no more for a given property than he would for a similar property." *Mill Road*, T.C. Memo. 2023-129, at *51 n.30 (quoting *Estate of Rabe*, 34 T.C.M. (CCH)

[114] Mr. Krasinski limited his search and analysis to sales of properties over 30 acres that occurred within Jones County over the two years directly preceding the valuation date.

[*132] at 119). We also agree with Mr. Krasinski that this should have been an indication to Mr. Hayter that a DCF analysis was inapt.[115]

iv. *Conclusion*

Our analysis and conclusions above are also supported by the Jackson-Wingate Agreement, which contemplated that the Jackson Family Partnership would receive $2 million ($1 million for each of JSS and JSN) in exchange for its interest in the securities of JSS and JSN. The LLCs' only assets were the JSS Property and the JSN Property. Mr. Jackson's agreement to sell 95% of the Jacksons' interests in JSS and JSN to petitioners for $1 million in the Jackson-Wingate Agreement indicates that he valued the 288-acre JSS Easement Property at $3,472 per acre and the 253-acre JSN Easement Property at $3,952 per acre. *See TOT Prop. Holdings, LLC v. Commissioner*, 1 F.4th 1354, 1371 (11th Cir. 2021) (holding that the sale price for a 98.99% interest in a partnership, whose only meaningful asset was property on which an easement was granted shortly thereafter, was representative of the "before" value of the property). Even if we were to consider that the Jackson Family Partnership ultimately received $2.5 million ($1.25 million for each of JSS and JSN) for their interests in the LLCs, that indicates that the JSS Easement Property was valued at $4,340 per acre, and the JSN Easement Property was valued at $4,941 per acre. These figures are much closer to Mr. Sheppard's "before" value range than Mr. Hayter's determination of the "before" value.

The substitute price for vacant land in and around Jones County reveals that petitioners' "before" values[116] of $19,840,000 in the case of JSS and $19,360,000 in the case of JSN are formed on the basis that a market participant would value the property according to its potential future cashflow if it were to operate for 26 years as a mine, and not according to the basis of the underlying property. *Cf. Buckelew Farm*, T.C. Memo. 2024-52, at *55. We agree with Mr. Krasinski's and Mr. Sheppard's opinions that a market participant would view the property as a large vacant land parcel with a claimed mineral asset or an exploratory-stage mineral property. No rational buyer would pay $68,870 per acre in the case of JSS, or $76,545 per acre in the case of

[115] We note that the $2,350 per acre median sale price of the market sales closely corresponds with the 2013 Appraisal that Mr. Jackson received from Mr. Stroup. The 2013 Appraisal appraised 200 acres of the Jackson Family Partnership land as having an FMV of $460,000, or $2,300 per acre, as of July 25, 2013.

[116] The "before" values for JSS and JSN are inaccurate and inflated because of the errors we discussed in petitioners' DCF analyses.

[*133] JSN,[117] to obtain raw land that market sales data indicates has a value range of $3,439 to $3,691 per acre simply because the raw land could, with the benefit of time, additional funds, zoning changes, mining expertise, and abundant market demand for its product, be transformed into an operating, successful mine. The premium is in the know-how of the people, not the land. As we have explained above, aggregate is abundant in Jones County and in this part of Georgia and market transaction data does not indicate that buyers are paying a premium for vacant land that has an underlying mineral asset. *Cf. id.* at *55–56. Petitioners have not demonstrated that a prospective buyer seeking to operate an aggregate mine would pay a market premium for either of the Easement Properties over one of the available substitute properties.

Under Treasury Regulation § 1.170A-14(h)(3)(ii) we must make "an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed." For the reasons discussed above, we find it unlikely that the Easement Properties would have been developed as aggregate mines, and that the probability that they would have been developed at a sale price of $19,840,000 in the case of JSS, or $19,360,000 in the case of JSN, is highly unlikely, at best.

As a result, we find respondent's expert Mr. Sheppard's rounded "before" value of $3,500 per acre or $1,010,000 in the case of JSS, and $885,000 in the case of JSN, which was based on comparable vacant property sales, to be the proper value of the JSS Easement Property and the JSN Easement Property, respectively, and adopt them as such.

b. *"After" Value*

The parties presented conflicting expert reports on the "after" value of the Easement Properties. Petitioners' expert Mr. Clanton opined that the rounded "after" value of the JSS Property was $420,000 comprising the value of the JSS Easement Property, $370,000, and the value of the excluded tract, $50,000. He also opined that the rounded "after" value of the JSN Property was $350,000 comprising the value of the JSN Easement Property, $300,000, and the value of the excluded tract, $50,000.

