The Billion-Dollar Loophole

The most generous charitable deduction in the federal tax code is being manipulated to make big profits — and there's no sign that Congress has any intention of fixing the problem.

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Robert Keller, in his office, points to an overhead view of a conservation easement project. (Melissa Golden for Fortune)

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The idea seems like the perfect marriage of environmentalism and capitalism: Landowners give up their right to develop a piece of property, and in exchange they receive a special tax deduction.

Nature is preserved and everybody benefits.

That's traditionally how what are known as "conservation easements" worked. In California's Napa Valley, for example, a former biology professor and museum director named Giles Mead agreed not to develop 1,318 hilltop acres in 1983 and got a deduction in return. The property, Mead Ranch, features vernal pools and rare and endangered plants. Two entirely new species were discovered there. Bears, bobcats and mountain lions roam the grounds. Mead allowed groups of hikers, birders, and plant enthusiasts to visit. He sometimes greeted them with glasses of wine from the family's vineyard. Since Mead's death, his daughter has kept the property available to the public.

A growing number of recent easement donations, however, are driven by a more commercial reward — an outsized tax deduction for wealthy investors. Known as "syndications" (or "syndicated partnerships," since they're typically offered in that structure), they're deals orchestrated by middlemen with the goal of big payoffs for all of the participants, many of whom have never visited the land in question.

One example: the former Millstone Golf Course outside of Greenville, South Carolina. Closed back in 2006, it sat vacant for a decade. Abandoned irrigation equipment sat on the driving range. Overgrowth shrouded rusting food and beverage kiosks. The land's proximity to a trailer park depressed its value. In 2015, the owner put the property up for sale, asking $5.8 million. When there were no takers, he cut the price to $5.4 million in 2016.

Later in 2016, however, a pair of promoters appeared. They gathered investors who purchased the same parcel at the market price and, with the help of a private appraiser, declared it to be worth $41 million, nearly eight times its purchase price. Why? Because with that new valuation and a bit of paperwork, the investors were suddenly able to claim a tax deduction of $4 for each $1 they invested.

Such transactions are booming today, transforming an incentive for charitable gifts into a windfall for the wealthy looking to save big on their taxes. The provision they're exploiting is the single most generous charitable deduction in the tax code, according to experts.

The use of syndicated easement deductions has exploded in recent years, according to Brookings Institution economist Adam Looney, who began researching the subject while serving as a top tax official in the Obama Treasury Department. They cost the Treasury between $1.2 billion and $2.1 billion, he estimates, in lost tax revenue last year.

That's a negligible sum for the federal government — but it's a proxy for a bigger, more systemic problem. There are plenty of other flawed provisions in the tax code that create opportunities for abuse, says Bill Hutton, an emeritus tax law professor at the University of California Hastings College of the Law. They often take years to surface — and many more to shut down. "The tax shelter advisors' mentality just seems to live forever," Hutton says. "Shelters keep coming back."

That makes the treatment of syndicated easements a telling prism through which to view the tax system at a moment in which Congress has been frantically redrafting the tax laws. It's also a case study in how difficult it can be to turn the rhetoric about draining Washington's swamps into reality. Even as Republicans scrambled to find revenue to underwrite their tax cut — legislation that they claimed would reform and simplify the system — they permitted syndicated easements to survive intact.

And the 1,000-page bill is likely to open up costly new loopholes, according to experts. "It clearly is going to create artificial incentives to engage in transactions that have no economic purpose other than to reduce taxes," says Looney. "The abuses in the new tax bill are going to make the costs of conservation easements seem trivial in comparison."

Conservation easements have generated controversy in the past, particularly when it came to light that private golf course owners were taking the deduction. Indeed, the nation's current president has availed himself of such write-offs in large quantities. In 2005, Donald Trump took a $39 million deduction on his private golf course in Bedminster, New Jersey. In 2014, he donated an easement on an 11.5-acre driving range in Los Angeles. (In both cases, he pledged not to build houses on the property.) All told, Trump has made at least five easement gifts, generating more than $100 million in write-offs.

But Trump's deductions are relatively tame compared to the aggressive strategies employed by others in recent years. A change in tax laws encouraged enterprising promoters to reap deductions many times the size of the investment, on behalf of investors who hadn't previously owned the properties in question. A preliminary IRS analysis of syndicated partnerships this summer showed investors claimed an average of $9 in tax deductions for every dollar they put in.

The Basics of Conservation Easements

- To be eligible for a deduction, land needs to meet at least one of four broadly defined "conservation purposes." These include protecting "relatively natural" habitats; historic sites or buildings; land for public recreation or education; and open space (including farms, ranches and forests).
- Based on the claimed value of the easement deduction, landowners can deduct up to 50 percent of their income in one year and any remaining write-off over the succeeding 15 years; farmers and ranchers can deduct 100 percent in any period from one to 16 years.
- The landowner can continue to own and use the land as before, and even build on a portion of it, subject to agreed restrictions;
- By law, a government agency or, more often, a nonprofit land trust, must accept and administer the easement. The trust negotiates the development limits with the landowner, and enforces them in perpetuity.
- 16 states sweeten the pot by offering state income tax credits, too.

