Predetermination in the Federal Conservation Easement Campaign

A Review of the Government's Valuation Process and Qualifications

September 2026

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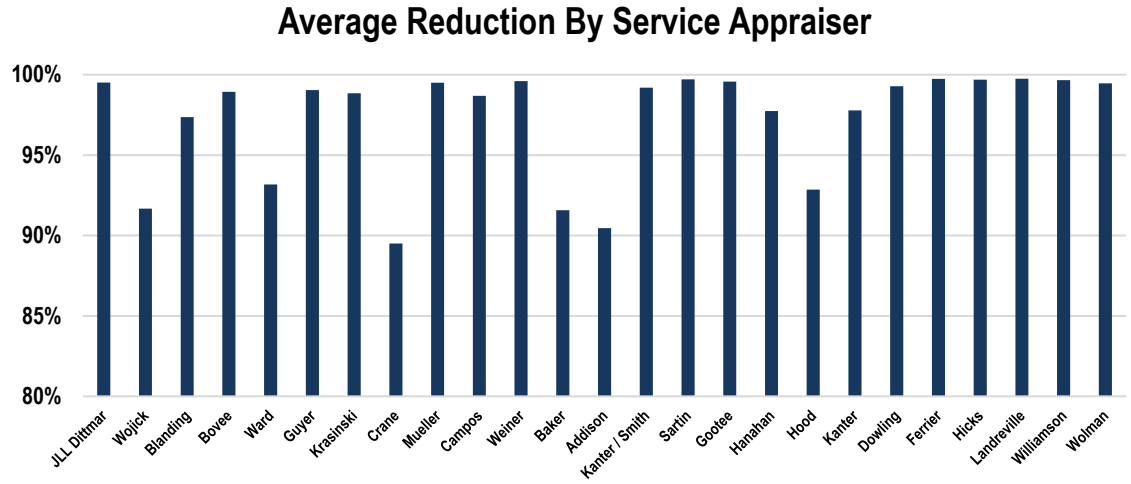
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EXECUTIVE SUMMARY

This report examines a single question. We ask whether the government's valuation position in conservation easement matters was settled as a matter of policy before it was tested against the facts of individual properties. The record we have assembled to date is consistent with that view, and in our judgment the pattern in the data is difficult to explain on another basis.

We have reviewed more than one hundred thirty Internal Revenue Service (the "Service") reviews with opinion of value ("ROV"), of which one hundred fifteen state both the taxpayer's appraised value and the value that the Service concluded to. Across those one hundred fifteen matters the reduction from the value claimed is approximately 97%. Reductions of 99% or more are common rather than exceptional. See Appendix A for detail on all reviewed ROVs. The review is ongoing.

What we believe is notable is not the size of any single reduction. It is the consistency. The result holds across asset types, across tax years, and across the people who signed the reports. The greater than one hundred matters have approximately thirty different appraisers, team or firm labels. A process that returns nearly the same answer regardless of what is being measured, and regardless of who is measuring it, does not appear to be measuring the property. The chart below shows the average reduction in value cited in the Review with Opinions of Value by reviewer/appraiser in connection with the Service:



See Appendix B for more details.

Section IV sets out a small sampling of specifics for the reader of this report. There are a significant number of additional similar issues being found in our review, which is ongoing.

We are careful about what this report does and does not establish. Nothing here demonstrates that any individual taxpayer appraisal was correct or incorrect. Those appraisals were not examined, and each matter deserves its own analysis. What the record does support, including the uniform 97% reduction in value, is that the government's figures were not developed in accordance with the standards the reports themselves invoke. The Service's August 2026 announcement recognized part of the problem when it ended uniform settlement terms. That change did not turn on any single matter. Case specific resolution, however, requires case specific valuation, and on this record and in this report that work has not yet been done.

I. Introduction: The Deduction, the Campaign, and the Current Posture

Section 170(h) of the Internal Revenue Code permits a charitable contribution deduction for the donation of a qualified real property interest to a qualified organization, exclusively for conservation purposes, granted in perpetuity. Where the interest contributed is a restriction on the use of real property, no market exists for the interest itself, and the deduction is therefore measured under the before and after method: the fair market value of the property unencumbered by the restriction, less its fair market value subject to the restriction. Treas. Reg. section 1.170A-14(h)(3)(i). The deduction therefore rests on the determination of fair market value, and within that determination it rests principally on the highest and best use assigned to the property in its unencumbered condition. That determination, rather than the conservation purpose or the sufficiency of the deed, accounts for the substantial majority of the litigation that followed.

Sponsors organized partnerships that acquired real property, obtained an appraisal supporting a development-based highest and best use, contributed a conservation easement, and allocated the resulting deduction to the partners. The Internal Revenue Service (the "Service") sought to designate these transactions as listed transactions with the issuance of Notice 2017-10. That Notice described marketing that offered investors a charitable contribution deduction of approximately two and one half times the amount invested. The ratio of deduction to investment, rather than the conservation outcome achieved, became the organizing objection.

The government responded in sequence over the following decade. Notice 2017-10 designated syndicated conservation easement transactions as listed transactions. The Notice was released December 23, 2016, and applied to transactions entered into on or after January 1, 2010. The Senate Finance Committee issued a bipartisan report in August 2020 concluding that the transactions operated as retail tax shelters. Congress then closed the structure prospectively in section 605 of the SECURE 2.0 Act of 2022, which added section 170(h)(7) and disallows a pass through entity level deduction exceeding two and one half times the partners' relevant basis, effective for contributions made after December 29, 2022.

The enforcement architecture did not survive intact. The Eleventh Circuit set aside the proceeds regulation for failure to respond to a significant comment in Hewitt v. Commissioner, 21 F.4th 1336 (11th Cir. 2021), while the Sixth Circuit sustained the same regulation in Oakbrook Land Holdings v. Commissioner, 28 F.4th 700 (6th Cir. 2022). The United States Tax Court held Notice 2017-10 itself unlawful for failure to observe notice and comment in Green Valley Investors, LLC v. Commissioner, 159 T.C. No. 5 (2022), after which Treasury re-designated the transactions by regulation. Each of those decisions turned on the adequacy of the government's process rather than on the merits of any valuation. They are the closest existing precedent for the inquiry undertaken here.

Closing the structure prospectively did not resolve the accumulated inventory. In announcing the terms of a time limited settlement opportunity on May 13, 2026, the Service reported approximately 1,100 conservation easement cases in process, of which roughly 740 were docketed in the Tax Court and approximately 400 remained in Examination. The docketed component alone represents a multi-year commitment of the trial calendar of a court that hears the national tax docket.

The May 2026 offer was uniform in its terms. For an initial 90-day period it allowed no charitable contribution deduction, allowed a deduction approximating out-of-pocket costs, and imposed a 10% gross valuation misstatement penalty, with no payment required at election. A 45-day extension carried the same terms at a

20% penalty. After one hundred and thirty-five days, settlement was available only on a hazards of litigation basis at approximately 5 to 7% of the claimed deduction with a 40% penalty.

The program did not run its course. It was withdrawn approximately three months after it was announced. The uniform terms rested on a stated average allowance of approximately 6% of the claimed deduction across litigated outcomes. That allowance is more than double what the reviews examined here concluded to. A reduction of approximately 97% leaves approximately 3% of the value claimed. The Service did not disclose the population of cases from which that average was drawn. Tried cases include a substantial number decided on technical grounds such as the deed, the baseline report or the Form 8283, in which no valuation was reached and the allowed deduction was nothing. Published analysis separating the decisions in which the Tax Court did reach a valuation, without first disposing of the case on a technical ground, identifies eighteen such valuations from 2009 through 2023 and reports that the court sustained approximately $100,689,468 of $123,285,175 claimed, or about 81%. The two figures measure different populations and are not directly comparable. Read together, they indicate that the 6% average describes the outcome of the government's technical arguments at least as much as it describes the valuation dispute, and that where valuation itself was tried the results have not supported a uniform schedule.

On August 19, 2026, the Service ended the uniform settlement program. It announced the establishment of an Office of Conservation Easements, stated that it would issue no further uniform settlement letters under the May 13, 2026 framework, and withdrew the deadlines previously announced, while providing that elections already made under that framework would remain in effect and be processed according to their terms. **The release stated that standardized, unsolicited settlement letters issued on a rolling basis are not well suited to the full range of easement cases, and that taxpayers with pending matters may continue to request settlement through their assigned representatives, with individual cases resolved on differing terms according to litigation hazards.** The release also stated that the announcement does not signal a new or more favorable standardized offer.

That announcement is the first statement by the Service that a single set of terms cannot resolve this inventory. It is not a statement that the valuations underlying those terms were wrong, and it is not treated as one here. The question this paper addresses is narrower.

In its May 13, 2026 release the Service stated that Tax Court decisions had allowed on average approximately 6% of the claimed deduction, and it priced the uniform settlement terms by reference to that figure. Whether that figure measures taxpayer overvaluation, measures the government's own valuation and litigation process, or reflects some combination of the two has never been separately estimated. The cases that produced it were selected by the government. The ROVs examined in this report were not the valuations presented in those cases, and nothing in this report is offered as a criticism of the expert work the Tax Court considered. They were then settled under a schedule derived from the resulting outcomes. Section II states that proposition as a testable hypothesis and sets out what the record shows. Sections III and IV present the statistical and case level evidence. Section V states the conclusions the evidence supports and those it does not.