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[117] These appraisals are also significantly higher than $4,738 per acre, which was the most a known mineral operator paid for a property greater than 25 acres containing an operating quarry between January 1, 2015, and December 31, 2017, in the three-county area.

[*134] Respondent's expert, Mr. Sheppard, opined that the rounded "after" value of the JSS Easement Property was $550,000. He also opined that the rounded "after" value of the JSN Easement Property was $480,000. Mr. Sheppard did not opine as to the "after" value of the excluded tracts.[118] He noted that there was no reliable market evidence that supported a value enhancement for the excluded tracts as a result of the easements.

Both Mr. Clanton and Mr. Sheppard selected comparables that were of similar size, restriction, zoning, conditions, encumbrance, HBU, and sale date to the Easement Properties. The experts did not select any of the same comparable properties. We note that Mr. Clanton's comparables were more widely dispersed throughout Georgia while Mr. Sheppard's were in counties that were closer to the Easement Properties. For instance, one of Mr. Clanton's comparables was in Walker County, which is in the northwest corner of the state, while another was in Chatham County, which is on Georgia's Atlantic coast and includes the City of Savannah. As discussed above, we adopted Mr. Sheppard's analysis and well-reasoned opinion on the "before" value, and do so again here with respect to the "after" value. The only difference that we can discern in the reports is the experts' selection of different comparable properties and the fact that Mr. Clanton's comparables were more geographically dispersed throughout Georgia.

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[118] We do not find it significant that Mr. Sheppard valued only the Easement Properties and not the tracts that were excluded from the Conservation Easements. Mr. Sheppard found no reliable market evidence that supported value enhancement on the excluded tracts. He analyzed several hundred transactions in the three-county region and did not find any clear evidence that the excluded tracts would benefit from the donations of the conservation easements on the Easement Properties. Additionally, the Subject Properties are already near a large, protected area to the north (i.e., the Piedmont Refuge), and the excluded tracts are large enough to provide the flexibility of where to host one or two homes to mitigate views of neighboring homes. In other words, in his view the before and after values of the excluded tracts did not change, and thus would not affect the before and after value of the Easement Properties. We find Mr. Sheppard's reports and testimony credible as to the absence of value enhancement of the excluded tracts and adopt it as fact. We are tasked with determining the value of the easement, which is equal to the "before" value of the property before the granting of the easement minus the "after" value. This inquiry is focused on the before and after values of the portion of each property that was encumbered by the easement. We conclude that the unencumbered portions of the Subject Properties did not have their value enhanced because they were next to the encumbered portions.

[*135] We think that this is the cause of the differing value ranges and the concluded "after" values in the reports.[119]

As a result, we find respondent's expert Mr. Sheppard's rounded "after" values of $1,900 per acre or $550,000 for the JSS Easement Property, and $1,900 per acre or $480,000 for the JSN Easement Property, which were based on comparable vacant property sales that were each encumbered by a conservation easement, to be the proper "after" value for each of the JSS Easement Property and the JSN Easement Property and adopt them as such.

c. *FMV of the Easements*

As discussed *supra* Opinion Part IV.B.3.a.iv, we found that the rounded "before" values of the JSS Easement Property and the JSN Easement Property were $1,010,000 and $885,000, respectively. Additionally, in Opinion Part IV.B.3.b, we found that the rounded "after" values of the JSS Easement Property and the JSN Easement Property were $550,000 and $480,000, respectively. Accordingly, the JSS Conservation Easement and the JSN Conservation Easement had FMVs on the Donation Date of $460,000 and $405,000, respectively.

V. *Limiting the Charitable Contribution Deduction to JSS's Basis*[120]

A. *The Parties' Arguments*

Respondent makes several alternative arguments to limit any charitable contribution deduction from the JSS Easement Property donation to basis under section 170(e). Respondent first argues that the Jacksons (save Mr. Jackson) were not bona fide partners in JSS and therefore, JSS was a single-member LLC owned solely by the Jackson Family Partnership or Mr. Jackson as the sole member, until JS Investments purchased interests in JSS in December 2016. The argument continues that, because JSS was a single-member LLC, JS Investments did not receive a tacked holding period in their partnership interests in JSS under section 1223(1) and therefore, JS Investments' share of JSS's charitable contribution deduction is limited under section 170(e). Respondent also argues that, because Mr. Jackson or the Jackson

[119] We note that petitioners have not identified any flaws in Mr. Sheppard's reports that would cause us to question his "after" value opinions.