People have accomplished that by exploiting a giant loophole: The size of the tax deduction is based on a claim about how much the land's value is diminished by the promise not to develop it. By law, that estimate is delivered by an appraiser hired by the taxpayer. The appraiser is free to assert that the donated land is actually worth many times what investors paid for it, often just months earlier. That, in turn, inflates the deduction. The process is abetted by law firms, brokers and accountants who pocket millions in fees.

“They’re bogus,” says tax expert Steve Small of syndicated easements. Small helped write the charitable-gift rules at the IRS and is now a tax attorney in Cambridge, Massachusetts. “They’re tax shelters masquerading as conservation easement transactions, based on highly inflated appraisals. Someone’s using a charitable contribution provision of the tax code to make a profit. That’s not what any charitable contribution is designed to do.” Former Montana Sen. Max Baucus, a sponsor of the legislation that updated the easement write-off, agrees. “Unfortunately, people have taken advantage of the code in ways that were not intended,” he says. “These things should not be legal.”

One reason abuses have multiplied is that a surprising amount of the oversight consists of the honor system. The genteel guardians of the old-line conservation community pledged to try to keep practitioners in line. But they’ve been unable to rein in the syndicators, whose rise they have watched with growing horror.

The traditionalists are embodied by the Land Trust Alliance, a Washington, D.C., association whose dues-paying membership includes the vast majority of the nonprofit trusts that, by law, administer conservation easements. (See sidebar, below.) The Alliance has long been the most important advocate for the tax break.

The Alliance’s leadership now fears that public outrage over profiteering will jeopardize the deduction altogether. “These need to be shut down,” says the organization’s president, Andrew Bowman. “These few bad actors are going to give us a bad name.” Bowman’s predecessor, Rand Wentworth, calls syndications “large-scale, multi-million-dollar tax fraud.”

As views harden among the traditionalists, a schism has occurred. A splinter group of land trusts has sided with the syndicators, providing a welcome home for their deals. Most prominent among the renegade land-trust leaders: Robert Keller, a brash conservation biologist in Georgia who has built an empire through syndicated easements.

Unable to stop syndicators through moral suasion, the Alliance has increasingly prodded the IRS to take action. The IRS has policing power, and it wields that clout chiefly by auditing the returns of those who take the deductions. But that’s a torturously slow process and one that so far has yielded negligible results. The speed at which the syndications have increased has left the resource-starved agency looking like a befuddled mall cop lurching off his chair and trying to figure out which of the dozen teenagers simultaneously grabbing candy bars to chase down.

The IRS announced a broader crackdown in December 2016. It took the rare step of branding syndicated easement deals as “listed transactions,” subject to special reporting and scrutiny. Such IRS moves usually scare off audit-wary investors. But this time, the action appears to have had little, if any, effect.

The syndicators, arguing that the profit motive produces big environmental benefits, have fought back with a million-dollar public relations and lobbying offensive. That campaign produced a move to eliminate the funding for the IRS crackdown — one of multiple fronts on which a legislative battle is being waged.

It might sound like an arcane matter. Yet there's a lot at stake for all Americans: billions in tax revenue and a system that protects 56 million acres of U.S. land from being turned into resort developments and Walmarts. How has a widely derided abuse — almost universally criticized by tax experts — managed to survive repeated attempts to fix it?

The view of Napa Valley from Mead Ranch, a property that was saved from development and made available to hikers, birders and plant enthusiasts. (Courtesy of Land Trust of Napa County)

Not so many years ago, conservation easements seemed to be approaching extinction. Starting in 2003, investigative reports in The Washington Post generated clouds of scandal over the write-off. The stories exposed self-dealing at the Nature Conservancy; sham deductions taken for protecting facades on urban buildings; and jaw-dropping write-offs for golf resorts, whose chemical-doused fairways and private membership seemed at odds with the goals of protecting natural habitat and providing "significant public benefit."

The deduction seemed destined to die, or at least be sharply limited. In January 2005, Congress' Joint Committee on Taxation proposed killing the tax break for some easements and slashing it for the rest.

But the Land Trust Alliance lobbied hard, promising it would do more to prevent misuse of the deduction. Prominent conservationists chimed in with support for easements. And another constituency with a mom-and-apple-pie appeal also weighed in: Farmers and ranchers, often rich in land but poor in cash, argued that the provision helped keep them in business, producing the nation's food.

As a result, rather than eliminating the easement deductions, in 2006 Congress expanded them. The updated law raised the maximum annual write-off from 30 percent to 50 percent of taxable income; farmers and ranchers were allowed to deduct 100 percent of what they make. All were given 16 years to use their full write-off.

As for enforcement, Congress adopted a stance that could mostly be called "trust but don't verify." It accepted the industry's promises to reform, which included a voluntary accreditation program that would set best practices for land trusts. Meanwhile, the law did mandate new training requirements for appraisers.