II. The Predetermination Hypothesis

A. Statement of the hypothesis

The hypothesis examined in this report is that the government's position on conservation easement valuation was adopted as a policy conclusion before it was tested against case specific evidence, and that the administrative apparatus assembled afterward, comprising examination, contracted valuation, public communication, and settlement pricing, was structured in a manner capable of confirming that conclusion but not of disturbing it. The hypothesis is testable in different ways (see Sections III and IV for our further analysis of this as one way of testing this). We believe that the record perhaps details that an analytic position was developed within the government before the examination program was built; enforcement action timed to external advocacy rather than to the development of case evidence; categorical public characterization of the outcome before adjudication; constraints on the government's own valuation professionals that foreclose the approaches capable of supporting a higher value; and a settlement schedule priced from a sample the government itself assembled. If instead the position has been developed case by case, the record should show valuation instructions permitting every applicable approach, settlement terms differentiated by property characteristics and appraisal quality, case precedent in support of this on a case by case basis (see more on this later in our testing) and public statements that distinguish among cases. We believe that a reasonable person will conclude as we did, that there was predetermination or at least strong indications of such.

B. The timing of Notice 2017-10

Notice 2017-10 was released on December 23, 2016, effective on release, and reached transactions entered into on or after January 1, 2010. It was issued without notice and comment. An advocacy organization active in the field has stated in its own retrospective account that it issued guidance and policies concerning tax shelter schemes in August 2016 and that by October the Service had heeded its call for action. The significance of the sequence does not depend on the advocacy account, which requires verification. It rests on a judicial finding. In Green Valley Investors, LLC v. Commissioner, 159 T.C. No. 5 (2022), the Tax Court held that Notice 2017-10 was promulgated in violation of the Administrative Procedure Act and set it aside. The Court did not reach the merits of any valuation. It held that the government had imposed a disclosure regime, carrying penalties under sections 6707A and 6707 and reaching back six years, without observing the procedure that would have required it to consider contrary views before acting. That holding is an independent finding that the first step of the campaign was taken without a process capable of testing the conclusion it embodied, and it is strong verified support for the hypothesis in this section. The Service imposed that regime without the notice and comment procedure that would have required it to consider contrary views first, and it did so with respect to a deduction Congress had enacted.

C. The analytic position preceded the examination program

The published analytic case against conservation easement valuations was developed by a Treasury official during his tenure and released shortly after his departure. The acknowledgments to the published paper state that it was prepared, circulated, and submitted for publication while the author was a Department of the Treasury employee. The paper was published approximately five months after the Service issued Notice 2017-10, and its policy proposals correspond closely to the limitation Congress enacted in section 170(h)(7) five years later. The sequence establishes that a comprehensive position on the valuation question existed inside the government before the examination program that would test it. It does not, by itself, establish that the position was adopted uncritically. Two things are still missing, and we do not have them. The first is a

contemporaneous Service or Treasury document adopting the analysis as the basis for examination policy. The second is a record showing whether the examination program was designed to test the position or to apply it.

D. Public characterization of the outcome in advance of adjudication

Publicity is a legitimate compliance tool, and the Service has long used it. What distinguishes the record here is that the characterizations were categorical, that they addressed valuation questions rather than the disclosed abusive conduct alone, and that they continued across administrations while the underlying valuation disputes remained untried. Three items form the core of the record. The Service stated in a November 2019 news release that it would not stop in its pursuit of these transactions, and referred to criminal investigations, at a time when the civil valuation disputes had not been adjudicated. In September 2020, responding to a Senate inquiry, the Service listed outreach through press releases and conferences among the tools it was applying to these transactions, alongside examination and litigation. In May 2026, while previewing a nationwide settlement offer, the acting Chief Counsel stated that these are not close calls. The September 2020 statement is the most probative of the three because it is the government's own description of its own practice, made in writing to an oversight committee. It establishes that public characterization was an instrument of the program rather than a byproduct of it.

E. Methodological constraint on the government's own valuation work

The element of the record that bears most directly on method is the treatment of the income approach in the ROVs themselves. We take this from the ROVs and from nothing else. Standards Rule 1-4 of the Uniform Standards of Professional Appraisal Practice requires an appraiser to collect, verify, and analyze the information necessary for credible assignment results, and where an approach is applicable to the assignment it is to be developed. In the valuation of a large unentitled tract whose contended value derives from development potential, the sales comparison approach applied to comparable large tract sales will return an acreage based indication and will not test the development premise at all. An income approach is the analysis capable of testing that premise. Across the ROVs we read, that approach is repeatedly named as the correct method for the property in front of the reviewer and is not carried through to a conclusion. Section IV sets out those instances by name. The ROVs do not explain why the method was not performed, and we do not speculate. What can be observed from the ROVs themselves is the consequence: once that approach is set aside, the only sales left in the grid are farm sales, and the figure that results is the farm price.

F. Competing explanations

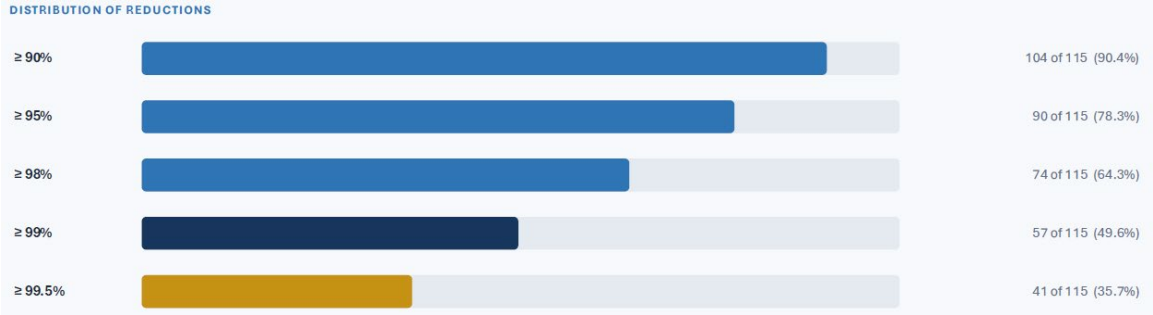
Three explanations can possibly compete with the hypothesis and we explain each as follows. The first is selection. The government tried its strongest cases first, and the test case procedure concentrated the weakest taxpayer positions in the published record. The litigated record does not support that account. In the decisions where the Tax Court reached a valuation rather than disposing of the case on a technical ground, it sustained approximately 81% of the value claimed. Taxpayers prevailed on the valuation question often enough that selection does not explain a set of reviews reducing the claimed value by approximately 97% on average. Selection may describe how the published record was assembled. It does not describe the ROVs, and an average drawn from tried cases cannot in any event price an untried inventory. The second is that the ROVs were prepared independently of one another. The response is that the ROVs, in our opinion, do not read that way. The same sentences, the same grids and the same three step structure appear across files written by different appraisers in different states, and Section IV sets out some of those instances by name.

Work produced independently on different bodies of evidence does not converge in that fashion. The third is the statutory ratio. Congress itself adopted a two and one half times basis limitation in section 170(h)(7), which reflects a legislative judgment that high ratios signal abuse. The response is that a prospective bright line rule adopted in 2022 is a policy choice about future transactions and is not evidence about the fair market value of any property contributed before it. Congress legislated prospectively, which is itself an indication that the prior law required valuation rather than a ratio test. The reviews are not explained by that limitation either. Section 170(h)(7) permits a deduction of up to two and one half times basis. The reviews do not conclude at that figure. Measured against the deduction to investment ratio the Notice describes, a conclusion at approximately 3% of the value claimed is a small fraction of what the statutory limitation would allow.