[120] Because we concluded *supra* Opinion Part II.B and C that JSN is not entitled to any charitable contribution deduction, our discussion of respondent's arguments limiting the deduction to basis is focused solely on JSS.

[*136] Family Partnership was the sole member of JSS before JS Investments' purchase of interests in JSS, Revenue Ruling 99-5, 1991-1 C.B. 434, applies. Respondent argues that under the rationale in Revenue Ruling 99-5, JS Investments' purchase of interests in JSS is treated as the purchase of a 95% interest in JSS's asset (i.e., the JSS Property). The argument continues that JS Investments is then treated as contributing its 95% interest in the land to JSS. As a result, JSS's holding period with respect to 95% of the interest begins on the date of purchase and was a short-term holding period as of the Donation Date. Finally, respondent argues in the alternative that JS Investments was never a bona fide partner in JSS and therefore any charitable contribution deductions should be allocated solely to the Jacksons.[121]

Petitioner JS Investments argues that section 170(e) is a new issue that is not properly before the Court because respondent did not raise it in the FPAA or in respondent's Answer and respondent did not seek to amend his Answer. Additionally, petitioner JS Investments argues that respondent's Answer admits that JSS was an LLC treated as a partnership for U.S. federal income tax purposes. JS Investments further argues that respondent stipulated that, along with Mr. Jackson, Mrs. Jackson and the Jackson children were the original members of JSS and that following the sale, they, along with JS Investments, held membership units in JSS. Finally, petitioner JS Investments argues that respondent should be bound by his stipulations or alternatively, respondent should bear the burden of proof on the new issue.

B. *Analysis*

Petitioner JS Investments is correct that respondent did not raise section 170(e) in the FPAA or in the pleadings. Rather, respondent first raised section 170(e) in his Pretrial Memorandum. Respondent bears the burden of proof with respect to any "new matter" he raises. *See*

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[121] Respondent also argues that the Jackson Family Partnership never transferred the benefits and burdens of ownership of the JSS Property to JSS and therefore any charitable contribution deduction should be allocated solely to the Jackson Family Partnership. In *Grodt & McKay Realty, Inc. v. Commissioner*, 77 T.C. 1221, 1237–38 (1981), we analyzed whether a purported sale constituted a transfer of ownership for tax purposes by examining through a multifactor test whether the benefits and burdens of ownership passed from the putative seller to the putative buyer. We agree with petitioner JS Investments that the test is inapplicable here as the Jacksons (through their individual interests in the Jackson Family Partnership) contributed the JSS Property to JSS in exchange for partnership interests in JSS. Thus, the transaction is properly treated as a contribution under section 721(a) and not a sale to which the benefits and burdens test applies.

[*137] Rule 142(a)(1). He will be considered to have raised a "new matter" when the basis or theory upon which he relies was not stated in the Notice of Deficiency and the new theory or basis requires the presentation of different evidence. *Shea v. Commissioner*, 112 T.C. 183, 197 (1999). Respondent's FPAA advised JS Investments that JSS did not establish that it made a noncash charitable contribution for the 2016 tax year and that it failed to establish that it met all of the requirements of section 170 and the corresponding regulations. The general reference to section 170 in the FPAA is insufficient to put petitioner JS Investments on notice that respondent would argue that the deduction should be disallowed under section 170(e). Thus, section 170(e) is a new basis for disallowing the noncash charitable contribution deduction because it would require petitioner JS Investments to present evidence to establish that the Jacksons were bona fide partners in JSS and that JSS was a bona fide partnership. As a result, it is a "new matter" for which respondent bears the burden of proof. *See* Rule 142(a); *Shea*, 112 T.C. at 197.

Respondent's Answer admitted that JSS was an LLC treated as a partnership for federal income tax purposes. Respondent also stipulated as to the original and continuing membership interests in JSS. Specifically, respondent stipulated that Mr. Jackson, Mrs. Jackson, and the Jackson children were the original members of JSS and that after the donation of the JSS Conservation Easement, they continued to hold membership interests in JSS, along with JS Investments.

