

GEORGIA DEPARTMENT OF NATURAL RESOURCES

Georgia Conservation Tax Credit Program

Frequently Asked Questions

This document is designed to give answers to general questions relating to the Conservation Tax Credit Program and certification requirements. More detailed information can be found on the web at www.glcp.ga.gov/taxcredit or by contacting the Department of Natural Resources at (770) 918-6411.

What are the minimum requirements for eligibility under the Georgia Conservation Tax Credit Program (GCTCP)?

Individual and corporate owners of real property in Georgia are eligible to participate in the program. In order to be eligible to receive the state income tax credit:

- 1) The landowner must donate or bargain sell the property in fee simple, or donate or bargain sell a permanent conservation easement, on the property;
- 2) The donation must be accepted by the Federal Government, State, county, municipal, consolidated government, or a bona fide charitable nonprofit organization defined as a “qualified organization” under this program
- 3) The property in question must meet one or more Conservation Purposes as defined by the Department of Natural Resources (“Department”).

What types of land are not eligible for certification under this program?

- 1) Land that is already protected from development under local ordinances (e.g., stream buffers or scenic setbacks)
- 2) Land that is set aside in order to increase building density levels (e.g., dedicated “greenspace” within conservation subdivisions or cluster developments)
- 3) Land that is planned for or used for golf courses, soccer fields, softball fields, or other types of intensively managed recreational uses.
- 4) Only one qualified donation may be made on a property that was part of a larger parcel under the same ownership in the prior year, except as otherwise provided in O.C.G.A. § 48-7-29.12 (d)(2)

What is pre-certification, and how does it differ from certification?

Under the GCTCP, the Department can only provide certification after the donation has been completed. This means that the donor and recipient must have executed and recorded all appropriate documents for the land transaction before the Department makes the final determination on a property’s suitability for certification. Many prospective donors want some degree of assurance that their conservation donation will meet the standards for certification before completing the transaction and applying for certification.

Pre-certification is an optional intermediate step that allows the landowner to consult with the Department staff to reduce the level of uncertainty concerning certification. By providing information about the property and the terms of the donation prior to the completion of the property transaction, the landowner gives the Department an opportunity to review the proposed donation and provide an estimate of the likelihood that it will meet the standards for certification. This also gives the Department staff an opportunity to advise the landowner on the various components of a successful conservation project and to make certain that the landowner knows about all available conservation options.

After reviewing the pre-certification application, the Department will provide a letter to the landowner indicating whether or not the proposed donation is likely to meet all requirements for certification. Please keep in mind that this preliminary determination is not binding on the landowner, the recipient organization, or the Department. However, the more complete and detailed the application package is, the more confidently the Department can determine the likelihood of meeting the certification requirements.

How do I apply for pre-certification or certification?

There is one application form that is used for both pre-certification and certification. It can be downloaded at www.glcp.ga.gov/taxcredit or you may request a printed copy by calling 770-918-6411.

When will I hear from the Department on my application?

The Department will review all complete pre-certification application packages and respond to the applicant within 60 days. The Department will review all complete certification application packages and respond within 90 days. The review period for certification applications is longer due to the amount of background work involved (including document review and site visits). Applicants who send in an incomplete application package will be notified by the Department and given an opportunity to provide the required information.

Is there a minimum or maximum number of acres that must be donated before the property becomes eligible for this program?

There is no minimum size requirement for donated property under this program. Instead, suitability for certification is based on an assessment of the contribution of the donation to one or more of the Conservation Purposes defined by DNR. This assessment takes into account the location, size, configuration, condition, and other characteristics of the site. All other factors being equal, larger sites generally provide more conservation benefits and are more easily managed to maintain viability over time. However, some small sites can provide significant conservation benefits as well. While there is no minimum size to be considered under this program, the size of the tract may influence the willingness of a qualified organization to accept the donation. Similarly, while there is no upper limit on the number of acres that can be donated, there is a limit to the financial incentive that can accrue through this particular state program. That limit is \$250,000 for individuals and \$500,000 for corporations (or 25 % of the assessed fair market value of the donation, whichever is less).

If the property being considered for donation includes structures that are in use, such as a home, barn, or storage building, will the property owner be permitted to continue such use after a conservation easement is placed on the property?

Yes, depending on the terms of the conservation easement that is developed by the landowner and the qualified organization. Generally, conservation easements allow continuation of existing uses, including the use of buildings. However, the landowner may wish to structure the easement to reduce the future use of some buildings or areas; that decision is entirely up to the landowner.