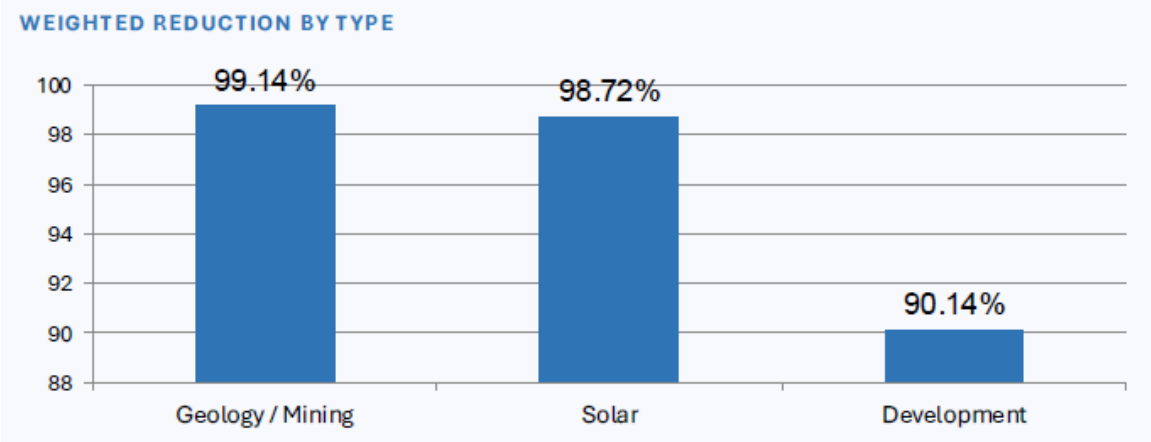
III. The Analysis and the Statistics

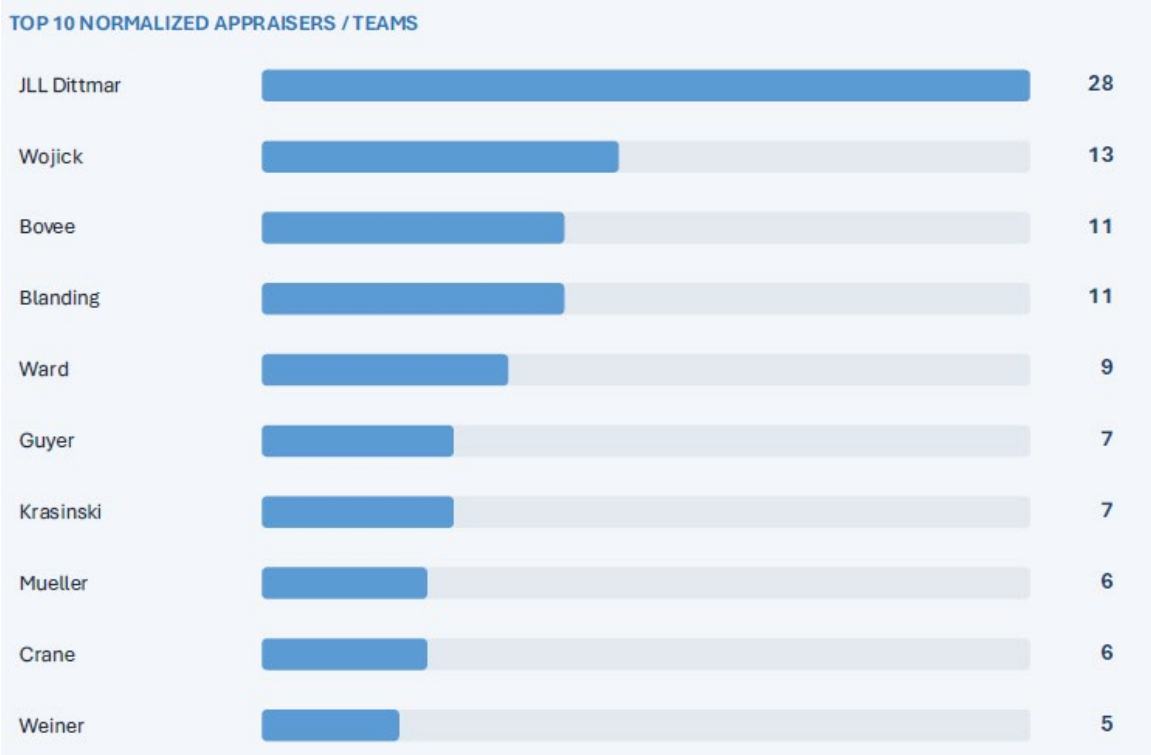
We believe that the Services position appears to have changed in August 2026. Within the space of a few days the Service withdrew the uniform schedule and established an office charged with case specific resolution and with working alongside Treasury on valuation integrity. We do not attribute it to any single matter. Those events opened the question this report examines. We have since conducted our own analysis of the government's valuation work in conservation easement matters, and this work is ongoing. The results are set out below, and they support the hypothesis stated above.

From the hypothesis, we turn to a more granular yet still high-level review of the numbers. In our view, the numbers speak for themselves. We have now analyzed more than one hundred ROVs issued by the Internal Revenue Service in conservation easement examinations. As of the drafting of this report the review is ongoing and additional ROVs are being received and analyzed. On average, across the ROVs analyzed to date, the Service position reflects a disallowance of greater than 95% of taxpayer valuations. That result is not produced by selecting a small number of favorable cases, and it is not a function of how the ROVs were assembled. It is drawn from a substantial number of ROVs across many asset classes, geographies, appraisers and fact patterns, and all of it points to the same outcome, a massive disallowance of taxpayer valuations. The charts and statistics that follow set out the detail.



The rate also does not move with the property or with the person writing the report. As of the drafting of this report, the over one hundred thirty different ROVs involved approximately thirty different appraisers, team or firm names, and none of them wrote more than 13% of the reports. A measurement that returns nearly the same answer across different properties, different years and different people does not measure the property, but rather reflects what appears to be a systemic approach to reaching valuation conclusions.





The observations that follow may not, on their face, present a problem. Some of them may. Across a sample of this size each is worth noting. A significant number of the ROVs were performed from a desk, meaning nobody went to the property. Every report in the population states adherence to the Uniform Standards of Professional Appraisal Practice ("USPAP"), and as set out later there are a number of instances in which the work appears to depart from that standard.

In summary, these results suggest a pattern. That the population is a sample, albeit a large one, assembled in the course of an ongoing review does not explain the pattern away. A set of files assembled without regard

to outcome would not be expected to return nearly the same reduction across different property types, different tax years and different appraisers.

In these ongoing reviews, and further supporting the hypothesis, is a body of work that suggests a predetermined course of action. These ROVs also indicate a body of work that at times departs from the standards the reports themselves invoke. The section that follows identifies some of the issues, with brief narratives on each, that support the hypothesis and some of those departures.

The standards the reports invoke

USPAP, the Uniform Standards of Professional Appraisal Practice, is the recognized professional standard for appraisal work in the United States. It sets obligations for competency, scope of work, investigation and credible results. It applies here because the Service appraisers invoked it. In 175 of the 178 ROVs, the appraiser attested that the work complied or conformed with USPAP.[1] That attestation is what makes USPAP the benchmark for judging the work, and it is the benchmark this report applies. We do not impose a standard on the Service. We measure the Service against the standard its own reports selected.

The record does not document the investigation that the attestation describes. A desk review is a review performed entirely from documents, without the reviewer going to the property. Of the 178 ROVs, 111, or 62.4%, were desk reviews; only 61 identify a site review by the Service appraiser, and six establish neither status. In the 102 geology matters, only 11 identify the technical specialist as holding a recognized professional qualification such as a licensed professional engineer or a registered professional geologist, one documents a visit to the subject property by that specialist, and none documents both. The attestation appears in nearly every file. The field work it describes frequently does not.

What appears in place of that investigation is set out in Section IV. In the Mattox matter it includes an individual relied on as the source on the granite market, with no interview notes, no date, no resume and no record of what he supplied; agents' meeting notes that the reviewer himself describes as generic and not property specific; and a bibliography whose granite entries are a 1989 tourism pamphlet written for schoolchildren and a 1977 article on the manufacture of memorials and headstones.[2]

None of this proves that any particular source was wrong, or that USPAP was violated in every matter. It shows that the reports invoke a standard without documenting the qualified, property-specific investigation that the standard requires before a reduction approaching complete disallowance can be called credible. The certification and the work behind it do not match.

The valuation work was purchased through a contracting chain

The Service did not staff this campaign with its own appraisers alone. A substantial share of it was bought. The contract vehicle was the Small Business Administration's 8(a) program, a set-aside for small disadvantaged businesses. The award was held by RER. RER did not perform the valuation work. It subcontracted the appraisal work to Jones Lang LaSalle. The chain is visible on the face of the files. In about

[1] Service ROV population schedule, Exhibit A.

[2] Mattox, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed September 7, 2021 by Lawrence Weiner, LB&I Engineering Group 1843, at scope of work and sources of information.

one in four of the matters in our files, the reviewer of record is not a Service appraiser but JLL RER, with a named signer behind it. Ten of those matters are set out in our schedule.[3]

Tiering of this kind moves the work without moving the responsibility. The 8(a) prime holds the contract and the small-business credential that won it. The subcontractor performs the work. The signer holds the appraisal license. No single layer holds all three. USPAP places competency and scope of work on the appraiser who signs the report, and delegation down a contracting chain does not move that obligation. The files do not document how the layers connect. They do not state what scope was passed down, what instructions accompanied it, or what review the prime performed of the subcontractor's qualifications and methods.

The taxpayer never sees the chain. He receives a review signed by a named appraiser. He does not receive the prime contract, the subcontract, the scope handed to each tier, or any instruction that traveled with it. He cannot test whether the signer selected the method or inherited it, or whether the analysis was performed by the person who signed it. Item 18 below shows what one such instruction looked like when it did appear on the face of a report.

IV. More Detail on a Selected Basis of Some of the Cases Above

Each of the matters below documents something that we believe the reader will find informative in support of this hypothesis. Some are a specific departure from how an appraisal is supposed to be developed, some are just simply interesting. Some are questionable. What follows are summaries, from the files we reviewed, and there are a significant number in excess of this as the overall review continues. Nearly every observation below is taken from a ROV in our files. These are examples, not the full list. Read together they show the same thing from different angles:

- development value withheld from a drilled and tested deposit until a permit issues;
- the one method that could actually measure the property's value thrown out;
- a reviewer who did the work correctly and then set his own number aside;
- a mining company's purchase price assumed away;
- a report whose contents describe a different property;
- a retained engineer's finding reversed in the ROV that attached it;
- a taxpayer appraiser's before value rejected as not credible while that same appraiser's after value was adopted to the dollar;
- another taxpayer's name left on the chart that states the conclusion;
- reports that decline to consider the subsurface and then place a value on it;
- a retained engineer's findings left out of the ROV that commissioned them;
- a probability written down and then not applied;
- a prior purchase price treated as controlling where it lowers the figure and ignored where it would raise it; and
- a conclusion recorded before the evidence existed, and a favorable internal review the taxpayer never saw.

No single case here proves the Service's value was wrong. Together they show examples of work whose conclusions do not trace back to anything in the file, trace back to contradictory information in the file, or to fail in adherence to cited appraisal standards.

[3] Exhibit C, matters in which the reviewer of record is JLL RER.

