



MINUTES

GEORGIA LAND CONSERVATION PROGRAM Third Quarterly Council Meeting July 11, 2008 - 10:30 AM

Call To Order

A quorum being present, the meeting was called to order.

Present at the meeting were:

Council Members: Steve Stancil, Chairman, Noel Holcomb, Mike Beatty, John Bembry, Stacy Patton, Brent Dykes, and Robert Farris.

Approval of the Minutes

Chairman Stancil presented minutes from the April 24, 2008 GLCP meeting for approval. Robert Farris made a motion seconded by Mike Beatty to approve the minutes as presented. The motion passed unanimously.

Georgia Conservation Tax Credit Summary Report

Kristina Sorensen stated that the Conservation Tax Credit legislation was signed into law on April 21, 2006, creating a new state income tax credit for land conservation. The purpose of this credit is to increase the financial incentive for a willing landowner to permanently protect their property. The tax credit is for up to 25% of the fair market value of the donation, with a maximum credit of \$250,000 per individual and \$500,000 per corporation.

In April 2008, HB 1274 was passed which amended the tax credit legislation to fix some problems recognized with the original legislation. A major correction was defining that the value of the donation will be determined by a qualified appraisal. Prior to this change, it was up to the local county tax assessor to evaluate and many people had problems with their assessments. The new legislation also now allows for discounted sales of property or conservation easements to be eligible for the tax credit. This is a major change that will allow many more people to apply for the tax credit. A third major change in the new legislation is that the Department of Natural Resources will define conservation purposes, and not rely only on the 10 goals defined in the Land Conservation Act.

To date, the DNR has received 75 tax credit certification applications; 68 applications have been certified for the tax credit; 2 applications were not eligible; 2 applications never were finalized, and 3 were determined by DNR to not have significant conservation purposes.

Brad Winn with the DNR Nongame Wildlife Department gave a presentation on the coastal planning and conservation initiative being led by DNR, DCA, ACCG, and others.

Curt Soper stated that the Federal Farm Bill did pass, including the provision extending the increased federal income tax deductions for donations of conservation easements.

Land Conservation Project Reviews

Curt Soper stated that the Council currently has approved 50 projects totaling 64,604 acres since its inception; total state investment is \$61.5 million; total project value/cost is \$225+ million; 38 grants and 8 loans have been provided to DNR, cities, and counties; 15 conservation easements and 37 fee title acquisitions have been approved; and there have been 9 outright gifts of property to the state.

Curt Soper presented the following projects:

Middle Oconee River/Athens-Clarke County

Athens-Clarke County is requesting a grant in the amount of \$77,750. The project would protect a 7.2-acre site along the Middle Oconee River located within a very developed area, just west of downtown Athens and adjacent to the Atlanta Highway (U.S. 78). This tract is part of the largest remaining block of greenspace remaining within the Athens I-10 loop, the Rowland family property. The Crane Tract offers a critical starting point for continued efforts to preserve the most environmentally sensitive portions of the Rowland Family properties that collectively define the heart of the Beech Haven area of Athens. Rowland properties targeted for acquisition includes the entire Middle Oconee River frontage stretching from Atlanta Highway northward to the southern edges of the existing Pine Forest subdivision and Forest Heights subdivision. The Crane tract serves as a pivotal anchor in the proposed Middle Oconee River Greenway and will potentially serve as a trail head for a critically needed multi-use path and wildlife corridor linking Ben Burton Park to the Atlanta Highway. The majority of the property (5 acres) is within the River floodplain and consists of grassy floodplain habitat. The remainder of the property (2.2 acres) is upland with a fairly mature mixed oak-hickory forest habitat. Much of the floodplain area has been fenced off and the riverbank is very steep. An MAI appraisal has been completed on the property with an estimated value of \$311,000. Mike Beatty made a motion seconded by Stacy Patton to approve a grant in the amount of \$77,750 to Athens-Clark County. The motion passed unanimously.

Mountain Cove/Walker County

Walker County is requesting a grant in the amount of \$6,497,080. This project would protect 1,860 acres of historic and scenic Mountain Cove. The property is adjacent to the Crockford Pigeon Mountain Wildlife Management Area and Zahnd Natural Area and is within one of six statewide conservation focus areas identified in the DNR's State Wildlife Action Plan. This tract includes the bottomlands and slopes of McLemore Cove, one of the most scenic locations in Georgia where the Lookout Mountain escarpment drops more than 1,000 feet to the valley floor. McLemore Cove is listed on the National Historic Register of Historic Places and this property contains a handful of historic structures including an 1840's schoolhouse. More than two dozen species of rare plants have been documented from the Pigeon/Lookout Mountain area. High priority habitats on this property include forested limestone slopes and terraces, high gradient first- and second-order streams, mesic hardwood forests, underground streams, and caves. The Pigeon Mountain WMA is a very popular and heavily used recreation area. Match sources include Walker County, a discounted sale by the landowner, a federal NFWF grant, and private foundations and organizations. Two appraisals have been completed with values set at \$11.6M and \$11.5M (\$6196/acre). Noel Holcomb made a motion seconded by John Bembry to approve a grant in the amount of \$6,497,080. The motion passed unanimously.