Respondent's Answer and the Stipulations establish that the parties agreed that (1) JSS was treated as a partnership for U.S. federal income tax purposes, (2) Mrs. Jackson and the Jackson children held membership interests in the partnership before the donation of the JSS Conservation Easement, and (3) Mrs. Jackson, the Jackson children, and JS Investments held membership interests in the partnership after the donation of the JSS Conservation Easement. Respondent's section 170(e) arguments that attempt to challenge whether JSS was a partnership, and whether Mrs. Jackson, the Jackson children, and JS Investments were bona fide partners of that partnership, is contrary to his Answer and Stipulations. We reject respondent's attempt to abandon his admission and the Stipulations. *See Cristo v. Commissioner*, T.C. Memo. 2017-239, at *11–12 (holding that the Commissioner was bound by parties' stipulation of facts), *aff'd*, 775 F. App'x 303 (9th Cir. 2019). Accordingly, respondent cannot meet his burden of proof on the section 170(e) "new matter" and the charitable contribution deduction from the JSS Easement Property is not limited to basis under section 170(e).

[*138] VI. *Penalties*[122]

The Code imposes a 20% penalty on "the portion of any underpayment [of tax] which is attributable to . . . [a]ny substantial valuation misstatement." § 6662(a), (b)(3). A misstatement is "substantial" if the value of the property claimed on a return is 150% or more of the correct amount. § 6662(e)(1)(A). The penalty is increased to 40% in the case of a "gross valuation misstatement." § 6662(h). A misstatement is "gross" if the value of property claimed on the return exceeds 200% of the correct amount. § 6662(h)(2)(A)(i).[123]

The value that JSS and JSN each claimed for the easements on their respective 2016 returns was $19,044,000. We have determined that the values of the JSS Conservation Easement and the JSN Conservation Easement were $460,000 and $405,000, respectively. The claimed value of the JSS Conservation Easement exceeded the correct value by $18,584,000 or 4,040%. The claimed value of the JSN

[122] In the FPAAs respondent asserted gross valuation misstatement penalties under section 6662(h), as well as asserting in the alternative substantial valuation misstatement penalties under section 6662(e)(1)(A), and accuracy-related penalties for an underpayment due to negligence or a substantial understatement of income tax under section 6662(a) and (b)(1) and (2). Only one section 6662 accuracy-related penalty may be imposed with respect to any given portion of an underpayment. Treas. Reg. § 1.6662-2(c). However, this Court has jurisdiction to readjust partnership items and the applicability of any penalty that relates to an adjustment to a partnership item. §§ 6221, 6226; *United States v. Woods*, 571 U.S. 31, 39–42 (2013). While there is thus no limitation on our authority to determine the applicability of more than one accuracy-related penalty at the partnership level, *Oconee Landing Prop., LLC*, T.C. Memo. 2024-73, at *3–4, we need not do so in this case with respect to JSS because we find a 40% gross valuation misstatement penalty under section 6662(h) applies to the entirety of the adjustment for JSS that is sustained in this Opinion. There is no reasonable cause exception for gross valuation misstatements of charitable contribution property. *See* § 6664(c); *Chandler v. Commissioner*, 142 T.C. 279, 293 (2014). Accordingly, we have not considered alternative 20% accuracy-related penalties in cases where a 40% penalty under section 6662(h) applies to the entirety of the sustained adjustment. *See, e.g.*, *Seabrook Prop., LLC v. Commissioner*, T.C. Memo. 2025-6, at *77 n.60; *Buckelew Farm*, T.C. Memo. 2024-52, at *61 n.27. We will not address the alternative 20% accuracy-related penalties further with respect to JSS because as discussed below, the 40% penalty under section 6662(h) applies to the entirety of the sustained adjustment. However, we will address the alternative 20% accuracy-related penalties with respect to JSN, as they may apply with respect to the portion of the underpayment to which the 40% gross valuation misstatement penalty does not apply. Finally, we do not address the substantial valuation misstatement penalties asserted against petitioners because all valuation misstatements in these cases are subject to the gross valuation misstatement penalty under section 6662(h).

[123] At trial in these cases the Court held that respondent met the requirements of section 6751(b).