Observations on a Sampling of Forty ROVs

Of the more than one hundred and fifty ROVs, we sampled forty charitable donations of land in nine states. Twenty different lead appraisers signed them, working from at least ten Service engineering groups and one outside contractor. The properties had almost nothing in common. Thirty five carried a delineated resource: levee clay, frac sand, limestone, granite, silica sand, sandstone, or a utility scale solar site, most with boring logs, laboratory results, and mine or project plans in the file. Across the forty files the Service reduced the claimed value by approximately 98% in the aggregate. On the typical property it allowed less than one dollar of every hundred. Ten of the forty ROVs concluded at exactly $3,000 per acre. Twenty eight of the thirty five resource properties concluded between $2,000 and $4,000 per acre, without regard to the resource beneath them. Resource properties and solar sites alike were valued at approximately the price of neighboring farmland. Multiple different appraisers working independently on forty different bodies of evidence should not converge on the local farm price. Drilling data, laboratory results, permit histories, and royalty contracts vary enormously between properties. Conclusions drawn from them should vary. These did not. Several of these are detailed in the following narrative section.

Subsection 1 – Inadequate analysis of development potential and risk

1. Value withheld from a tested deposit until the permits are issued

Calcasieu Clay Property carried clay and sand deposits that had been drilled and laboratory tested. The Service reviewer stated the rule she applied outright. The property, she wrote, "has no additional value for the reported clay and sand on site until the permits are actually approved. Only then is the risk removed to say with enough certainty that it could without a doubt be developed as a clay and sand mine." Twenty eight pages later in the same ROV she quoted the governing regulation, which calls for an objective assessment of how immediate or remote the likelihood of development is. The two sentences cannot both govern. The regulation asks how likely development is, which is a question of degree. Neither the regulation nor the case law requires that a permit have issued before a mining use may be the highest and best use. The ROV answers a different question, whether development is certain, and answers it on the single fact that no permit had issued on the date of the donation. Applied consistently that standard would remove development value from every conservation easement, because an easement is granted at the stage where a use is planned and unbuilt rather than permitted and operating. We observe that the same ROV had in hand two operating quarries within a few miles on the same geology, a signed royalty agreement, and borings to one hundred feet, and that none of them changed the conclusion.

2. A reviewer who did the work, then set his own answer aside

In a solar matter, Dry Branch Solar[4], the reviewer was the one appraiser in the group whose credentials covered the asset class, including mineral estates, sand and gravel pits, limestone quarries and a 2022 course on the valuation of photovoltaic solar. He surveyed sales of land bought for utility scale solar in Georgia, built an installed cost survey from security deeds, tested capitalized land rent, and reached his own value under a solar highest and best use of $8,497 per acre.

However, in reaching the final figure this data was ignored and there was a reporting of $3,000 per acre as farmland, on the reasoning that only about 14% to 16% of queued Georgia projects reach operation. He did

[4] Dry Branch Solar, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed September 24, 2024.

not weight his solar value by that probability or discount it. He treated that probability as zero. This report does not adopt his solar figure; it points out the treatment. The point is that competence did not change the outcome, which means the outcome was not likely coming from the reviewer's analysis.

3. A probability written down, and then not applied

The Cole Creek ROV[5] states the governing rule in the reviewer's own words. "Moreover, the chance of approval is never 100%; therefore, market participants will make an allowance that takes into account the potential risk of failure. This is a critical step in the valuation process." The reviewer faults the taxpayer's appraiser for not performing that step. He then supplies the inputs himself: if the permits are not obtained the property reverts to agricultural or recreational use, and "Values for those two use classes are roughly between $5,000 to $12,000 per acre." No allowance was made. The ROV concluded a before value of $5,198 per acre. That is the bottom of the range the reviewer had just written down for the outcome in which every permit is denied. An allowance is a weight applied across two outcomes, and on the reviewer's own figures no weight produces the bottom of the failure case. This is similar to the item in 2 above, where the reviewer measured the completion rate at 14% to 16% and carried none of it into value. Standards Rule 1-4 requires the appraiser to analyze the information necessary for credible assignment results, and the report identifies that analysis as a critical step without performing it.

Subsection 2 – Inconsistent treatment and reconciliation of evidence

4. The Service's own engineer answered the zoning question, and the ROV recorded the opposite

Standing Rock Holdings, a conservation easement was donated December 20, 2019. The Service retained a mining engineer, whose thirty six page report is dated July 19, 2022. The engineer reported the county's own answer on zoning: the Greene County Building Official "stated that the zoning ordinances for A-1 lists mining as a conditional use, thus, mining is allowed at the Standing Rock Holdings subject property".[6] He reported that the granite met Georgia and South Carolina Department of Transportation specifications for public construction use. The ROV, signed August 9, 2022 with that report attached, states that "Mining is not a permitted use" and that mining "would require and change of use to Industrial zoning".[7] The certification states that "No significant real property appraisal assistance was provided anyone not signing this report". Where a retained specialist reports that a use is permitted and the ROV concludes that it is not, the record contains two inconsistent findings on the same question.

5. A taxpayer appraisal before value found not credible and the same taxpayer appraiser's after value adopted to the dollar

An easement deduction is the difference between the before value and the after value. In thirty two of the forty ROVs we read in full, the reviewer found the taxpayer's appraisal not credible as to the before value and then adopted that same appraiser's after value without change and without independent analysis.

[5] Cole Creek, L.P., Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed September 23, 2024 by Raymond H. Krasinski, MAI, AI-GRS, ASA, IFA, RAA, GAA, LB&I Engineering Group 1843.
[6] Standing Rock Holdings, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed August 9, 2022. The mining review quoted is bound into that same review file as an exhibit to the Form 886-A, dated July 19, 2022, at attachment pp. 13 to 14.
[7] Standing Rock Holdings ROV at p. 16.

- In Fenton Flats Property the ROV reduced the before value to $805,000 and accepted the taxpayer's after value of $535,000, leaving an easement of $270,000.[8]
- In Calcasieu Clay Property the before value became $708,000 and the taxpayer's $500,000 after value was accepted without analysis, leaving $208,000.
- In Standing Rock Holdings the before value became $927,000 and the taxpayer's $820,000 after value was adopted without change, leaving $107,000.
- In Anderson Pointe the before value became $371,585 against the taxpayer's $330,000 after value, leaving $41,585.
- In SW Pivot Quarry the before value became $543,000 against the taxpayer's $270,000 after value, leaving $273,000.
- In Goolsby Road the before value became $700,000 against a claimed $55,770,000, and the taxpayer's $330,000 after value was carried through unchanged.[9]
- The Deep Green Holdings ROV states the practice in terms: "I accept the Lucus Mason Report's 'after' value of $710,000 as the correct value of the subject property in the after analysis," two pages before concluding that the same report for the before value "is not credible or reliable for its intended use."[10]

We do not suggest that any of these after values were wrong, and we express no view on what the correct figures are. We observe only that the same appraiser's work was treated as unreliable for the figure that increases the deduction and accepted without ROV for the figure that reduces it, and that in the ROVs we examined the asymmetry runs in one direction.

6. A retained engineer's findings left out of the ROV that commissioned them – Ohoopee Holdings

In the Ohoopee Holdings ROV the Service's reviewer's retained mining engineer found the drilling adequate to estimate the mineable reserves, the sand within specification, the permits obtainable within six to twelve months, and the taxpayer's discount rate appropriate. The ROV never cites him. The reviewer then built his own discounted cash flow, using his own inputs, and reported a positive net present value. He wrote on the face of that table that a positive net present value is the test of financial feasibility in highest and best use, and concluded on the same page that the operation was not feasible. He concluded $2,206 per acre. Each step of that sequence is in one ROV, and the two statements sit on one page. Where a reviewer commissions an expert, receives findings that support the use, performs his own analysis, obtains a result that supports the use, and then reports the opposite, the conclusion is not being drawn from the work in the file.[11]

7. Inconsistencies in the application of prior purchase prices

When the donor had recently purchased the land and it supported a low value in the following two cases the purchase price became the answer:

[8] Fenton Flats Property, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed September 1, 2022 by Peter S. Crane, MAI, AI-GRS.
[9] Calcasieu Clay Property ROV, Standing Rock Holdings ROV, Anderson Pointe ROV, SW Pivot Quarry ROV and Goolsby Road ROV, each at its summary of value or reconciliation.
[10] Deep Green Holdings, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed January 25, 2021 by William D. Hood, LB&I Engineering Group 1866, at PDF pp. 14 and 16.
[11] Ohoopee Holdings, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, and the mining engineer's report bound into that review file.

- The Calcasieu Clay Property ROV states the reasoning: "Comparable 1 is the subject's prior parent sale at $2,919/acre. Since there is no data to indicate that the value of undeveloped acreage land has changed since the prior parent sale, Comparable 1 is the best indicator of value (as supported by case law – see scope of work)."[12] The ROV concluded $3,000 per acre, which is 1.03 times that price.
- The Sandwood Holdings and Woodland Ridge Property ROVs, by the same appraiser, reach their conclusions the same way, and the Barlan Properties ROV opens its grid with the parent purchase and concludes at 1.01 times the price.[13]

The same treatment is not given to a prior sale that points the other way. By contrast, in item 9 below there was a sale 8 days before the donation. It describes a 2,783 acre parent tract that sold to a limestone mining company for $5,642 per acre eight days before the donation, in a matter where the report prepared for the Service concluded $1,650 per acre. A prior sale analyzed for what changed between the purchase and the donation, the drilling, the testing and the planning, is evidence, and USPAP requires that analysis for that reason. A prior sale adopted in place of the analysis is a substitute for performing it. In the files we read, the prior sale is treated as controlling where it lowers the figure and as uninformative where it raises it.