It was left to the IRS to police conservation easement misconduct through case-by-case audits, with stiffer penalties for those found to have violated the rules. That method would prove woefully inadequate to combat the coming wave.

It's impossible to identify the precise birthplace of the syndicated conservation easement. But it's safe to say it became an industry in Georgia. Between 2010 and 2012, taxpayers in the Peach State claimed about 36 percent of all federal tax deductions for conservation easements — despite having only 2.5 percent of the nation's land under easement — according to a report published in May by Adam Looney, the former Treasury official, who is now a senior fellow in economic studies at the Brookings Institution. Eight of the ten biggest syndicators are located in Georgia, according to his research.

The syndication technique wouldn't have spread the way it did without a confluence of people and events. They include a small-town conservation biologist and a couple of big-city ex-bankers who met after the easements law was changed — at a moment in the wake of the real estate crisis when investors began looking for ways to salvage value from land whose price had plummeted.

The small town was Jasper, Georgia, pop. 3,684 (about 60 miles north of Atlanta) and the biologist was Robert Keller. In the world of land trusts, no one embraces and enables syndicated deals quite like he does. Keller, 60, is CEO of the Atlantic Coast Conservancy, where he has built a conservation empire. By his estimate, ACC oversees 80,000 acres of conserved land in 11 states.

Despite the IRS' recent crackdown, Keller expects to accept more than 80 easements this year. He did 79 in 2016. Like most land trusts, Atlantic Coast Conservancy doesn't report the total value of its donors' conservation deductions. But a sampling of deal documents suggests it took easements and land donations responsible for as much as $1 billion in write-offs in 2017.

Keller accepts more syndications than any one and he's utterly unapologetic. "They call me a rogue land trust," he says. "I'm sick of people pointing an accusatory finger. I'm putting aside to the tune of about 12,000 acres a year that will never be developed. *Ever.* If I can do that, then I feel like I'm doing what I was tasked to do. I'm supposed to conserve land. What am I doing wrong? This is almost like me going to church every week, and somebody telling me I'm going to burn in hell."

During the day I spent with Keller in northwest Georgia, followed by many email exchanges and phone calls, he was charming, forthcoming and blunt. Stocky, with a red face and white beard, he was dressed in a black T-shirt, blue shorts and running shoes. His left leg bears a tattoo of a shark. On his right calf there's a tattoo of a leopard seal. "They eat penguins," he says.

Keller with his technical team. He defends syndicated easements, calling them a "wonderful conservation ploy." (Melissa Golden for Fortune)

Keller's story — and a close look at some of the deals he's embraced — explains a lot about the battle over syndicated conservation easements. For starters, in a world of nonprofit land trusts, Keller is a proud capitalist. His direct compensation from the nonprofit he heads totaled $156,750 in 2015, tax returns show. But that's dwarfed by the $602,432 he made from Environmental Research and Mapping Facility, a side business he operates that works exclusively for his land trust.

Keller served in the Navy for a decade before earning a doctorate in conservation biology at Wake Forest University. He then worked as an assistant professor at the University of Tennessee, Chattanooga, for seven years. He left in 2006, to become the executive director of the Mountain Conservation Trust, a tiny outfit in Jasper, where, says Keller, "land conservation moved at a glacial pace." Keller's stock in trade, he says, was the expertise he'd picked up in the Navy about satellite-based global information systems, which allows him to survey land sites virtually anywhere in the U.S. "I wanted to expand and do more things," he says. "They wanted to putter along."

Keller's ambitions didn't find the right vehicle until about 2009, when two former Wachovia bankers rolled into Jasper from Atlanta. They pitched Keller on the idea of exploiting the devastated real estate market by urging developers and lenders to recoup some of their losses through partnerships donating "monetized easements" (Keller's preferred term). Notes Keller: "Most of these people would never have talked to a conservation biologist if the economy hadn't turned down because they were going to turn it all into a subdivision and make a bunch of money."

The ex-bankers needed a nonprofit to accept easement gifts, and they had struggled to get a land trust on board. Keller smelled opportunity. He convinced his board to take a look.

They didn't like what they saw. In December 2009, the board of the Mountain Conservation Trust asked Keller to resign. Cody Laird, then one of its directors, says Keller was proposing accepting easements with "excessive appraisals" that went "against the IRS guidelines." He adds, "It's something we didn't want to do as a board." (Keller denies the allegation and blames the move on "a personality conflict.")

In 2010, Keller set up Atlantic Coast Conservancy, and began to accept "monetized" easements. By then, the Georgia syndication industry had begun to flourish. It touted itself with the get-rich-quick appeal of an infomercial. "Thinking about tax deductions for this year?" began one marketing email from a promoter called Forever Forests. "Contact us right now for more information on how you can facilitate a conservation easement and get incredible tax benefits for doing so."