Camp Adahi/Walker County

Walker County is requesting a grant in the amount of \$750,000. This project would protect 740 acres on Lookout Mountain. This property is adjacent to the Zahnd Natural Area and near the Crockford Pigeon Mountain Wild Management Area and is within one of six statewide conservation focus areas identified in the DNR's State Wildlife Action Plan (SWAP). About 100 acres of the property has been managed as a Girl Scout camp facility since 1965 and the remainder is undeveloped. More than two dozen species of rare plants have been documented from the Pigeon/Lookout Mountain area. High priority habitats on this property include underground streams, freshwater springs, caves and talus slopes, pine-oak woodlands, and sandstone barrens and outcrops. The tract contains several miles of first and second order streams that feed into the East Fork of the Little River, a high priority stream in the SWAP. The streams found on this property show little evidence of erosion or sedimentation and their protection would benefit water quality downstream. Match sources include a discounted sale of the easement by the landowner and private foundations and organizations. One MAI appraisal has been completed with a value set at \$3.8M (\$5135/acre) for the unencumbered property and \$2.8M (\$3797/acre) as the easement value. The easement would allow the continued operation of the Girl Scout camp on 103 acres of the tract and would establish a Special Natural Area on the remaining 637 acres of the property where no consumptive uses or structures could occur. Noel Holcomb made a motion seconded by Stacy Patton to approve a grant in the amount of \$750,000 to Walker County. The motion passed unanimously.

Sam Way Ocmulgee River Tract/Georgia Forestry Commission

Georgia Forestry Commission is requesting a grant in the amount of \$10,000. This project would protect 124 acres on the Ocmulgee River in Pulaski County. Retaining this property in its natural state would have substantial water quality benefits due to its frontage on the Ocmulgee River. It is also anticipated that this transaction may be the first phase of a larger

conservation effort along the Ocmulgee River near Hawkinsville, Georgia. The majority of the site is wooded, containing approximately 47 acres of pine and 65 acres of natural mixed hardwood/pine forest. The southern end of the Ocmulgee WMA lies directly across the Ocmulgee River from the property. The property will be preserved through a conservation easement held by Georgia Forestry Commission (GFC). Funds requested will be utilized to cover GFC's costs associated with the easement such as title insurance and legal closing. The landowner has had an appraisal completed. The State has not formally reviewed or approved this appraisal. The conservation easement would allow continued use of an existing home on the property and timber management but no additional structures may be built. A motion by John Bemby and seconded by Noel Holcomb to approve a grant in the amount of \$10,000. The motion passed unanimously.

John Bemby made a motion seconded by Robert Farris to set aside \$200,000 in the Georgia Land Conservation Program local grant funds to be used to pay due diligence costs associated with conservation easements being donated to the state by landowners including survey, title insurance, legal environmental hazard assessment and closing costs with a cap of \$20,000 per project. The motion passed unanimously.

Georgia Land Conservation Program Policy Changes

Curt Soper presented the following due diligence requirement policy changes for review:

A An appraisals, a Current Survey Plat, a Phase One Environmental Site Assessment, proof of Title Insurance, and specific Deed Restriction (for fee title acquisitions) or Conservation Easement language (for conservation easements) are all part of the due diligence which is required prior to the release of any authorized funds. Details are provided below. While an application can be submitted without the completion of these due diligence requirements, the GLCP will typically not take action on an application until ~~at least one~~ **a certified appraisal has been completed and approved** and there is ~~land acquisition~~ **an agreement** in place with the landowner. Where the acquisition of a conservation easement is proposed, the terms of the easement must **also** be negotiated with the landowner and approved by the GLCP.

Appraisals:

For land or conservation easements acquired with GLCP grant or loan funds ~~two~~ **an** appraisals meeting specific professional standards ~~are is~~ required ~~(one if the land or conservation easement value is under \$250,000)~~. All appraisers must be Certified General appraisers according to the Georgia Real Estate Appraisers Board. The Georgia Real Estate Appraisers Board establishes standards from time to time under the Real Estate Appraiser Classification and Regulation Act O.C.G.A. § 43-39A-1 through § 43-39A026 and Rules and Regulations. The appraiser should have experience in appraising the type of property to be acquired (farm, recreational, commercial residential, timber, etc.). All appraisals are subject to GLCP review and approval.