[*139] Conservation Easement exceeded the correct value by $18,639,000 or 4,602%. The valuation misstatement for each of JSS and JSN was therefore both "substantial" and "gross."

Generally, an accuracy-related penalty is not imposed if the taxpayer demonstrates "reasonable cause" and shows that he "acted in good faith with respect to [the underpayment]." § 6664(c)(1). This defense may be available where a taxpayer makes a "substantial" valuation overstatement with respect to charitable contribution property. *See* § 6664(c)(3) (second sentence). But this defense is not available where the overstatement is "gross." *See* § 6664(c)(3) (first sentence). The 40% penalty thus applies to the entirety of JSS's underpayment, and to the portion of JSN's underpayment attributable to claiming a value for the JSN Conservation Easement in excess of $405,000.

Respondent also seeks a 20% penalty for an underpayment due to negligence or a substantial understatement of income tax. *See* § 6662(a) and (b)(1) and (2). This penalty applies to the portion of the underpayment that was not attributable to a valuation misstatement. *See Oconee Landing Prop., LLC*, T.C. Memo. 2024-73, at *1–2; *Plateau Holdings, LLC v. Commissioner*, T.C. Memo. 2021-133, at *2–3. In other words, the 20% penalty would apply to the portion of the underpayment resulting from our conclusions that JSN is not entitled to a charitable contribution deduction of $405,000 because (1) the JSN Baseline did not satisfy the requirements of Treasury Regulation § 1.170A-14(g)(5) and (2) petitioner JN Investments failed to establish that the JSN Conservation Easement was a contribution that was exclusively for conservation purposes as defined in section 170(h)(4). Because we have held that JSS is entitled to a deduction equal to the FMV of the conservation easement, $460,000, the 20% penalty for an underpayment due to negligence or substantial understatement of income tax does not apply to JSS.

The determination of an "underpayment" within the meaning of section 6662(a) cannot be made at the partnership level because partnerships do not pay tax. *Plateau Holdings*, T.C. Memo. 2021-133, at *4. However, we can determine at the partnership level the applicability of the penalty for negligence or substantial understatement of income tax. *See Dynamo*, 150 T.C. at 233; *Oconee Landing Prop., LLC*, T.C. Memo. 2024-73, at *3–4; *Plateau Holdings*, T.C. Memo. 2021-133, at *4.

[*140] The Code provides for an accuracy-related penalty equal to 20% of an underpayment attributable to a taxpayer's negligence or disregard of rules or regulations. § 6662(a) and (b)(1). The existence of negligence is determined at the partnership level. *See Oakbrook Land Holdings, LLC v. Commissioner*, T.C. Memo. 2020-54, at *41–42 (holding that the 20% penalty applies when a partnership takes a return position that is negligent); Treas. Reg. § 301.6221-1(c) (stating that assessment of any penalty that relates to the adjustment of a partnership item shall be based on partnership-level determinations). Negligence is strongly indicated where a taxpayer fails to make a reasonable attempt to ascertain the correctness of a deduction, credit, or exclusion on a return that would seem "too good to be true" under the circumstances to a reasonable and prudent person. Treas. Reg. § 1.6662-3(b)(1)(ii). An understatement of income tax is a "substantial understatement" if it exceeds the greater of 10% of the tax required to be shown on the return or $5,000. § 6662(d)(1)(A).

We agree with respondent that JSN's reporting position was "too good to be true" to a reasonable and prudent person. As discussed *supra* Findings of Fact Part IV.A, Mr. Wingate and his associates marketed the easement transactions to investors as producing a deduction of 4.5 to 1 on the prospective investors' investments. Aside from restating JSN's reliance on Mr. Hayter's and Mr. Edwards's appraisals, ORLT, and Mr. Winders, petitioner JN Investments does not point out what if anything JSN did to ascertain the correctness of the tax deduction. At the very least, JSN should have questioned the objectivity and conclusions of the advisors that were guiding and assisting with the transaction because they stood to financially benefit from the consummation of the transactions.