For the promoters, the deals were lucrative, often generating $1 million or more in fees per transaction. New entrants rushed in from careers in banking, real estate, law and accounting. In Georgia, they included a former lieutenant governor and a former state senator, even a practicing dentist.

The new syndication businesses typically had earth-friendly names: ForEverGreen, EvrGreen, EcoVest, Webb Creek. They set up websites featuring images of forests, waterfowl, and mountain streams. Their text proclaimed their principals' deep concern about the fate of the earth. For example, Frank Schuler, president of Ornstein-Schuler, among the most active promoters, describes a personal epiphany that he says spurred his move into the conservation easement business after a decade in Atlanta commercial real estate. In an interview, Schuler recalls driving with his toddler son past a large residential development where the site had been bulldozed. "Every square foot was going to be paved. There were no trees. My son said, 'Dad, that's *pollution!*'" Says Schuler: "The importance of conserving land for him and future generations really pushed me to this point. … That's why today I'm so passionate about conservation."

But returns were front and center in marketing pitches. Eco Terra's website, for example, offered the motto "Be Green, Make Green." The website for a law firm that handles easements displayed a chart listing its clients' high-end demographics: It said 92.5 percent had a net worth over $10 million. A 2015 summary for one fund reported that it was on track to deliver a return of 89 percent for the year.

The Land Trust Alliance became alarmed about the growing syndication-easement movement, fearing that it would generate a fresh wave of scandal and Congressional outrage. But syndications also posed a ticklish internal situation for the Alliance. Some of its members were an essential part of the chain that made the deals possible.

In 2010, Russ Shay, the Alliance's public policy director, privately urged IRS officials to crack down on the syndicators through more aggressive action than individual audits — perhaps by issuing a public advisory. But the IRS remained silent. (The agency declined to make officials available for on the record interviews for this article.)

To be sure, the agency was auditing dozens of conservation easements; they were among the most litigated issues in federal tax court. But the case-by-case enforcement had limited impact. And given the years it took to pursue a case, says Shay, the result "is they were solving yesterday's problem." He adds, "They did not seem interested in solving the problem of the present — which we told them was much bigger."

Deep budget cuts left the IRS with limited resources for the costly task of disputing an appraisal, which often required hiring outside experts. "The IRS is outgunned," says Steve Small, the former IRS attorney. "They don't have the budget or personnel to audit a fraction of these transactions."

The IRS also lost some key battles. In one challenge to a $30.6-million golf course deduction taken in 2002 — but not resolved until 2009 — the presiding tax court judge allowed 94 percent of the write-off. Claud Clark III, a folksy Alabamian who had appraised the coastal property and defended the deduction in court, became the syndicators' star expert. Marketing materials hailed him as the man who beat the IRS.

Promotional documents for syndicated deals always acknowledge the risk of an IRS audit, which can result in an assessment for back taxes, interest and stiff penalties. Recent Ornstein-Schuler marketing materials, for example, say the firm assumes "all partnerships will be audited," but that it trusts its "conservative, defensible valuations ..." It noted: "As of 3/13/17, approximately 11 percent of the partnerships have been audited and none of the valuations have ever been reduced as a result of an IRS examination or review." Syndication deals routinely include a six-figure "audit reserve" for battling the IRS. A few even offer "audit insurance" to help offset any disallowed write-offs.

To many investors, the promise of a fat deduction seems worth the remote peril of a government audit. "If there's a day of reckoning," noted Small, "it's way, way, way out in the future."

By 2013, Atlantic Coast Conservancy's "monetized" business was booming. Keller accepted 49 easements that year, and established a branch operation in Mobile, Alabama. He began staging promotional seminars around the Southeast with such agenda topics as: "Turning an Easement into a Source of Liquidity" and "Defending the Tax Audit from Examination through Litigation."

Keller had also applied for formal accreditation from the Land Trust Alliance, through a painstaking process that required him to submit reams of documents and a $12,000 application fee. Keller was an Alliance devotee, donating to the organization and faithfully attending its seminars. He was confident about measuring up to its rigorous standards. Noted Keller in a website posting: “Obtaining the prestigious Land Trust Alliance seal of accreditation … makes a public statement that ‘we do things right!’”

A bridge crossing at the former Millstone Golf Course in Greenville, South Carolina, whose value rose by a factor of eight when it was donated as a conservation easement. (Courtesy of Ethos Projects)

But by this point, the Alliance had issued a memo counseling its members to reject gifts with “grossly inflated appraisals,” regardless of the land’s conservation virtues. As the memo put it, “The public has entrusted us to act on its behalf. Enabling abuse endangers that confidence.”

The Alliance was concerned by the practices described in Keller’s application. In an August 13, 2013, call, accreditation commission chairman Larry Kueter, a Colorado attorney who had reviewed Keller’s submissions, questioned him and his directors about “troubling” appraisals on several easements. “In all of the applications when I’ve been on the commission, I haven’t asked a question like this before,” Kueter said, according to a recording of the conversation that Keller made and provided to ProPublica.