At a minimum, all appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. The purpose of the appraisal is to develop an opinion of the market value of the fee simple interest or the conservation easement interest of the property. It must also meet the requirements of Section 170 of Title 26 of the United States Code and must contain the following items:

- (1) Purpose, Scope and function of the appraisal.
- (2) Highest and Best use of the property must be stated.
- (3) An adequate description of the physical characteristics of the property being appraised and at least a 5-year sales history of the property.
- (4) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices.
- (5) A description of comparable sales with photos and location maps of each comparable.
- (6) A statement of the value of the real property to be acquired, including valuation and analysis of data. In the case of conservation easements, a statement of the value of the property *before and after* the easement is in place.
- (7) The effective date of valuation, date of appraisal, signature and certification of the appraiser.

~~The GLCP may award a grant or loan based on a single "limited" or "summary" appraisal by an MAI appraiser, but the required full appraisal(s) must be completed and approved prior to the disbursement of any approved grant or loan funds.~~

For donations of fee title or a conservation easement, the donor needs their own appraisal in order to receive state and/or federal tax incentives. For donations to the State, the State requires a copy of the donor's appraisal.

Appraisal Costs

Appraisal costs are typically paid by the land purchaser. For land or easement purchases, this cost may be recoverable as part of a successful GLCP grant application. For donations of property or conservation easements, appraisals are paid by the donor.

A Current Survey Plat

For land or conservation easements acquired with GLCP grant or loan funds or to be held by the State, a current survey plat signed by a registered Georgia land surveyor is required. At a minimum, the surveyor shall (1) provide a recordable plat of the tract(s); and (2) provide a signed "Certificate of Surveyor" that complies with OCGA §§15-6-67 – 69 as amended, and OCGA §§44-4-20 – 31. For landowners donating property or a conservation easement to a qualified entity other than the State and seeking a tax credit from the State, a legal description and/or a plat is acceptable.

Survey Costs

Survey costs are typically paid by the landowner or easement grantor. These costs may be recoverable as part of a successful GLCP grant application and may be paid by the State if the landowner is donating the property. If the landowner is donating a conservation easement to the State, any necessary survey costs may be shared by the donor and the State.

A Phase I Environmental Site Assessment

A Phase I Environmental Assessment in accordance with the American Society for Testing and Materials (ASTM) Standard E 1527-00 or ASTM Standard E 2247-02 shall be conducted on all land proposed for acquisition using loan or grant funds.

Phase I Environmental Assessment Costs

Phase I Environmental Assessment costs are typically paid by the intended real property interest holder. These costs may be recoverable as part of a successful GLCP grant application.

Deed Restriction (for fee simple acquisitions)

For projects where the GLCP grant will result in fee title being acquired by the recipient, the GLCP requires that a deed restriction be placed on the property and recorded on the date of the real estate acquisition closing. The purpose of the deed restriction is to provide for the preservation of the conservation values on the property in perpetuity. A copy of the deed restriction to be recorded must be delivered to the GLCP and the deed restriction must include the following language:

This property shall be and is perpetually restricted, as indicated herein, so as to maintain certain conservation values which include natural habitats, forests, wildlife, scenic, agricultural and other ecological values which qualify the property as a scenic, natural and rural area that has not been subject to significant development and as a significant natural area that provides a "relatively natural habitat for fish, wildlife, plants, or similar ecosystems" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code. These restrictions are deemed to be covenants running in favor of or for the benefit of land and are being held for the use of the public. Therefore, pursuant to O.C.G.A. § 44-5-60 (c), these covenants shall run in perpetuity. The grantee shall seek to preserve any plants, animals, or plant communities of the property, including but not limited to species designated as protected by the Georgia Department of Natural Resources and the U.S. Fish and Wildlife Service.

Conservation Easement

For projects where the GLCP grant will result in a conservation easement being placed on the property, GLCP must review the easement document prior to closing to ensure that it includes the restrictions necessary to protect the identified conservation values in perpetuity. A copy of the fully negotiated conservation easement must be delivered to GLCP. In addition, the amendment clause included in the conservation easement must include the following language:

This conservation easement shall be perpetual and shall be a covenant running with the land. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee, or their successor or assigns, may subject to the approval process discussed below, amend this Conservation Easement; provided that no amendment shall be made that will adversely affect the qualification of this Conservation Easement or the status of

Grantee under any applicable laws, including Sections 170(h) and 501(c) (3) of the Internal Revenue Code and the Georgia Uniform Conservation Easement Act, O.C.G.A. § 44-10-1 et seq. Any such amendment shall be consistent with the purposes of this Conservation Easement, shall not affect its perpetual duration, and shall result in equal or greater protection of the Conservation Values on the Protected Property. Nothing herein shall require Grantee to agree to any amendment, and Grantee shall obtain approval of the Georgia Land Conservation Council or its successor State of Georgia entity, for any amendments, which approval shall not be granted if, in the sole discretion of the State of Georgia, the proposed amendment affects the Conservation Values of the Property. In the event no successor State of Georgia entity exists, the contact agency will be the State Properties Commission or the State of Georgia entity then responsible for the accounting of state property.