Additionally, where the tax benefits far exceeded the cost, the taxpayer had an obligation to make additional inquiries regarding the correctness of the deduction. *See Roberson v. Commissioner*, T.C. Memo. 1996-335, 72 T.C.M. (CCH) 180, 184 (holding that taxpayer was liable for negligence or intentional disregard of rules and regulations where third party leased to taxpayer a master recording worth $850,000 for $10,500, which generated an investment tax credit of $21,250) (citing *Allen v. Commissioner*, 925 F.2d 348, 353 (9th Cir. 1991), *aff'g* 92 T.C. 1 (1989)), *aff'd*, 142 F.3d 435 (6th Cir. 1998) (unpublished table decision); *Donahue v. Commissioner*, T.C. Memo. 1991-181, 61 T.C.M. (CCH) 2460, 2473 (holding that taxpayer was liable for negligence or intentional disregard of rules and regulations when tax deduction exceeded the amount invested by 50% because "[a] reasonably prudent person would

[*141] have asked a qualified tax advisor if th[e] windfall was not too good to be true"), *aff'd sub nom. Pasternak v. Commissioner*, 990 F.2d 893 (6th Cir. 1993). Here, those promised tax benefits of a 4.5 to 1 deduction on the prospective investors' investments were too good to be true to a reasonable and prudent person. The promised tax benefits that greatly exceeded the investment cost should have indicated to JSN that something was amiss and additional diligence was required. JSN had an obligation to take additional steps to ascertain the correctness of the deduction, and it failed to do so. Accordingly, JSN's underpayment of tax is attributable to negligence.[124]

The substantial understatement penalty is applicable as it relates to an adjustment to partnership items. § 6221; *VisionMonitor Software, LLC v. Commissioner*, T.C. Memo. 2014-182, at *16. Whether the understatement exceeds the threshold in section 6662(d)(1)(A) is a computational determination based on the partners' information. Treas. Reg. § 301.6221-1(c) and (d). Accordingly, we sustain the Commissioner's section 6662(b)(2) accuracy-related penalty on any portion of an underpayment of tax that is due to a substantial understatement of income tax. *See Triumph Mixed Use Invs. III, LLC v. Commissioner*, T.C. Memo. 2018-65, at *51–52.

The "reasonable cause" defense may be asserted against the negligence and substantial understatement penalties. The determination of reasonable cause is made on a case-by-case basis, taking into account all pertinent facts and circumstances. Treas. Reg. § 1.6664-4(b)(1). JN Investments bears the burden of proving that JSN had reasonable cause and acted in good faith with respect to the underpayment. *See Higbee v. Commissioner*, 116 T.C. 438, 449 (2001).

JN Investments asserts reliance on professional advice as the basis for its reasonable cause defense. *See* Treas. Reg. § 1.6664-4(b)(1). Reliance on the advice of a professional tax adviser may, but does not necessarily, establish reasonable cause and good faith. Treas. Reg. § 1.6664-4(b)(1), (c). A taxpayer must prove by a preponderance of the evidence three elements in order to show that reliance on advice was reasonable: "(1) The adviser was a competent professional who had

[124] "Once a partnership-level proceeding is final, the liability of the partners, if any, may be determined in a partner-level proceeding, which may involve a computational adjustment or a notice of deficiency." *Dynamo*, 150 T.C. at 233 (citing § 6230(a)). We note that the disposition of this partnership-level proceeding does not preclude a partner's raising a personal defense to penalties in that partner-level proceeding. *See id.* (citing Treas. Reg. § 301.6221-1(d)).

[*142] sufficient expertise to justify reliance, (2) the taxpayer provided necessary and accurate information to the adviser, and (3) the taxpayer actually relied in good faith on the adviser's judgment." *Neonatology Assocs., P.A. v. Commissioner*, 115 T.C. 43, 99 (2000), *aff'd*, 299 F.3d 221 (3d Cir. 2002); *Estate of Goldman v. Commissioner*, 112 T.C. 317, 324 (1999), *aff'd sub nom. Schutter v. Commissioner*, 242 F.3d 390 (10th Cir. 2000) (unpublished table decision). Additionally, reliance on representations by insiders, promoters, or offering materials, such as a PPM, is an inadequate defense to negligence. *See Pasternak v. Commissioner*, 990 F.2d at 903.

