



Guidance for Completing Conservation Easements in the State of Georgia

Thank you for considering a conservation easement on your land. Your stewardship and generosity will help preserve our state's precious landscapes and natural resources for current and future generations of Georgians to use and enjoy. This guidance document will help answer some of the questions you may have, and will serve as a reference during the easement process. If you would like clarification about anything in this document, or have a question not addressed here, contact the Georgia Land Conservation Program staff (contact info below). We look forward to helping you protect Georgia's valuable natural lands.

Conservation Easement Basics

A conservation easement is a binding legal contract between a landowner and a qualified entity that ensures the conservation values on a piece of property are maintained. Qualified entities include local, state, or federal agencies, as well as nonprofit conservation organizations (typically known as land trusts) recognized under Section 501(c)3 of the Internal Revenue Code. Unlike the more common temporary conservation use covenants that must be renewed after 10 years; conservation easements are permanent and remain with the land in perpetuity. Properties encumbered by conservation easements can be sold or transferred, but the easement restrictions and the easement holders' obligations to uphold them never expire.

Where to Start: Finding a Conservation Partner (Easement Holder)

The first step towards completing a conservation easement is to identify the organization or agency that you feel is best suited to 'hold' an easement on your property. Georgia has an extensive and growing network of land trusts and conservation organizations that are able to help guide you through the process. A list of qualified organizations certified by the state is available on the Georgia Land Conservation Program website at www.glcp.ga.gov. *(Note: Starting in 2014, only local governments, state agencies and organizations that have been accredited by the Land Trust Alliance may accept donations that are eligible for the state income tax credit.)*

Organizations located close to you that have conservation goals similar to your own often make the best partners. However, state agencies, local governments and regional conservation groups are also potential easement holders that may provide a better "fit" for you and your land. The best way to determine if a potential easement holder is right for you is to speak with them directly. Some questions to consider include:

- How fast can your organization complete my easement?
- What expenses will I incur by working with your organization?
- What is the scope of services and assistance that your organization will provide?

There may be costs incurred by the landowner when donating a conservation easement on property. These include tax and legal advice, appraisal costs, survey and other real estate transaction costs, and provision of a stewardship endowment for the holder of the easement. It is advised to meet on your property with a representative from the organization or agency you are considering before committing to work with them.

What's in a Conservation Easement?

Generally, a conservation easement is organized according to the outline below, although many organizations use acceptable variations. Additional guidance on the appropriate components of a conservation easement can be found in *Land Trust Standards and Practices* and *The Conservation Easement Handbook* – both of which are publications of the Land Trust Alliance and available on their website (www.lta.org).

1. Purpose. The Purpose of the conservation easement must be to preserve the property in perpetuity and to prevent any use of the Property that will adversely impact or interfere with the property's conservation values.

2. Conservation Values. The Conservation Values of the property represent the reasons for creating the conservation easement. These values should be defined, listed and described such that future Landowners and the courts understand those reasons.

3. Restrictions and Prohibited Uses. Any activity on or use of the Property inconsistent with the Purpose of the conservation easement must be expressly prohibited.

4. Reserved Rights of the Landowner. Rights that are not inconsistent with the Purpose of the conservation easement and which are expressly reserved to the Landowner should be listed.

5. Land Management Plans for Reserved Forestry and Agricultural Uses. For conservation easements where forestry and/or agricultural uses are expressly reserved by the Landowner, a Management Plan defining how such uses will be carried out must be prepared, and the Plan must be approved by the easement holder.

6. Baseline Documentation Report. There must be a detailed record of the condition of the property at the time the easement is executed. The Baseline Documentation Report is that record, and formal acknowledgment of this document by the Grantee and Grantor is required. The Baseline Documentation Report provides the basis for monitoring and is critical if an easement violation occurs in the future.

7. Assignment of Rights to the state of Georgia. In conservation easements for which the state is providing a monetary incentive (such as a tax credit), language that prohibits any future amendments without written approval of the state must be included. In cases where the state is providing funding for a conservation easement through a grant or low-interest loan, the state also requires the right of entry (with reasonable notice), and the right to post a sign on the Property stating that it is permanently protected conservation land.

Drafting the Conservation Easement

After you identify an easement-holding organization or agency that meets your needs, initiate the process of drafting the easement document. Invite your easement holder to visit you on your property to have a more detailed discussion about the prospective terms of the easement. Be prepared to discuss the ways in which you would like to use your land in the future and what rights you are willing to relinquish through the easement.

The easement holder will typically provide you with standard “template” language outlining many of the legal and conservation provisions that will be required by the easement. Much of this language is included to provide necessary consistency with applicable state and federal 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. However, many terms of your easement should be determined by you and your easement holder based upon the nature of your property and the desires of both parties involved. (See the “What’s in a Conservation Easement” box on page two for additional information.)

It is recommended, but not required, that you consult your own legal counsel at this stage of the process to review the terms in the draft easement. Once you and your easement holder have fully negotiated the terms of your easement, develop a final draft to use moving forward. Do not sign or execute the conservation easement at this stage.

Due Diligence

Developing a mutually-agreeable conservation easement is a big step towards protecting your land. It is at this point that both parties should feel comfortable moving forward by completing the necessary due diligence to execute the easement. All conservation easements require some due diligence to ensure that the transaction is legally defensible. At a minimum, a title search, baseline documentation report and real estate recordings must be undertaken. A qualified appraisal is required for easement donations that will be submitted to the IRS and/or State Department of Revenue for tax benefits (See the “Appraisals for Conservation Easements” box on page four).