Almost every easement appraisal he had reviewed, Kueter said, “just showed a really significant, significant increase … within not real long periods of time. *One* of these I wouldn’t have thought twice about it. …But here we saw it four or five times. … The pattern was concerning.”

In one transaction, Kueter noted, the valuation soared “from $300,000 to $1.7 million in 15 months at the back end of the real estate crisis. And I’m thinking I would have asked the appraiser … ‘How do you get to that kind of a judgment?’”

Keller countered that a land trust has no legal obligation to challenge an appraiser’s professional judgment. “Roaming around in the appraisal is not something that we do,” explained Keller on the call. “We feel like we’re giving tax advice if we do.”

Keller’s argument was not well-received. “I’m not sure there’s more to talk about that on this call,” Kueter finally said. The Alliance, he said, believes land trusts have a “duty of inquiry” as part of their obligation to participate in “credible transactions.”

By the end of the conversation, Keller says, it was clear “they were not going to let us through.” He withdrew his application for accreditation.

This setback, however, didn’t seem to hurt the Atlantic Coast Conservancy’s business, as syndicators rejected by other land trusts brought even more deals to him. Their easements have protected “gorgeous land,” says Keller. “It turned out to be this wonderful conservation ploy. … For me, as a conservation biologist, this is the best.”

In a typical syndicated deal, the investor partnership has acquired the property within the past year or two, presumably from a seller determined to get what it’s worth. How, then, can an appraiser conclude its value has suddenly multiplied eight or 10 times from what the partnership paid for it?

Under federal regulations, an appraisal must offer an opinion on the land’s fair market value — the price a knowledgeable buyer would pay a knowledgeable seller when neither is desperate to make a deal. But when it comes to conservation easements, syndication appraisers typically claim there are no comparable area sales. So they use a more subjective approach (albeit one that often includes reams of complex projections and reports): They try to estimate what the land would be worth if put to its most profitable legal use — as, say, a development of resort homes. Under tax court rulings, this transformation is supposed to be “reasonably probable” to occur in the “reasonably near future” and not rely on “mere speculation and conjecture.”

Based on a skeletal development plan, consulting studies commissioned by the promoter, and an array of optimistic assumptions, the appraiser then projects the development costs and profits for the imagined business. On syndicated deals this invariably results in a sky-high valuation — a calculation of what the investors are giving up and can thus claim as a deduction — that makes everyone a hefty profit.

The syndicated easement on the old Millstone Golf Course in South Carolina, donated to the Atlantic Coast Conservancy, illustrates how this works. The project was the brainchild of two attorneys, Hank Didier and Andrew Speaker. The men had formed their company, Ethos, in 2016. This was their first easement deal together. Their partnership would split a few months after the donation was made.

Didier was a Florida personal injury lawyer who had previously started two other businesses: one represented companies pursuing claims from the BP oil spill; another counseled injury victims on how to cash out on long-term settlement awards.

Speaker was best known for causing an international uproar in 2007. Then a personal injury lawyer in Atlanta, he'd defied health officials by traveling to Europe and back after being informed that he'd contracted a highly drug-resistant strain of tuberculosis. The incident prompted congressional hearings and multiple lawsuits.

The old golf course property, four miles outside of Greenville and renamed River West, had been for sale since January 2015. CBRE had marketed it as a development site, approved for 2,136 residential units and 172,500 square feet of commercial space, at $5.8 million. When it didn't sell, the firm cut the asking price to $5.4 million — about $22,000 an acre. That's when Didier and Speaker entered the picture. They raised $9.8 million from 52 investors.

The two men hired Claud Clark, who concluded that the property's most profitable use was as a gated community with 1,404 single-family homes. Among the heady assumptions: The home lots would sell for $60,000 apiece, and be gone in six years.

Although the outcome was usually pre-ordained, Ethos, like most syndicated promoters, formally offered investors three options: to develop homes on the site; to hold it for "long-term appreciation"; or to donate 185 acres for a conservation easement. According to Clark's preliminary appraisal, the "conservation option" would justify a $40 million deduction. That's a value of more than $215,000 an acre — almost ten times the price at which the land had been offered for sale just months earlier. This choice would reward each of the partnership's $25,000 investors with a $100,000 federal tax write-off.

Local real estate experts express shock at this valuation. "It wasn't anything that was going to sell," says Frank Hammond, a Colliers International commercial broker with 30 years' experience in the Greenville market. "It's in a blue-collar service area, with very little in the way of upper-income demographics. It's a rough piece of dirt in an area that isn't sought after very much right now." A list of comparable sales showed only four tracts of 100 to 200 acres that had sold in the area over the past three years. The most expensive had brought about $8,400 an acre.

The premise of lofty syndication appraisals is that the promoters have suddenly discovered something on the land that multiplies its value, or come up with a sure-fire, highly profitable development idea that no one else contemplated. In the real world, experts say, that rarely happens. “Real estate is actually a very efficient market,” says Wentworth, the former chief of the Land Trust Alliance. “There’s a vast amount of local knowledge about what a thousand acres of pine trees in central Georgia is worth. People did not just fall off a turnip truck.”