Subsection 3 – Incomplete valuation methods and scope of work

8. The income approach declared irrelevant by an appraiser who builds the models

In three ROVs prepared by the same Service appraiser, covering Calcasieu Clay Property, Sandwood Holdings and Woodland Ridge Property, each report states that the income approach is not relevant to land, or that buyers in the market area do not use it. The same appraiser's qualifications page records that in prior bank employment she was responsible for creating discounted cash flow models and analyzing absorption for subdivisions, and for training associates in discounting methodology. That work is the subdivision development method, which is the income approach applied to land. The qualifications page records no experience in mining, minerals, quarries, sand, levee clay, frac sand, limestone, granite, silica sand, sand and gravel, sandstone, or a utility scale solar site, and no engineer or geologist was retained for any of the three ROVs. We draw no conclusion about intent. We observe only that once the income approach is set aside the remaining sales in the grid are farms, and the resulting figure is the farm price. [14]

Twenty seven of the forty ROVs name the income approach as the correct method for the property in front of them. Several name it repeatedly. Not one carries it to a conclusion. In each of those files the value was reached on comparable sales alone.

Many of the ROVs ran an income analysis and then set it aside, and in each the reviewer's own arithmetic produced a number well above the figure he certified. In Fenton Flats Property the reviewer reran the taxpayer's cash flow himself, reached $22,588 per acre, wrote a few pages later that there is no reason to conject hypothetical income, and concluded $3,000 per acre. In Ohoopee Holdings the reviewer recited the rule that a use producing a positive return is financially feasible, built his own cash flow, reached a positive present value and a price indication of $3,325 per acre, wrote on the same page that this clearly shows it is

[12] Calcasieu Clay Property ROV.

[13] Sandwood Holdings ROV, Woodland Ridge Property ROV and Barlan Properties ROV.

[14] Calcasieu Clay Property, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed September 7, 2023 by Mary E. Campos, MAI, SRA, AI-GRS, AI-RRS; Sandwood Holdings ROV, signed August 1, 2023 by the same appraiser; and Woodland Ridge Property ROV, signed by the same appraiser. Each at its highest and best use and approaches to value sections. The appraiser's statement of qualifications is appended to each of the three reviews.

not, and concluded $2,206 per acre. In Dry Branch Solar the reviewer capitalized solar ground rent to $9,524 per acre, called that figure consistent with the market for solar photovoltaic land sites, and concluded $3,000 per acre. We do not adopt any of those figures. We report them because each was produced by the reviewer's own hand, in his own file, and then left out of his conclusion.

9. A mining company's purchase price removed from the analysis by assumption

Silver Moss Properties. The property was appraised for the Service by an outside contractor.[15] It is zoned for mining, and the report acknowledges active and former sand and gravel mines nearby. Its own sales history records that the parent tract sold to a limestone mining company on December 20, 2017 for $5,642 per acre, and that two days later the subject was carved out and conveyed to the donor for $2,160 per acre. Both closed within days of the December 28 donation.

The Service's appraisers adopted an extraordinary assumption that they had specifically not considered revenues associated with a future mining operation, because they had not inspected the site and had not been provided with any information concerning subsurface mineral resources. The report was prepared for the agency holding the taxpayer's file, and does not say why that file was not provided. The concluded before value was $1,650 per acre (this figure is never reconciled to either sale), less than a third of what a mining company had paid for the ground around it the same week.

10. A report that declines to consider the subsurface and then places a value on it

Twenty-two of the forty ROVs we read carry a limiting condition stating that subsurface or mineral rights were not considered.

- Anderson Pointe ROV states it as condition six: "Subsurface rights (valuable minerals, coal, gold, uranium, oil and gas, etc.) were not considered in this ROV."
- SW Pivot Quarry ROV carries the more common form of the same sentence, that "Subsurface rights (mineral and oil) were not considered in making this appraisal, unless stated otherwise."[16]
- Goolsby Road and Paint Rock Farms ROV[17]s go further and assume that there are no mineral deposits, surface or subsurface rights of value involved.

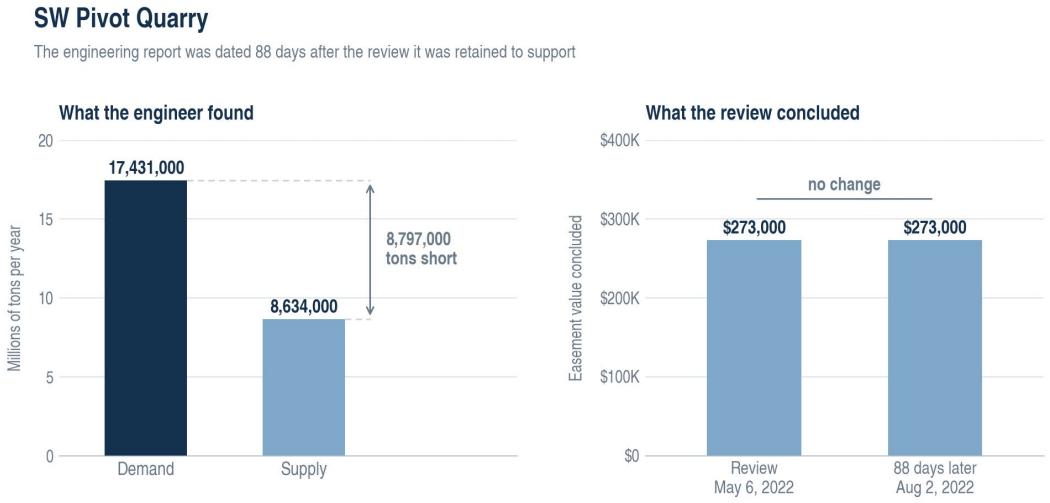
The condition is routine in an ordinary commercial appraisal, where nothing below the surface is in dispute. **In each of these files the deposit below the surface was the only thing in dispute.** A report cannot both decline to consider the subsurface and state an opinion of what the property is worth with the subsurface in it. Where the condition appears, the absence of any value for the resource is not a finding that the resource is worth nothing. It is a statement that the question was not reached. Standards Rule 1-2(h) permits an assumption of this kind only where its use still results in a credible analysis, a question the reports do not address where the element excluded was the only one in dispute.

[15] Silver Moss Properties, appraisal report prepared by JLL Valuation & Advisory Services, LLC for RER Solutions, Inc., date of report September 11, 2020.
[16] SW Pivot Quarry, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed May 6, 2022, limiting conditions at p. 51.
[17] Paint Rock Farms, LLC, Internal Revenue Service Restricted Appraisal Review Report with an Opinion of Value, signed January 25, 2022 by Frank J. Wojick, Jr., CVA, LB&I Engineering Group 1879.

Subsection 4 – Deficiencies in the timing, completion, and disclosure of review work

11. An engineering report dated after the ROV it was retained to support – SW Pivot Quarry

SW Pivot Quarry is a clear example where an engineering or specialist report dated after the ROV it was retained to support. The SW Pivot Quarry ROV is dated May 6, 2022. The engineering review in the same file, prepared for the Service by a contractor, is dated August 2, 2022, eighty eight days later. The ROV does not cite it, and the certification states that no one provided significant appraisal assistance. On the question the engineer was retained to answer the two documents disagree. The ROV, written first, states that "There appear to be sufficient quarries to meet the local demands".[18] The engineer, writing afterward, found annual regional demand of 17,431,000 tons of crushed stone within a seventy mile market radius against an estimated annual supply of 8,634,000 tons, a deficit of about 8,797,000 tons.[19] The ROV was not revised. We believe a reader can draw the ordinary inference from this without expert assistance. A report that is not needed before the answer is recorded, and that does not move the answer when it arrives, was not an input to the answer.



12. A ROV signed subject to a specialist report that had not been written – Goolsby Road

As in SW Pivot Quarry, the ROV was signed before the specialist had finished. When the specialist's work was produced it did not change the recorded value. Goolsby Road states the point on its own transmittal page. The ROV, signed June 27, 2024, carries a note that it "is prepared 'subject to' the completion of another report that will be seemingly written by a mining specialist," that if the condition on which it rests "is determined to be false, then the developed opinion(s) and conclusion(s) could be impacted," and that "The completion date of the report from the mining specialist is not known."[20] The reviewer nonetheless recorded a before value of $700,000 on that page. The specialist report was produced fifty four days later. The value did not change. On this record the specialist's finding did not affect the value the reviewer concluded.

[18] SW Pivot Quarry ROV at p. 32.
[19] SW Pivot Quarry ROV, engineering review bound at p. 78, dated August 2, 2022.
[20] Goolsby Road, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed June 27, 2024 by Frank J. Wojick, Jr., CVA.

13. A conclusion recorded before the evidence existed, and a favorable internal ROV the taxpayer never saw

In Park Lake III v. Commissioner, Docket No. 8018-21[21], the Service appraiser, described as having roughly 35 years of ROV experience with the agency, spent 148 hours, produced a 230 page USPAP compliant work file, and concluded that the taxpayer's appraisal was supported by the underlying documentation. That opinion was then set aside. According to the petitioner's filing, the ROV was not referenced in the agent's summary report and was not disclosed to the taxpayer in the final partnership administrative adjustment issued in the matter. The filing's own footnote records that the favorable ROV was withdrawn with an intent to reissue it and that no reissued report has been produced.