Additionally, state agencies that hold easements require Property Surveys and Phase 1 ESA’s (described below), while conservation organizations often request that donors pay expenses associated with drafting baseline reports and conducting annual monitoring. Coordinating the various due diligence needs with your easement holder in advance will help clarify this part of the easement donation process.

Due Diligence Required for Conservation Easements with the State of Georgia

Property Survey Plat. A current property survey plat is required for all land or easements donated to the State of Georgia. At a minimum, the surveyor must (1) be registered by the state of Georgia; (2) draft a recordable plat of the tract(s); and (3) provide a signed “Certificate of Surveyor” that complies with OCGA §15-6-67-69 as amended, and OCGA §44-4-20–31.

Phase I Environmental Site Assessment. A Phase I Environmental Assessment must be conducted for all lands on which the State of Georgia will hold either a fee-title or easement interest. Assessments must be in accordance with the American Society for Testing and Materials (ASTM) Standard E 1527-00 or ASTM Standard E 2247-02.

Appraisals for Conservation Easements

Donations of conservation land or easements qualify for a charitable contribution deduction on federal income taxes and are also eligible for a state income tax credit. If these tax incentives will be sought, an appraisal that meets specific professional standards is required.

The purpose of the appraisal is to develop an opinion of the market value of the fee-simple or conservation easement interest of the property. At a minimum, 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. Appraisals 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) **A detailed physical description** of the property being appraised;
- (4) **A 5-year sales history** of the property;
- (5) **Comparable sales descriptions** with photos and location maps of each comparable sale;
- (6) **A statement of value** for 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 is required. Value calculations using all relevant and reliable approaches that are consistent with commonly accepted professional appraisal practices should be provided as well; and
- (7) **Warranties** including the effective date of valuation, date of appraisal, signature and certification of the appraiser all valid within two months execution.

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 appraising the type of property in question, such as farmland, recreational lands or timber tracts.

Note that in order to negate possible conflicts of interest, easement holders may not provide funds towards completing the appraisal, request donors to use any one specific appraiser or verify the findings of the appraisal. The donor is solely responsible for obtaining a qualifying appraisal.

Completing the Easement

After completing all due diligence, your easement holder will provide final copies of the easement and baseline documentation report for you to sign. You should retain copies of your executed easement and baseline for future use. It is also important to stay in touch with your easement holder after finishing the easement. Notify them whenever you sell or transfer all or part of your property that is covered by the easement. Contact them if you have any questions about how you can use your land under easement or encounter any related problems. Your easement holder should be in touch with you at least once every year to conduct an annual monitoring visit of the property. If not, don't hesitate to contact them with a date that is convenient for you.

Reaping the (Tax) Benefits

Completing a full or partial donation of a qualifying conservation easement on your property entitles you to federal and state income tax benefits. (*It is recommended, but not required, that you retain a tax professional to advise you.*) If your easement is fully executed by December 31, you can claim these benefits for the current tax year and any subsequent years.

- **Federal Deduction.** Claiming the federal tax deduction requires you to enter the value of your conservation donation on Form 1040 and attach both a copy of your appraisal and a completed Form 8283 signed by both your appraiser and easement holder. For Federal income tax purposes, easement donors may deduct 50 percent of their Adjusted Gross Income (AGI) (or up to 100 percent for qualifying ranchers and farmers) for 16 years or until the amount of the donation is used up. Fee-title land donations are treated like standard charitable donations, which are eligible for a 30 percent AGI deduction over a maximum of 6 years. Contact GLCP staff for current deduction limits.
- **State Income Tax Credit.** Donations of land or conservation easements meeting state conservation purposes qualifies donors for a state income tax credit up to \$250,000 (individual) or \$500,000 (corporation or partnership), and the donor has 10 years to use it. The law provides for a credit on Georgia state income tax of 25 percent of the value donated for qualifying lands. To receive certification, you must submit an application form (available at www.glcp.ga.gov) along with a copy of the recorded easement, appraisal, baseline report, and evidence of clear title to the Department (*contact info below*). If your easement and appraisal are approved, you will receive a Certification Letter that must be attached to your state tax return.
- **Property Tax Revaluation.** You are also entitled to have your land reassessed for property tax purposes after completing a conservation easement. Contact your local government's tax assessor's office to request a revaluation. Methods of assessment vary widely across the state, and there is no guarantee that your local property taxes will be reduced.

Your donation may also result in reductions to your federal estate tax liability. Details concerning the level of benefits available through these incentives can be found on the GLCP web site (www.glcp.ga.gov) or by requesting GLCP's "Land Conservation Tax Incentives" publication for the most up-to-date benefits.

General Information

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Phone: 404-584-1101
Fax: 404-584-1069
Website: www.glcp.ga.gov

Information on Conservation Tax Credits

Georgia Department of Natural Resources
Wildlife Resources Division, Nongame
Conservation Section
2065 US Highway 278 SE
Social Circle, GA 30025-4743
Phone: 770-918-6411
Websites: www.gadnr.org and
www.glcp.ga.gov/taxcredit

General Outline for Completing a Conservation Easement

Easements are complicated transactions that require time and careful planning. Easement donations typically require three to six months to complete. Adequate time should be allowed to thoroughly complete all steps of the process. Please inform your Easement Holder about any time constraints you may have.

