



Due Diligence Requirements

An appraisal, 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 not take action on an application until a certified appraisal has been completed and approved and there is 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 GLCP.

Appraisals:

For land or conservation easements acquired with GLCP grant or loan funds an appraisal meeting specific professional standards is required.. 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 all valid within one year of review by the Land Conservation Council.

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.