Subsection 5 – Insufficient property-specific analysis and report quality control

14. Seven properties, four appraisers, one number

Between 2020 and 2024 the Service examined appraisals supporting nine donations of land or conservation easements in Louisiana, Georgia, Kentucky and Florida. The nine are Barlan Properties, Cypress East Properties and Fenton Flats Property in Jefferson Davis Parish, Louisiana; Calcasieu Clay Property, Sandwood Holdings and Woodland Ridge Property in Allen Parish, Louisiana; Dry Branch Solar in Twiggs County, Georgia; Sweeden Property in Edmonson County, Kentucky; and Silver Moss Properties in Taylor County, Florida. Seven were reviewed by four Service staff appraisers working out of at least two engineering teams, and the remaining two were prepared for the Service by an outside contractor.[22]

The properties had little in common. Most held delineated clay or sand deposits with boring logs, laboratory testing and mine plans. One had frac sand testing. One was a utility scale solar site. One held a former mine. One sat inside a tract a limestone mining company had bought eight days before the donation.

Yet even with this disparate asset type, geography, geology, appraisers, and staff, every one of the seven staff ROVs concluded that the land was worth exactly $3,000 per acre before the donation. Two further reports prepared for the Service by an outside contractor, different firm, different signers, different states, four years apart, ran the same steps in cheaper farm markets and produced $1,950 and $1,650 per acre. Independent analysis of seven different bodies of evidence does not converge to the dollar. The figure tracks the price of the neighboring farms and never moves with the resource.

15. A report that describes a property it was not written about

Sweeden Property, located in Edmonson County, Kentucky.[23] The contractor report states that the physical condition of the property is based on visual inspection only, in a report whose authors did not visit the site. Its subject property photos section records that the authors were unable to access the subject property to perform a physical inspection and consequently took no photographs of it.

The Sweeden Property report's site description places a Kentucky county in Georgia. The same page describes the parcel as located off Kyrock Road near Sweeden in Edmonson County, Kentucky, and then

[21] Park Lake III v. Commissioner, T.C. Docket No. 8018-21.

[22] Barlan Properties ROV, Cypress East Properties ROV, Fenton Flats Property ROV, Calcasieu Clay Property ROV, Sandwood Holdings ROV, Woodland Ridge Property ROV, Dry Branch Solar ROV, and the Sweeden Property and Silver Moss Properties contractor appraisal reports, each at its conclusion of value.

[23] Sweeden Property, appraisal report prepared by JLL Valuation & Advisory Services, LLC for RER Solutions, Inc..

records its location as Edmonson County, GA. The report's market conditions adjustment is explained by reference to Missouri being a non-disclosure state.

The Sweeden Property report's sales history records the tract passing to Kyrock, LLC on December 26, 2018, and then passing from Kyrock, LLC to Sweeden Property, LLC on December 26, 2017, a year before the same report says Kyrock acquired it. A report in which the state changes twice and the calendar runs backward was not written about the subject property.

The same report disposes of the mining use by observing that a survey of 35 county land sales, none of which it identifies as a mineral sale, found no mining premium, and by noting that mining on the property was abandoned in past years. The mining it refers to took place between the 1920s and the 1950s.

Taken together, these are not close questions of appraisal judgment. A report that places a Kentucky county in Georgia, explains a Kentucky market adjustment by reference to Missouri disclosure law, and records a chain of title that runs backward is a report whose contents were not developed from this property. We believe that a reader can reach that conclusion from the face of the document without any need to weigh competing appraisal opinions.

16. One grid used for two properties

Anderson Pointe, sand and gravel land on the Tallapoosa River in Montgomery County, Alabama, was reviewed on July 30, 2020. Blue Ridge Valley, carrying a granite claim in Elmore County, the adjoining county, with a different taxpayer appraiser, was reviewed by the same Service appraiser on September 30, 2020. The two ROVs rest on the same five comparable sales at the same prices averaging $2,816. They are described in the same words as the same tracts along the Alabama and Tallapoosa Rivers. Both ROVs carry the same paragraph treating the material below the surface as overburden included in the land price, the same sentence that there are no sales of vacant land evidenced in the reviewer's research, and the same statement that most weight is given to Sale 1. What changes between the two is the case name, the county, the mineral, the acreage and the taxpayer's per acre figure inserted into the no sales sentence, $275,577 in Anderson Pointe and $371,058 in Blue Ridge Valley. Both concluded $3,200 per acre.[24] The same five farm sales priced a sand and gravel deposit in one county and a granite deposit in the next at the same number. A comparable sales grid is a statement about one property in one market. A grid that transfers intact to another property, another county and another mineral is not performing that function. Two adjoining counties can of course share a comparable market, and the use of overlapping sales would not by itself be a departure. What is not explained by proximity is that the sale descriptions, the adjustment reasoning and the concluded unit price are identical in both files while the mineral, the acreage and the taxpayer appraiser are not.

17. A matter named in a ROV written about another property

The Deep Green Holdings ROV states its own conclusion under a chart headed "Daniel Creek," which is a different matter. The Dry Branch Solar ROV lists among its data sources the Meriwether and Troup County sources belonging to Crawford Creek Plantation, a different property in different counties. A single paragraph stating that competitive bidding by buyers for interchangeable uses causes prices to converge appears, in the same or nearly the same words, in at least twelve of the forty ROVs under seven different signatures. None of these is a valuation judgment or even valuation related. They are the marks of a template being carried

[24] Anderson Pointe, Internal Revenue Service Review of Appraisal Report with an Opinion of Value, signed July 30, 2020 by Donald W. Mueller, and Blue Ridge Valley ROV, signed September 30, 2020 by the same appraiser.

from one file to the next, as well as volume processing. A reviewer who leaves another taxpayer's name on the chart that states his conclusion, and another county's sources in his list of what he relied on, has not reread the document he signed. We draw no conclusion about intent. [25]

Subsection 6 – Instructions from the IRS

18. One reviewer, one property, two conclusions, and a written instruction from counsel

Tenk Center, LLC donated a historic preservation facade easement on the Bruce-Macbeth Engine Company Building at 2111 Center Street, Cleveland, Ohio, with a valuation date of December 26, 2018. The taxpayer's appraiser concluded an easement value of $27,880,000. The Service reviewer, Howard Kanter, reviewed that same appraisal twice.

In the first review, signed September 13, 2021, Mr. Kanter adopted the taxpayer's highest and best use premise of a ten-story residential addition over the existing three-story building with a four-story parking garage over the adjoining lot. He concluded an easement value of $18,065,000 or $23,170,000 depending on which of two extraordinary assumptions applied, both of which the report attributes to a conversation with Service counsel. He reached those figures by modifying the taxpayer's discounted cash flow and identifying the inputs he changed, and he certified a personal inspection of the property. The higher of the two figures stands within 17% of the taxpayer's own conclusion.[26]

On July 20, 2023, the same reviewer reissued the report on the same property, the same valuation date and the same appraisal under review. The easement conclusion was $400,000. The report states the reason on its face. The valuation section "is based upon the following instructions from IRS counsel received June 15, 2023," which directed that "All review appraisals performed by the IRS for the exterior of buildings in historic districts should consider only the historic building and should provide a value only for the restrictions placed on that building," and that "An IRS appraisal should not include the value of any purported loss with respect to adjoining parking lots, buildings, air space over adjoining buildings, etc." The instruction is addressed to all Service review appraisals of this class of property rather than to this file. The revised review was signed thirty-five days after it was received.[27]

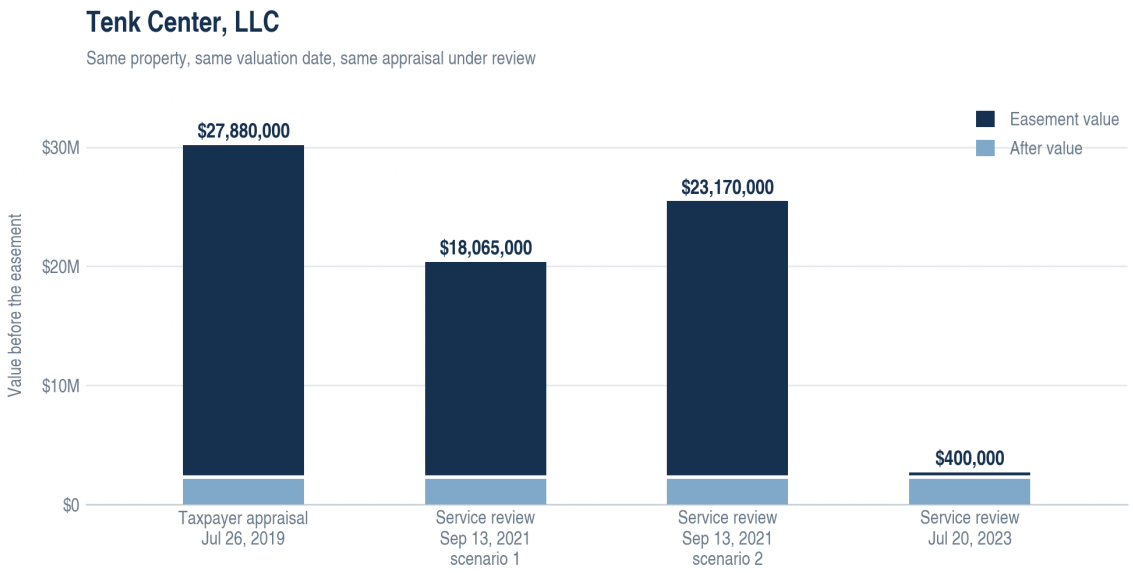
The method changed with the conclusion. The 2021 review reached its figure through an income analysis. The 2023 review states that its conclusion "is based exclusively on the Sales Comparison Approach with additional support derived from relevant tax court decisions." The income analysis performed in 2021 is not carried forward, and no error in it is identified. The 2023 before value of $2,700,000 is the price at which the membership interests in the taxpayer were acquired on December 21, 2018, five days before the donation. The review attributes that figure to Service counsel and notes that the appraisal under review reported consideration of $3,300,000 for the same transaction. The lower figure was used. The three sales the review cites range from $52.47 to $71.87 per square foot, while $2,700,000 equates to $56.25 per square foot, which is that purchase price divided by the building area.