JN Investments contends that it relied upon multiple tax advisors for the transaction including Mr. Winders and his law firm Fisher Broyles. JN Investments further contends that Mr. Wingate sought and relied upon advice from Mr. Winders and Fisher Broyles and that Mr. Winders prepared documents, drafted the JN Investments PPM, provided legal advice, and answered questions related to the transaction. JN Investments also asserts that it received a tax opinion from Fisher Broyles, "which advised on the tax consequences of all aspects of the transactions, including the offering and purchase of membership units in JSN and JSS, and the conservation easement contributions." JN Investments states that Mr. Wingate conferred with counsel regarding the legal permissibility of the HBU of the properties and the possibility of rezoning and that counsel communicated with, and answered legal questions from, the advisors and appraisers during the due diligence process. Finally, JN Investments asserts that Mr. Wingate engaged accounting firm Robins Eskew to ensure that the transaction was properly reported.

JN Investments' arguments improperly conflate the actions and reliance of JSN with those purportedly taken by JN Investments. The penalties asserted relate to an adjustment to partnership items, and therefore the penalties and reasonable cause defenses are determined at the partnership level. *See* § 6226(f); *Woods*, 571 U.S. at 39–42. Thus, only JSN's reliance and actions are relevant for determining reasonable cause in this partnership-level proceeding, and not the actions of JN Investments, which was a partner in JSN and not JSN's manager at the relevant time.

Similarly, Mr. Wingate's alleged actions are also irrelevant in determining JSN's reasonable cause. We determine whether a company has exercised due diligence by looking at the actions of the company's manager. *Glade Creek Partner, LLC v. Commissioner*, No. 21-11251,

[*143] 2022 WL 3582113, at *6 (11th Cir. Aug. 22, 2022) (citing *Stobie Creek Investments LLC v. United States*, 608 F.3d 1366, 1380–83 (Fed. Cir. 2010)), *aff'g in part, vacating in part and remanding* T.C. Memo. 2020-148; *see also 106 Ltd. v. Commissioner*, 684 F.3d 84, 91–92 (D.C. Cir. 2012), *aff'g* 136 T.C. 67 (2011). Mr. Jackson was JSN's manager and TMP at all relevant times for the tax year at issue and thus only his actions are relevant to determining whether JSN acted with reasonable cause. Petitioner JN Investments does not identify any actions that Mr. Jackson took that would indicate JSN acted with reasonable cause. Instead, it relies on actions taken by or on behalf of JN Investments to establish reasonable cause. The record establishes that JSN did not (1) retain an attorney to advise on the JSN Conservation Easement transaction and (2) seek or receive a tax opinion letter from an attorney that provides a conclusion with respect to the tax issues related to the JSN Conservation Easement transaction.

Lastly, even if JSN relied on tax-related representations made by JN Investments or any individual or advisor who consulted with JN Investments such as Mr. Winders or Fisher Broyles, JSN's reliance was unreasonable. JN Investments has not demonstrated by a preponderance of the evidence that the three-prong test in *Neonatology Associates* has been satisfied. The documents that petitioner JN Investments points out as establishing reliance on a professional include the JN Investments PPM and the tax opinion letter from Fisher Broyles, JN Investments' law firm, which expressly state that they cannot be relied on for legal or tax advice and that investors should consult with their own legal or tax advisor. As discussed above, petitioner JN Investments' assertion of reliance on the PPM is an inadequate defense to negligence. *See Pasternak v. Commissioner*, 990 F.2d at 903.

The tax opinion letter specifically warned prospective investors: "PARTICIPANTS IN THE PROPOSED TRANSACTION WILL NOT BE ABLE TO RELY ON THIS OPINION TO ESTABLISH A REASONABLE BELIEF THAT THE TAX TREATMENT OF THE PROPOSED [JSN CONSERVATION EASEMENT] TRANSACTION WAS PROPER OR FOR ANY OTHER PENALTY PROTECTION PURPOSES." We do not see how JSN could have relied on the purported advisor's judgment when (1) the purported advisor expressly disclaimed that it provided any legal or tax advice regarding the transaction, and (2) JSN never retained or sought the advice of any other advisor. *See Barber v. Commissioner*, T.C. Memo. 2000-372, 80 T.C.M. (CCH) 810, 822–23 (holding that taxpayer did not establish reasonable cause where attorney's letter to taxpayer "was filled with so many qualifications,

[*144] reservations, and disclaimers, as to undermine any contention that the letter justified [the taxpayer's] reporting position"). Any such reliance that JSN now claims is unreasonable. Finally, we note that petitioner JN Investments has not presented evidence to show that the purported advisors had expertise to justify any reliance or that JSN provided all necessary and accurate information to the advisors. Accordingly, JN Investments has not met its burden of showing JSN's reasonable reliance on any advisor's advice. *See Higbee*, 116 T.C. at 449; Treas. Reg. § 1.6664-4(b)(1), (c).