In an interview, Didier called the old golf course site “a great property” that had been “completely recaptured by nature” and defended its valuation. “The $40 million is what the value of the property is with the development on it,” he said. “I could absolutely build those homes and make a god-awful amount of money for my investors. If they [had] elected that, we would be ready to go.” (Speaker declined comment for this story; Clark didn’t respond to calls.)

Stratospheric valuations for syndicated easements don’t always depend on a theory that a wildly profitable housing development could be sold on the spot. Increasingly, promoters have been declaring high valuations for parcels of land that sit on top of sand and rock, which they claim could be lucratively mined.

In the fall of 2015, promoters from ForEverGreen Group, based in Atlanta, contacted Judy Steckler, who runs the Land Trust for the Mississippi Coastal Plain. They had a piece of land they wanted to conserve: 203 acres along the Pearl River, near the Louisiana border.

Steckler took a team to inspect the tract. Much of it was covered in cypress pond swamp, prone to flooding, with wetlands habitat. There was also a good bit of sand, reputed to be of high quality for oil and gas fracking. The property sat inside the boundaries of an operating quarry. Steckler concluded that the property met her trust’s conservation standards.

She advised ForEverGreen that she was prepared to accept the easement, pending some standard reviews. But days later, Steckler says, a friend forwarded her a private placement memo seeking investors for the deal. The document said the property had an estimated appraised value of $160 million — $786,000 an acre.

Steckler was gobsmacked. “I’m familiar with what that land sells for,” she says. “There is no piece of property I know in the Mississippi Gulf Coast in the six coastal counties that would ever sell for that much.” (A 240-acre parcel nearby had sold just months earlier for $2,125 an acre.) Steckler pulled out of the deal.

There was another land trust that had no problem with the donation: Atlantic Coast Conservancy. Keller says he didn’t care about the size of the write-off, and found the wetlands there interesting. In a detailed email, he said the area is also the most likely habitat of the storied — but long-unseen — Ivory-billed Woodpecker.

Binders featuring paperwork for easements all over the Southeast in the Atlantic Coast Conservancy offices in Jasper, Georgia (Melissa Golden for Fortune)

Although an environmental study of the site found “a high percentage of land area in wetlands”— which would add extra costs for any commercial operation — mining was the basis for the site’s stratospheric valuation. Investor documents show the appraisal, conducted by star appraiser Claud Clark, relied on two expert studies, which concluded that the land’s most valuable use was to mine for fracking sand. (It was not clear why the original landowners, who were operating the surrounding quarry, wouldn’t want to mine the site themselves.) Nevertheless, in its 2015 tax return, Atlantic Coast Conservancy listed the value of the Mississippi land, which was ultimately donated as an outright gift rather than as an easement, as $170 million — more than $835,000 an acre.

As time went on, syndicators became more audacious. Some began acquiring large tracts of land themselves, then selling it in pieces to investors they recruited, who then used it to extract easement deductions. The two-step process had the effect of inflating the values even higher (and letting the syndicators make money on the sale, too).

In central Florida's Polk County, for example, entities controlled by Ornstein-Schuler bought the County Line Ranch, a 3,475-acre tract once owned by a citrus baron. They then carved it into 20 parcels and began selling them to investor partnerships run by Ornstein-Schuler and three other syndicators. Nine separate partnerships, all of them listing their address as a drop box at a Lakeland, Florida, UPS store, then donated easements to Keller's land trust in December 2015. Eleven new partnerships followed a similar pattern in 2016.

In a matter of weeks, the land's value jumped from $3,500 and $6,500 per acre (its listing prices before the syndicators bought the land in two pieces) to about $20,000 an acre (the price at which the syndicators resold it to their investors) to more than $200,000 an acre (the claimed easement deduction). Once all that was accomplished, most of the partnerships gave away the land, earning one final, much smaller, deduction on its residual value.

The valuations defy common sense, say mining experts, who rejected the stated claims that the parcels could each be developed into highly profitable limestone mines. Dean Saunders, a commercial broker who listed the County Line Ranch for years, says a previous owner tried to sell it in 2008 as a potential mining site for $10,000 an acre, but found no takers. He "realized the economics didn't justify trying to mine," says Saunders. He calls the $200,000 per acre appraisal "a farce and a travesty and an abuse of the system." (Schuler defends the transaction, saying his company relied on "qualified, independent experts" who concluded that "profitable limestone mining operations were feasible.")

For his part, Keller calls it a "heck of a project." He says the area's avian and amphibian diversity is "amazing" and that the land will also help protect the endangered Florida grasshopper sparrow. "If I can provide habitat for that. ... I think I'm doing a heck of a good job."