Easements that are developed specifically to protect historic buildings and other structures may include specific conditions relating to the use, maintenance, and rehabilitation of these structures. For more information on this type of easement, contact the Historic Preservation Division of Georgia DNR at 404-656-2840.

Is a conservation easement that allows future development eligible for consideration under this program?

Yes, however, the amount of future development allowed under the easement will determine the suitability of the site for certification, the willingness of a qualified organization to accept the donation, and the amount of income tax credit provided by the donation. In general, conservation easements that place few restrictions on future development will not be considered suitable for certification.

Certain types of “development” may not impact conservation values on some properties. These may include construction of walking trails, kiosks, or boardwalks, minor improvement of roads, and replacement or repair of existing structures (other than replacement or modification of historically significant structures). On the other hand, draining wetlands, building artificial levees, damming streams, converting native vegetation, and constructing new roads or buildings are types of alterations that may significantly impact the conservation value of a property. The types of reserved uses and amount of development allowed must be clearly defined in the conservation easement and will be considered by the Department in their decision.

Is a conservation easement that allows future subdivision of property eligible for consideration under this program?

Allowing future subdivision of a property is considered detrimental to the conservation values of the property and is strongly discouraged. As with development, the amount of subdivision allowed under the easement will determine the suitability of the site for certification, the willingness of a qualified organization to accept the donation, and the amount of income tax credit provided by the donation.

Does donation of a conservation easement or restrictive covenant under this program require the landowner to provide public access?

While conservation easements can include provisions for public access and use, most do not. There is no requirement in this program that the landowner include public access as a component of the donated conservation easement.

For properties held by a qualified organization and protected by a permanent restrictive covenant, the situation is different. Under Georgia law (O.C.G.A. 44-5-13), permanent restrictive covenants are those that include provisions for public use. Restrictive covenants that do not provide public access and use are not permanent, and are therefore ineligible for certification under this program.

Are there circumstances in which a government entity (state, county, or municipal) will not accept a property proposed for donation?

Yes, some local governments may not be staffed to handle the process or have the necessary policies and procedures in place. Also, the property may not meet their conservation and greenspace goals due to its configuration, size, condition, or location.

The State of Georgia will only accept a donation of land (fee-simple or conservation easement) if the property is of statewide significance and can be managed to protect and maintain its values in perpetuity. In addition, emphasis is placed on sites that can provide opportunities for public recreation, education, or scientific research.

Are there circumstances in which a private conservation organization will not accept a property proposed for donation?

Yes. The property in question may not be compatible with the organization's mission or objectives, or may be judged problematic for any number of other reasons. Private non-profit organizations that accept conservation easements must annually monitor and report the status of the easement to the Department, so these organizations must assess the conservation value of the proposed donation in relation to available staff resources.

Does certification under this program provide automatic eligibility for other financial incentive programs supporting conservation uses?

No, but much of the documentation required for certification under GCTCP is the same as that required for other programs providing federal tax deductions, property tax relief, or other financial incentives. Please check with the Department (770-918-6411) for information on other programs that provide financial incentives for land conservation.

Can the Department provide me with an estimate of the income tax credit that would result from a conservation donation?

No, the Department is responsible for determining the eligibility and suitability of a site for certification under this program. The Department does not determine or estimate the monetary value of a donation or the resulting state income tax credit. Many of the cooperating qualified organizations can provide guidance on what to expect in terms of financial benefits from a conservation donation under this program.

Who is responsible for determining the value of the state income tax credit?

The state income tax credit is based on the monetary value of the donation, as determined by a qualified appraisal. This value is determined by a qualified appraisal. The Department of Revenue is responsible for issuing the tax credit.

How is the Georgia Conservation Tax Credit Different from Federal Tax Incentives available from the IRS?

The federal incentives available for land conservation currently consist only of income tax deductions. The Georgia Conservation Tax Credit provides for an actual dollar-for-dollar credit on your state income tax return, not just a deduction.

Also, the IRS uses much broader criteria on what constitutes conservation purposes. The State has stricter requirements for the program, more specific definitions of eligible conservation purposes, and has a certification process in which the property, and allowed uses, is scrutinized by the Department. Therefore, there may be some donations that will qualify for federal income tax deductions, but fail to meet the State's criteria.