Petitioner JN Investments also asserts that JSN acted in good faith. "The term 'good faith' has no precise definition but means, among other things, (1) an honest belief and (2) the intent to perform all lawful obligations." *Sampson v. Commissioner*, T.C. Memo. 2013-212, at *18 (citing *United States v. Hirschfeld*, 964 F.2d 318, 322 (4th Cir. 1992)). The decision as to whether the taxpayer acted with reasonable cause and in good faith depends upon all the pertinent facts and circumstances. *See* Treas. Reg. § 1.6664-4(b)(1). Relevant factors include the taxpayer's efforts to assess his proper tax liability, including the taxpayer's reasonable and good-faith reliance on the advice of a professional such as an accountant. *See id.* Further, an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge, and education of the taxpayer may indicate reasonable cause and good faith. *Higbee*, 116 T.C. at 449 (citing *Remy v. Commissioner*, T.C. Memo. 1997-72). The only assertions that petitioner JN Investments makes supporting its position that JSN acted in good faith is that (1) JSN relied on tax professionals to determine its proper tax liability and (2) JSN disclosed the easement donation on Form 8886, Reportable Transaction Disclosure Statement, and attached required forms to its return.

For the same reasons discussed above, we reject petitioner JN Investments' assertion that JSN acted in good faith because it relied on tax professionals to determine its proper tax liability. As we have already discussed, the Fisher Broyles tax opinion expressly disclaimed that it provided any legal or tax advice regarding the transaction and JSN did not retain or seek the advice of any other tax advisor with respect to the tax issues related to the JSN Conservation Easement transaction. JSN's asserted reliance on the advice of any individual or advisor who consulted with JN Investments such as Mr. Winders or Fisher Broyles was not reasonable. While disclosure on tax returns is a factor that is considered in determining reasonable cause and good faith, *see Rolfs v. Commissioner*, 135 T.C. 471, 496 (2010), *aff'd*, 668 F.3d 888

[*145] (7th Cir. 2012), JSN's disclosure on its return did not demonstrate good faith reliance because it did not retain or seek the advice of any tax professional to determine its proper tax liability. In other words, JSN did not have the intent to perform all lawful obligations relating to its tax return because it did not take efforts to assess the correctness of the deduction and its proper tax liability. Even if JSN relied on the purported advice that Mr. Winders or Fisher Broyles provided, we do not believe any such reliance was in good faith because the JN Investments PPM that was prepared for JN Investments and the tax opinion letter expressly state that they cannot be relied on for legal or tax advice. *See Barber*, 80 T.C.M. (CCH) at 822–23. This express disclaimer of advice cannot form the basis of JSN's good faith defense.

Because petitioner JN Investments has not met its burden of proving that JSN had reasonable cause for its reporting position, we sustain respondent's imposition of the accuracy-related penalties under section 6662(a) and (b)(1) and (2) for JSN's tax year ending December 31, 2016.

VII. *Conclusion*

In conclusion we hold that (1) the LLCs had the requisite donative intent for a charitable contribution under section 170(a)(1) and (c); (2) the charitable contribution deduction for the JSN Conservation Easement is disallowed because (a) the JN Investments Baseline failed to comply with Treasury Regulation § 1.170A-14(g)(5)(i), and (b) the JSN Conservation Easement donation did not satisfy the requirements of section 170(h) and therefore was not a qualified conservation contribution; (3) Mr. Hayter was a qualified appraiser and the Hayter Appraisals were qualified appraisals; (4) JSS's charitable contribution deduction under section 170 is not limited to basis under section 170(e); and (5) JSS is entitled to a charitable contribution deduction under section 170 of $460,000 for its donation of the JSS Conservation Easement to ORLT. Additionally, we hold that the 40% gross valuation misstatement penalty under section 6662(h) applies to the entirety of JSS's underpayment and to the portion of JSN's underpayment attributable to valuation misstatement; the 20% accuracy-related penalty for negligence or, in the alternative a substantial understatement, applies to the remainder of JSN's underpayment.

We have considered the parties' other arguments and, to the extent they are not discussed herein, find them to be irrelevant, moot, or without merit.

[*146] To reflect the foregoing,

Decisions will be entered under Rule 155.