As Keller's syndication business mushroomed, so did his conflict with the Land Trust Alliance. Keller blamed the group for growing aversion to the promoters within the conservation community. In 2014, Keller heard scuttlebutt that Heather Benham of the Athens Land Trust had voiced qualms about syndication at a public forum. He shot her an email seeking "any and all" correspondence with the Land Trust Alliance on the issue. Keller also blamed the Alliance for Judy Steckler's decision to pull out of the ForEverGreen deal. (Steckler says it played no role.)

In 2015, Keller tried to convince Chuck Roe, a former Land Trust Alliance executive who he'd hired as a consultant, to launch a rival trade association. Roe declined. He says he recognized that it would be an advocate for syndications, which he calls "horrifying."

By the end of the year, Congress once again addressed easements. The 2006 law that expanded the deduction had actually been temporary and had been renewed periodically since then. But in December 2015, even as concern mounted about syndications, Congress decided to make the enhanced deduction permanent.

In August 2016, the Land Trust Alliance officially barred all accredited land trusts — and later, all of its members — from accepting syndicated easements. It urged avoidance of deals that are managed by a paid promoter, involve land acquired within the past 36 months, and claim deductions of more than 2.5 times the property's acquisition cost.

The Alliance's position forced land trusts to choose sides. In 2016, the Georgia-Alabama Land Trust, an accredited and influential group which had previously accepted syndicated deals, broke off discussions to accept another from a previous donor. Keller accepted the easement instead.

Keller dismisses concerns about "hyper-inflated" easement values, declaring it "something the Land Trust Alliance made up" as part of a "smear campaign." He says he knows the promoters bringing him easements are "in this for the money," but he says his mission is to conserve land. "At the end of the day," he says, "I don't care if they get their tax benefit or not."

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The Republican proposal will not only allow them to pass millions (or billions) to their heirs without inheritance taxes, it will also add another benefit on top of that.

Last December, the IRS finally took a more systematic step. The agency issued a formal notice branding virtually all profit-making syndicated deals as abusive. Anyone who had served as a promoter or material advisor on any deal dating back to January 2010 was required to file special forms, allowing the IRS to red-flag and scrutinize the transactions. This was intended to deter such deals and to lay the groundwork for future punitive action. The IRS has "listed" just two such tax-avoidance transactions since 2009.

Under most circumstances, such a move by the IRS would have sent a jolt of fear through anybody contemplating a syndicated easement. But the syndicators were not inclined to back down.

Instead, they marshaled their resources and girded for a fight. A few months before, Frank Schuler had formed the rival advocacy group Keller had contemplated, calling it the Partnership for Conservation ("permanently conserving important lands in the U.S."). It has spent $650,000 on lobbyists since its inception. EcoVest Capital — the single most prolific syndicator — has invested another $1.13 million on lobbyists. Those riches bought the services of top-tier advocates, such as former deputy Treasury Secretary Stuart Eizenstat.

In the months that followed, the industry persuaded Georgia congressman Tom Graves, whose district includes the syndication hotbed of Rome, to slip a rider into the federal appropriations bill that would bar the IRS from spending money to enforce the listing notice. (A spokesperson for Graves said via email that constituents had expressed concerns that the IRS notice would have a "chilling effect" on conservation.) The provision passed in the House but has not been voted on yet in the Senate.

The next legislative volley, months later, came from the traditionalists: In November, two representatives introduced a separate bill to kill syndications.

In the final months of 2017, all attention turned to the tax bill, which became the ultimate field of battle for all tax matters. Again, the syndicators emerged unscathed — the easement rules were untouched — and it doesn't appear to have been a close call.

The anti-syndications contingent may still ultimately prevail. Yet every time the issue has reached Congress so far, the result has been to preserve or strengthen the deduction. It might not quite qualify as the cockroach of the tax code — the provision that survives every calamity — but it will take a lot to kill it.

Filed under: Environment

Peter Elkind

Peter Elkind is a senior reporter covering the Trump administration.

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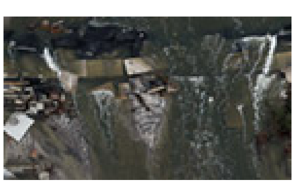

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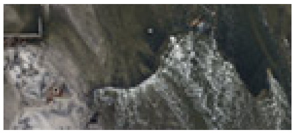

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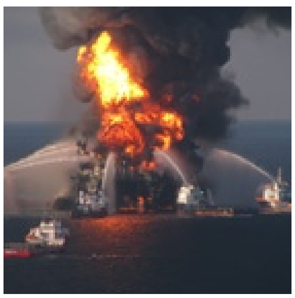

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Jelsig 67 • 12 days ago

Not so simple as appraisal fraud (though the same happened in the housing crisis with credit rating agencies). The "IRS is outgunned". They buy the congressmen and lobbyists, defund the government allowing them to do whatever they want and avoid or delay repercussions through the legal system. Great story. This is "the Swamp". Literally.