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[25] Deep Green Holdings ROV at its summary of value; Dry Branch Solar ROV at sources of information; Crawford Creek Plantation ROV for the Meriwether and Troup County sources.

[26] Tenk Center, LLC, Internal Revenue Service Restricted Appraisal Review Report with a Restricted Opinion of Value, historic facade easement on the Bruce-Macbeth Engine Company Building, 2111 Center Street, Cleveland, Ohio, signed September 13, 2021 by Howard Kanter.

[27] Tenk Center ROV (2023), Restricted Appraisal Review Report and Restricted Appraisal Report, same property and valuation date, signed July 20, 2023 by Howard Kanter.



Both reviews conclude that the appraisal under review is not credible and is not a qualified appraisal as defined within section 170(f)(11)(E). Both nonetheless adopt that same appraiser's after value of $2,300,000 to the dollar, the 2023 review stating that it accepts the after value "as stated in the KK report." This is the same pairing described in item 5 above, and it produces the smallest deduction available from the two figures. Both reviews also carry the same certification, including that the engagement "was not contingent upon developing or reporting predetermined results," that the work was "prepared in conformity with the Uniform Standards of Professional Appraisal Practice," and that "no one provided significant real property appraisal assistance to the person signing this certification."

We do not suggest that the taxpayer's appraisal was correct. The criticisms of that appraisal in these reviews are substantive, are unrelated to the counsel instruction, and are identical in both reviews. What this file shows is narrower, and the reviewer states it himself. On the same property, the same valuation date and the same appraisal under review, the government's own conclusion fell by 97.8% in six hundred seventy-five days, and the reason given on the face of the document is an instruction applied to a class of property rather than any fact about this one.

19. The same reviewer, an adjacent tract, and a whistleblower complaint

In a separate consolidated Tax Court proceeding, the petitioners moved to disqualify the Commissioner's counsel from representing Mr. Kanter at a deposition being taken to preserve his testimony as a proffer for the record. The motion states that Mr. Kanter assisted the Service in valuing a neighboring tract, Cabbage Bluff, using the before and after method applied to the property's highest and best use, and that the methodology the Commissioner proposes for the immediately adjacent Habitat Green tract is "vastly different," described in the motion as valuing "all property as raw land, regardless of its highest and best use." The motion further states that Mr. Kanter filed a formal whistleblower complaint concerning the Service's methodology as it relates to penalties assessed against appraisers who use the method set out in Treas. Reg.

section 1.170A-14(h)(3)(ii), and that the Service has pursued appraiser penalties under section 6695A based on the methodological choices those appraisers made.[28]

These are allegations in a pending motion and are not findings of the Court. We report them for three reasons. The reviewer is the same reviewer identified in item 18. The objection described is to the same methodological shift that item 18 documents on the face of a report, from a highest and best use analysis to a raw land conclusion. And the objection is raised by a Service appraiser rather than by a taxpayer.

20. Who they asked, and what they read

An appraisal is only as good as what it stands on, and a reader is entitled to test that footing. In these files he usually cannot. The sources are named but not documented, and the reading list does not match the question.

In the Mattox ROV the Service appraiser relied on one individual as the source of information about the granite market and its participants. The review records no interview notes, no transcript, no interview date, no resume, no statement of what he was asked or what he supplied, and no explanation of why he was treated as a qualified source on that market. The same review discloses reliance on notes of meetings taken by other Service agents, which it describes in its own words as generic in nature and not property specific. The bibliography of that review includes an eight-page 1989 tourism pamphlet titled "What Is Granite?" written for schoolchildren, and a 1977 publication describing the quarrying of granite and the manufacture of memorials and headstones. Neither evaluates the subject property's geology, reserves, feasibility, market or value.[29]

The issue is not that the appraiser interviewed a local market participant, which is ordinary practice, and it is not a criticism of the individual. The issue is that Service appraisers relied on that source while attesting to USPAP compliance, without documenting either his relevant qualifications or the substance of the information relied on.

21. The sequence, matter by matter

Items 11 and 12 above describe two files in which the technical work followed the valuation. The pattern is not confined to those two. In the matters below, each drawn from the broader population of files reviewed, a technical report bearing directly on the valuation is dated after the value was signed, and the recorded value did not change after the report was received. Dates are taken from the face of the documents.[30]

- Barlan Properties. Value signed April 30, 2021. Engineering review dated November 15, 2021, one hundred ninety-nine days later, addressed to the same revenue agent.
- SW Pivot Quarry. Value signed May 6, 2022. Engineering review dated August 2, 2022, eighty-eight days later.
- Goolsby Road. Value signed June 27, 2024, subject to a specialist report whose completion date was recorded as unknown. The report followed fifty-four days later.

[28] Habitat Green Investments, LLC, MM Bulldawg Manager, LLC, Tax Matters Partner, et al. v. Commissioner, T.C. Docket Nos. 14433-17, 14434-17, 14435-17 and 20849-17, Petitioners' Motion to Disqualify and for Opportunity to Obtain Independent Counsel, Doc. No. 403 (filed March 27, 2026).

[29] Mattox ROV, at scope of work and sources of information.

[30] Barlan Properties ROV, SW Pivot Quarry ROV, Goolsby Road ROV, White Wing ROV and the Sweeden Property contractor appraisal report. Dates are taken from the signature and transmittal pages of the Service review and of the engineering or mining report in each file.

- White Wing. Value signed July 13, 2022. Mining due diligence report dated August 10, 2022, twenty-eight days later, finding substantial mineable reserves.
- Sweeden Property. Value signed October 15, 2024. Mining review dated October 18, 2024, three days later.

In the balance of the dated files the technical report reached the appraiser first, but by a short margin, between two and thirty-nine days before signature. In those files the recorded value also did not change after receipt. Timing alone does not establish motive. It establishes a sequence problem. Where the report that could have informed the analysis arrives after the conclusion, and the conclusion is not revisited, the record does not show that the technical work affected the value.

Subsection 6 – A chart on the forty ROVs.

The items above are set out one at a time because each rests on a particular passage in a particular ROV. Several of them also appear in the table that follows. We have repeated them in that form in the following format to bolster the written format through this report. The table shows at a glance how many separate files carry the same feature.

In our sample of forty ROVs out of the substantially greater than one hundred we have pulled the following data points, and shown them in the grid below. Some of these examples are repeated from the narratives above.

What the files show	40 Count
The same “prices converge” paragraph, in the same words or nearly	12 files, 7 signatures
Concluded exactly $3,000 per acre	10 of 40
Rejected the taxpayer’s before value as not credible, then adopted the same appraiser’s after value to the dollar	32 of 40
Engineering report dated after the opinion of value it was retained to support	5 files, by 29 to 88 days
One grid or one text reused across parcels, counties, minerals, and appraisers	7 groups

V. Conclusion

This report set out to test a single proposition: that the government's valuation position in conservation easement matters was settled before it was measured against the properties to which it was applied. The record we reviewed is consistent with that proposition. Across more than one hundred government appraisal ROVs, the reduction to appraised value holds at nearly the same level whether the subject is mining, levee clay, frac sand, limestone, granite, silica sand, sandstone, solar land or development land, whichever of the appraisers or firms wrote the report, and whether or not anyone went to the site. The overall statistics are clear. They are consistent with a theory in which conclusions were reached and recorded before the evidence was gathered, a reviewer's own supported figure was abandoned, and a mining company's purchase price for the adjoining ground was excluded by assumption. These ROVs also routinely state that they are in compliance with USPAP.

Each ROV that reaches a reduction in taxpayer's appraised value as high as 99-100% creates momentum that has demonstrated similar results in the next ROV. This momentum created by the substantial write downs in the ROVs has carried forward to present day. That weight has been carried into examination and into the pricing and structure of settlements. The accumulation works against the taxpayer, who must contest a figure that draws its force from reviews of other people's property.

None of this establishes that any particular taxpayer's appraisal was correct. This is important to note, as the proper conclusions take time and analysis. The ROVs we examined illustrate how much turns on the particular facts of each property. Taxpayer appraisals were not examined here, and that question remains open in every case. Again, a thoughtful approach to each is warranted.

What the record does establish is that the government's figures in these matters do not appear to be developed the way the standard the government itself invokes requires. Figures produced that way cannot carry the weight that has been placed on them in examination, in litigation, and above all in the pricing of settlement, where an average allowance drawn from unlike cases has been applied to properties that were never separately valued.

The Service's August 2026 announcement addressed part of the problem. It ended uniform settlement terms and created an office charged with resolving matters case by case. The rest of the problem is still there. Case specific resolution requires case specific valuation, and on the evidence reviewed here, the valuations in the files are not that.