Title Insurance

GLCP funded conservation projects require a copy of a valid title insurance policy in favor of the intended real property interest holder. Projects where the State is holding fee title or a conservation easement interest require a valid title insurance policy in favor of the State.

Title Insurance Costs

The cost of a title insurance policy is typically paid by the intended real property interest holder. These costs may be recoverable as part of a successful GLCP grant application.

Real Estate Closing Costs

There are typically several real estate closing costs associated with the legal conveyance of fee title or a conservation easement interest in property. These may include attorney fees, transfer taxes, recording fees, real estate commissions, and pro rata ad valorem taxes. Real estate closing costs are typically paid by the landowner and/or the land purchaser in a manner consistent with locally accepted protocol. These costs may be recoverable as part of a successful GLCP grant application.

Conservation Easement Monitoring and Enforcement Costs

The holder of a conservation easement has a responsibility to monitor the easement property at least once a year and be prepared to enforce the terms of the conservation easement into perpetuity. Monitoring should be appropriate to the size and restrictions of the easement property and should be documented through a written report, which is guided by the baseline documentation report. For projects where the State is holding a conservation easement, annual monitoring is conducted. For GLCP funded conservation easements where the State is not holding the easement, the State does not conduct formal easement monitoring but does retain a right of entry and regularly inspects the property.

The holder of a conservation easement also has a responsibility to enforce the terms of the easement if and when violations occur. The easement holder must take necessary steps to see that violations are resolved and must have the financial and legal resources for such enforcement and defense.

The costs associated with conducting long term conservation easement monitoring and enforcement is typically paid by the Grantor in the form of a donation sufficient to pay for the annual monitoring and to assist with potential enforcement costs that may come up. These costs are based on the size of the property and the complexity of the conservation easement. For projects where the State is holding a donated conservation easement, the State will use its resources to monitor and defend the easement.

Mike Beatty made a motion seconded by John Bemby to approve the due diligence requirement changes as presented. The motion passed unanimously.

Curt Soper presented the following changes to the application requirements regarding when an application can be submitted and the match requirements:

Applications

Grant and loan applications are due on March 1, June 1, September 1, and December 1 in 2008 **can be submitted at any time throughout the year**. Each application project area is visited, reviewed, and scored by GLCP staff. Upon receipt of a completed application, the GLCP review process takes approximately 100 days. A complete application must include a certified appraisal, the landowner's signature and in the case of a proposed conservation easement, a fully negotiated

easement document. The Council will consider fully reviewed applications at each of its quarterly meetings in 2008 which are scheduled for January, April, July and October, pending available funds. **Beginning in August of 2008, the GLCP is requiring all local grant applications to provide a minimum 1:1 ratio of non-state matching funds to requested grant funds. Match sources can include cash contributions, due diligence costs, and landowner contributions verified through an approved certified appraisal. Projects not approved for financial reasons will not be reconsidered for six months by the Council.**

Application Form

The application review cycle for loans or grants takes approximately one hundred days.

Conservation Tax Credit Program

Provides State of Georgia income tax credits for qualified donations of real property for conservation purposes.

Due Diligence Requirements

~~Two MAI~~ **A certified** appraisals, a current survey plat, a Phase One Environmental Site Assessment, roof of Title Insurance, and specific Deed Restriction (for fee title acquisitions) or Conservation Easement language (for conservation easements) are all part of the due diligence which is required prior to the release of authorized funds.

Low Interest Land Conservation Loans

How does the low interest loan program work, what are some payback sources, and why is a low interest loan a good idea?

Project Scoring and Evaluation Criteria

The Georgia Land Conservation Program utilizes a weighted 3-factor decision making model which assists the Council in making grant and loan funding decisions that reflect the goals and objectives of the program.

Brent Dykes made a motion seconded by Mike Beatty to approve the changes made to the application requirements.

Emerging Issues

No emerging issues were presented.

New Business

The next Land Conservation Council meeting will be scheduled for the third week of October. Council members will be notified of the date.

Adjournment

A motion was made by Mike Beatty to adjourn the meeting seconded by John Bembry. The motion passed unanimously. The meeting adjourned at 11:45 a.m.

Kim Yawn, Executive Assistant

Chris Clark, Executive Director