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Michael_in_ABQ • 14 days ago

As a certified commercial real estate appraiser I can echo the comment that the appraisers involved in this apparent fraud are putting their livelihoods at their professional licenses at risk. If these inflated appraisals were submitted to their respective state regulatory boards I suspect they would find numerous violations of the Uniform Standards of Professional Appraisal Practice (USPAP). These are the guidelines that all appraiser must abide by and boil down to don't be misleading. These standards were implemented to promote the public trust. An appraiser is supposed to be the unbiased party in the transaction who is paid a flat fee to determine their professional opinion of value. When they become a paid shill for a client that public trust is eroded.

With large and relatively unique properties there might be little data to support a value conclusion. But when a property is listed for sale for years and then is appraised for higher than that value (to say nothing of many multiples of that value) it's a huge red flag. Most land I've seen with conservation easements is unsuitable for development due to location, topography, zoning restrictions, etc. Those same factors mean that it's highest and best use is often as recreational or agricultural land, not a luxury resort or some other use that would justify a much higher value.

Most appraisers are wary of working on conservation easement appraisals because there is such a high risk of fraud. Putting your name and professional license on an inflated appraisal going to the IRS could mean not just losing that license but possible fines and jail time. If the authors of this article have copies of any of these inflated appraisals I urge them to make formal complaints the respective state boards. They are duty bound to investigate these claims and while it may take months (or even years) they are the only ones who can revoke an appraisers license which will make them unable to participate in further tax fraud.

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Pietro7 • 15 days ago

The issue is appraisal fraud, pure and simple. The appraisals described in the article reach conclusions that certainly appear to lack any reasonable credibility. The appraisers' decision to avoid checking their conclusions by also doing a standard Sales Comparison Approach casts doubt upon their honesty. All appraiser participants in this massive abuse of conservation easements should be investigated by their state licensing agencies, and I strongly suspect that they will end up stripped of their licenses. This abuse must be stopped.

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Derrick P. Fellows ➦ Pietro7 • 10 days ago

The IRS actually requires the sales comparison approach to be used to value conservation easements when feasible. See Treas. Reg. § 1.170A-14(h)(3)(i). In practice, however, this approach is never used because conservation easements are not usually sold. Not using the sales comparison approach doesn't by itself cast doubt on the appraisers' honesty; there are simply no comparable sales to be used.

What the article (very vaguely) describes is called the before-and-after method, which is the standard method for valuing conservation easements. When using the before-and-after method, the appraiser basically does two appraisals in one: an appraisal of the hypothetical value of the property if developed to its highest and best use, and an appraisal of the value of the property after being restricted by the conservation easement. The value of the conservation easement is the difference between the two. In determining those two appraisal values, the appraiser usually does use the sales comparison approach, the income approach, or some other standard appraisal methodology. The problem is that these appraisers are being overly aggressive in (1) how they apply these standard methodologies (for example, by making excessive adjustments to the comparable sales) and (2) how they determine what the property's highest and best use is in the first place.

Having said all that, you are absolutely correct that "[t]he appraisals described in the article reach conclusions that certainly appear to lack any reasonable credibility."

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Andrew Bowman • 15 days ago

I want to publicly thank reporter Peter Elkind, ProPublica and Fortune for caring so much about this complex, important issue. Peter is to be commended for his thorough work, just as ProPublica and Fortune are to be applauded for publishing his investigation.

Peter describes a serious and urgent threat for the land conservation community. That's why the Land Trust Alliance and many other national organizations have endorsed the bipartisan Charitable Conservation Easement Program Integrity Act (H.R. 4459). This pending legislation was only quietly referenced in Peter's article, but it represents the best possible solution to this issue.

I invite you to learn more about H.R. 4459, why the Land Trust Alliance so vigorously supports this legislative remedy and how you can help by visiting http://www.landtrustallianc...

The time is right for Congress to close what the article describes as a "billion-dollar loophole." On behalf of the Land Trust Alliance, I look forward to seeing that loophole closed soon.

Andrew Bowman
President, Land Trust Alliance

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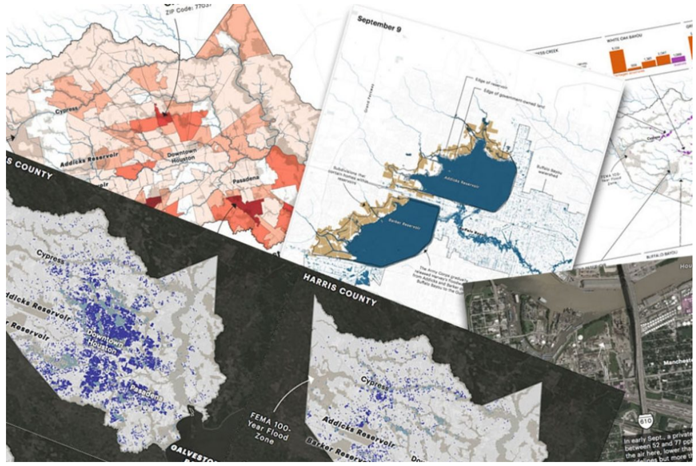

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