Commentary published after the announcement reads it the same way, describing the shift from a blanket settlement program to a centralized office conducting case-by-case resolutions, and observing that the Service appears to have found the standardized approach ineffective for a docket of this factual variety. That commentary also identifies the priorities on which the new office will be measured, among them published guidance drawing a workable line between legitimate conservation transactions and abusive arrangements, and settlement terms that are genuinely accessible case by case.[31] To those we would add one that follows from this record: that the valuations the Service brings to the table be developed the way the standard its own reports invoke requires.

[31] Daily Tax Report, "IRS's New Conservation Easement Approach Is a Promising Step" (Sept. 24, 2026).

APPENDIX A: All Write-Downs in All ROVs Reviewed

Property	Type	Discounted By IRS
Calcasieu Clay Property	Geology	-99.6%
Dry Branch Solar	Solar	-98.4%
Cole Creek	Geology	-98.6%
Standing Rock Holdings	Geology	-99.8%
Fenton Flats Property	Geology	-99.6%
Anderson Pointe	Geology	-99.9%
SW Pivot Quarry	Geology	-99.1%
Goolsby Road	Geology	-99.3%
Deep Green Holdings	Development	-91.6%
Ohoopee Holdings	Geology	-98.2%
Sandwood Holdings	Geology	-99.4%
Woodland Ridge Property	Geology	-98.9%
Barlan Properties	Geology	-99.7%
Silver Moss Properties	Geology	
Paint Rock Farms	Geology	-99.7%
Park Lake III		
Cypress East Properties	Geology	-99.9%
Sweeden Property	Geology	-99.9%

Property	Type	Discounted By IRS
Blue Ridge Valley	Geology	-99.3%
Daniel Creek	Development	-94.2%
Crawford Creek Plantation	Solar	-98.2%
Newtown Road	Geology	-99.7%
Old Garrison	Geology	-99.7%
Sawmill Well	Geology	-99.3%
Coosa Springs	Geology	-99.8%
Pitts Chapel	Geology	-99.8%
Terra Oaks	Geology	-99.0%
Kilby Central	Geology	-98.7%
Old Corral	Geology	-99.6%
Potts Pond	Geology	-99.6%
Rock Quarry Road	Geology	-99.8%
Flatwoods Cherokee	Geology	
Little Creek Reserve	Geology	-99.0%
Morrison Road Solar	Solar	-99.7%
Cattail Holdings	Geology	-91.2%
Tarpon Creek	Geology	-99.2%
Fishpond Creek	Geology	-100.0%
Harlan Mountain	Development	-96.3%

Property	Type	Discounted By IRS
Mulberry Farms	Geology	-99.3%
Norcave Properties	Geology	-99.5%
Cummings Bluff	Development	-95.8%
Norwood Mineral & Timber	Geology	-99.8%
Toscano Holdings	Development	-76.2%
Union Creek	Geology	-99.2%
Vibrant Minerals	Geology	-99.3%
Zebra Creek	Geology	-99.1%
Cedar Rock	Geology	-99.5%
Maple Mill	Geology	-99.5%
Oglethorpe Oaks	Geology	-99.6%
Tatham	Geology	-99.5%
Jasper	Geology	-98.3%
Warren	Geology	-99.7%
Belford Oaks	Development	-80.8%
Fort Argyle	Development	
Big Sky	Development	-92.6%
Maxwellton	Development	-78.1%
Ripley	Development	-81.6%
Seabrook	Development	-93.1%

Property	Type	Discounted By IRS
Dorchester	Development	-78.7%
Lodebar	Development	-81.9%
Elm Creek	Geology	-99.5%
Ogeechee Plantation	Development	-80.8%
Belford Pines	Development	
Cedar Point	Development	-91.3%
Dunham Farms	Development	-93.4%
Fishhawk	Development	-93.8%
New River	Development	-89.4%
Queens Road	Development	-94.2%
Screven	Development	
Smith Settlement	Geology	-99.9%
Solar	Solar	-98.1%
White Wing	Geology	-99.6%
Sparta Pink	Geology	-98.4%
Ashwood Gap	Geology	-99.5%
Casper Grove	Geology	-99.8%
Cave Hollow	Geology	-100.0%
Denny Pines	Geology	-99.8%
Goodwater Gap	Geology	-98.5%

Property	Type	Discounted By IRS
Hackney Creek	Geology	-99.5%
Massey Creek	Geology	-99.9%
Morris Heights	Geology	-99.6%
Nolen Lake	Geology	-99.8%
Parker Springs	Geology	-99.8%
Salem Bend	Geology	-99.4%
2121 First Avenue	Development	-96.4%
A&G Henry	Development	-93.4%
Alcovy	Development	-74.6%
Airline Road	Development	
Bartow Investments	Development	
Brown Bridge	Development	
Caney Fork	Geology	-98.5%
Foster Drive	Development	
Hanger Highway	Development	-89.5%
Harris Drive	Development	
Henry 46	Development	-92.7%
HWY 20 Henry 30	Development	-96.8%
South Fulton	Development	
Stroud Road	Development	-87.7%

Property	Type	Discounted By IRS
Walker Drive	Development	-100.0%
Mill Road 36 Henry	Development	-94.3%
South Unity Henry 28	Development	-93.5%
Fairview Road	Development	
Fears Drive	Development	
Hwy 81	Development	
Island Shoals	Development	-90.6%
Kimberly	Development	
Mattox	Geology	-99.5%
Tigner Property	Geology	-99.0%
970 Turner Property	Geology	-97.8%
Blue Rock	Geology	-99.6%
Dahlia Aggregates	Geology	-99.9%
Ellis Road Property	Geology	-99.5%
Harman Road Property	Geology	-98.5%
Ogletree Property	Geology	-99.0%
Option Rock	Geology	-99.7%
Vigor Aggregates	Geology	-99.9%
Potato Creek	Solar	-98.8%
CAZ Property	Development	

Property	Type	Discounted By IRS
Harris Solar Property	Solar	-98.9%
Natural Rock	Geology	
Tayes Hollow	Geology	-98.0%
Trigger Gap Property	Development	
Camden County 42	Development	
Edisto Georgia	Development	-100.0%
WePartner Airline 97	Development	
Gardner Road Henry 56	Development	-97.7%
Hart County KY 115	Development	
Highway 20 Henry 40	Development	-98.6%
Keys Ferry Henry 82	Development	-97.7%
Whitaker Road Henry 19	Development	-96.4%
Bridge Creek	Geology	-96.6%
Cherry Creek	Geology	-97.1%
Pleasant Ridge	Geology	-96.8%
Winding Ridge	Geology	-98.0%
Monty Ridge	Geology	-97.0%
Rolling Springs	Geology	-95.6%
Meadow Rock	Geology	-97.7%
Wahoo River	Geology	-99.27%

Property	Type	Discounted By IRS
Yacht Creek	Geology	-99.30%
Redacted #1 – Commercial preservation easement	Development	
Redacted #2 – 252-unit hotel / retail	Development	-99.4%
Redacted #3 – Proposed 270-unit lodging facility	Development	-88.6%
Redacted #4 – Improved commercial preservation easement	Development	
Redacted #5 – 99-unit extended-stay hotel	Development	-91.3%
Redacted #6 – Commercial preservation easement	Development	
Redacted #7 – 103-unit condominium concept	Development	-91.7%
Redacted #8 – Peachtree Hills apartment property	Development	
Redacted #9 – Commercial preservation easement	Development	
Redacted #10 – Improved commercial preservation easement	Development	
Redacted #11 – Two-building commercial preservation easements	Development	
Redacted #12 – Boutique hotel / retail	Development	-93.1%

APPENDIX B: Write-Downs in All ROVs Reviewed by Appraiser

Reviewer	ROVs	Calc.	High %	Low %	Avg. %
JLL Dittmar	28	8	99.88%	98.67%	99.51%
Wojick	13	13	99.90%	78.14%	91.67%
Blanding	11	11	99.60%	95.59%	97.36%
Bovee	11	11	99.60%	98.10%	98.93%
Ward	9	9	100.00%	87.72%	93.17%
Guyer	7	7	99.82%	97.84%	99.04%
Krasinski	7	7	99.99%	96.38%	98.85%
Crane	6	6	99.93%	76.16%	89.50%
Mueller	6	6	100.00%	98.53%	99.50%
Campos	5	5	99.77%	95.78%	98.69%
Weiner	5	5	99.89%	99.47%	99.60%
Baker	4	4	93.07%	89.39%	91.57%
Addison	3	3	98.45%	74.63%	90.46%
Kanter / Smith	3	3	99.27%	99.08%	99.19%
Sartin	3	3	99.80%	99.53%	99.71%
Gootee	2	2	100.00%	99.14%	99.57%
Hanahan	2	2	97.74%	97.73%	97.74%
Hood	2	2	94.17%	91.55%	92.86%
Kanter	2	2	99.17%	96.38%	97.78%
Dowling	1	1	99.28%	99.28%	99.28%
Ferrier	1	1	99.74%	99.74%	99.74%
Hicks	1	1	99.69%	99.69%	99.69%
Landreville	1	1	99.75%	99.75%	99.75%
Williamson	1	1	99.66%	99.66%	99.66%
Wolman	1	1	99.46%	99.46%	99.46%
TOTAL	**136**	**115**	**100.00%**	**74.63%**	**96.56%**