



## **Conservation Easements**

### ***Frequently Asked Questions***

#### **What is a Conservation Easement?**

- A conservation easement is a binding legal contract between a landowner and a qualified entity (a local, state, or federal jurisdiction or a nonprofit organization recognized under Section 501(c)3 of the Internal Revenue Code) to ensure that lands are maintained in a conservation use state. The easement ensures protection of the conservation values of a property while the owner retains ownership and use;
- Specific property rights are typically removed or limited and conveyed to the easement holder. Rights commonly transferred include building construction, subdivision, mining and timber harvest limits. Remaining rights are retained by the property owner and typically include recreation use, use of existing buildings, and agricultural and forest uses;
- Conservation easements are authorized by state statute (In Georgia, *The Georgia Uniform Conservation Easement Act, OCGA §§ 44-10-1 to 8*). Conservation easements are different from common law easements that are typically intended to benefit an adjacent property under common law. Conservation easements benefit the public at large, and not simply one parcel of land;
- Property with a conservation easement on it can be conveyed, bought, and sold, but the terms of the easement are transferred to the new owner. The IRS and the State of Georgia recognize and allow charitable contributions and tax credits for perpetual easements meeting conservation purposes;
- Conservation easements require a baseline document which provides a detailed description of the condition of the land at the time of the easement and usually include a land management plan developed with the assistance of the easement holder and/or natural resource professionals such as ecologists, wetlands biologists, and foresters.

#### **What are qualifying conservation purposes under IRS regulations?**

- Preservation of land areas of outdoor recreation for use by, or the education of, the general public;
- The protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems;
- The preservation of open space – including farmland and forestland – for the scenic enjoyment of the general public, or pursuant to a clearly delineated governmental conservation policy; in either case, such open-space preservation must yield a significant public benefit;
- The preservation of a historically important land area or a certified historic structure.



### **When does a Conservation Easement work best?**

- When a landowner wants to retain ownership of their property, but has a long-term conservation objective for the land;
- When the property owner has a strong desire and commitment to see their land kept in its natural state;
- When traditional and historic land uses and management of the property are compatible with conservation;
- When the owner lives on the property or frequently visits;
- When the holder of the conservation easement is a reputable and well established land trust or government entity;
- When the property is relatively large (larger than 100 acres, though there is no minimum requirement).

### **Who can hold Conservation Easements in Georgia?**

- There are about 50 land trusts operating in Georgia qualified to hold conservation easements and recognized by the IRS under Section 501(c)3 of the Internal Revenue Code;
- At least 5 state or federal agencies and some counties also hold conservation easements in Georgia;
- There are currently some 380 properties and 131,000 acres of land under conservation easements in Georgia;
- Conservation easement holders have the right and responsibility to monitor and enforce easement terms.

### **What are the potential tax benefits of Conservation Easements?**

- **State of Georgia Income Tax Credit:** In 2006, House Bill 1107, known as the Georgia Conservation Tax Credit Program, was passed by the General Assembly and signed by Governor Perdue. Donations of land or conservation easements meeting state conservation purposes qualifies donors for a state income tax credit up to the lesser of \$250K (individual), \$500K (corporation) or 25% of the value of the donation. The donor has 6 years to use the tax credit for qualifying lands;



- **Federal Income Tax:** If the donation or bargain-sale of fee title or a conservation easement meets the IRS requirements for a charitable contribution, it is deductible for Federal income tax purposes, up to 50% of the donors Adjusted Gross Income (AGI) over 16 years or until the amount of the donation is used up. Qualifying farmers or ranchers (people who derive more than half of their gross income from farming or ranching) can deduct up to 100% of their AGI. These limits are an increase enacted in August of 2006 and are valid for deductions made in taxable years between January 1, 2006 and December 31, 2007, after which the deductions revert to the previous limits of 30% of AGI and a 6 year carryover, unless Congress acts to extend the period again;
- **Estate Taxes:** Donating conservation land or a conservation easement may reduce the value of an estate, and thereby reduce or eliminate estate taxes.
- **Local Property Taxes:** Real estate tax assessments are based on the property's value as determined by the local assessor. In theory, the assessed value of property will be reduced by a conservation easement, but this principle has had mixed results in Georgia due to each county having its own interpretation of how a property will be assessed. Check with your local tax assessor's office to determine if an easement will benefit you with respect to local property taxes.

**What are the typical costs associated with placing a Conservation Easement on property, even when the easement is donated?**

- Good, experienced tax and legal advice;
- Appraisal costs;
- Title search fees and title insurance premiums;
- Survey expenses (if needed);
- Provision of a stewardship endowment for the holder of the easement.

**Who should I contact if I want to pursue a Conservation Easement on my property?**

- You can call the Georgia Land Conservation Program (GLCP) at 404-584-1101, or 404-463-5715. They can answer your basic questions about conservation easements and may be able to refer you to possible easement holders such as a local land trust in your area or a public agency;
- You should contact your tax advisor, real estate attorney, or accountant for good advice and information about the easement process and possible tax benefits of placing a conservation easement on your property