

**GEORGIA DEPARTMENT OF NATURAL RESOURCES
POLICIES
Georgia Conservation Tax Credit Program**

The Georgia Conservation Tax Credit Program (GCTCP) is administered jointly by the Georgia Department of Natural Resources (Department) and the Georgia Department of Revenue. This document provides an overview of the objectives of the program, requirements for participation, and procedures relating to the Department.

Background

In 2006 the Georgia legislature passed House Bill 1107, which amended existing Georgia laws relating to the imposition, rate, and computation of state income tax. The stated purpose of the Act was to “provide for income tax credits with respect to qualified donations of real property for conservation purposes.” Qualified donations include fee simple donations of property to the State, a county, municipality, or consolidated government, or bona fide charitable nonprofit organization, as well as donation of a conservation easement on real property to any of these organizations. “Conservation Purposes” were defined by the Act to include those types of conservation lands identified in Chapter 22 of Title 36 of the Georgia Code, as follows:

“Conservation land” means permanently protected land and water, or interests therein, that is in its undeveloped, natural state or that has been developed only to the extent consistent with, or is restored to be consistent with, one or more of the following goals:

- (A) Water quality protection for rivers, streams, and lakes;
- (B) Flood protection;
- (C) Wetlands protection;
- (D) Reduction of erosion through protection of steep slopes, areas with erodible soils, and stream banks;
- (E) Protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species;
- (F) Protection of prime agricultural and forestry lands;
- (G) Protection of cultural sites, heritage corridors, and archaeological and historic resources;
- (H) Scenic protection;
- (I) Provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities; and
- (J) Connection of existing or planned areas contributing to the goals set out in this paragraph.

For more detailed descriptions of these Conservation Purposes, see Exhibit A.

In general terms, the purpose of the GCTCP is to provide a financial incentive to landowners to encourage dedication of their property for conservation uses. The incentive is provided in the form of a state income tax credit that can be applied in the tax year of the

donation; any unused tax credit can then be carried forward and applied to the landowner's tax liability for up to five additional years. The overall goal is to provide permanent protection for a variety of important conservation areas throughout Georgia through voluntary donations of property.

Eligibility

Individual and corporate owners of real property in Georgia are eligible to participate in the GCTCP. In order to be eligible to receive the state income tax credit, the following terms must be met:

- 1) The landowner must donate the property in fee simple or donate a permanent conservation easement on the property;
- 2) The donation must be accepted by the state, county, municipal, consolidated government, or a bona fide charitable nonprofit organization;
- 3) The property in question must meet one or more Conservation Purposes as provided in Chapter 22, Title 36 of the Georgia Code; and
- 4) Properties donated in fee must be permanently protected either by placing a conservation easement or restrictive covenant on the property. The restrictive covenant must meet the requirements of subsection (c) of Code Section 44-5-60.

Two types of land are specifically exempted from eligibility under the Act. One type includes properties that are required to be dedicated for conservation use pursuant to local government regulations or ordinances (e.g., zoning regulations), or in order to increase building density levels (e.g., cluster developments or conservation subdivisions with dedicated greenspace). The other type of ineligible land includes property used for or planned for use as a golf course. In addition, lands developed for or intended for other intensively managed recreational uses, such as baseball or soccer fields, are not eligible.

Role of the Department of Natural Resources

The Department is responsible for determining whether or not a donated property is suitable for the Conservation Purposes described in the Act and providing certification of suitability to the landowner. The Department has the authority to promulgate rules and regulations necessary to carry out this mandated responsibility.

Once the three conditions providing eligibility have been met, the Department considers a variety of other factors to determine whether a donation is suitable for certification under the GCTCP. These include the characteristics of the property, surrounding land uses, the type of donation, the terms of the deed, conservation easement, or other instrument of transfer, the qualifications and stewardship capacity of the recipient, and other factors relating to the long-term viability and protection of the property. The Department does not take into account or evaluate any financial aspects of the conservation donation.

Application Requirements

For a conservation donation to be considered for certification under this program, the applicant must provide the following to the Department:

- a. A completed application form signed by the landowner making the donation
- b. A USGS quad/topographic map, county tax map, or other map depicting boundaries of the subject property and identifying the location of natural, historic, or archaeological resources of significance
- c. A county map showing the location of the property
- d. General information about the Conservation Purpose(s) met by the project (see Exhibit A)
- e. For pre-certification applications, an explanation of how the property will be permanently protected
- f. For final certification applications, a copy of the executed instrument of transfer, survey plat, clear title report, and a description of how the property is permanently protected (see Exhibit B)
- g. An outline of a long-term plan to manage the conservation values of the property if fee ownership or monitor and enforce the terms of the conservation easement

Other materials that may be required, depending on the Conservation Purpose, include:

- a. Photographs showing unusual or significant natural features of the property
- b. Copies of surveys or reports detailing the natural or cultural significance of the property
- c. Photographs of, and information on, any historic buildings, structures, objects or sites that are known to be fifty years or older that are located on the property

Application forms are available from the Department at the following address:

Georgia Conservation Tax Credit Program
Georgia Department of Natural Resources
Wildlife Resources Division
2065 U.S. Highway 278, SE
Social Circle, GA 30025

Application forms are also available online at www.gadnr.org

Submission of Applications

Applications may be submitted by mail or in person, but must include all necessary attachments. The Department will not accept incomplete applications for consideration. If an incomplete application is received, the applicant will be notified of this fact and given an opportunity to submit the additional required materials within 30 days. After 30 days, the incomplete application will be returned to the applicant.

Review of Applications

Complete applications received by the Department will be submitted for review by Department staff. Evaluation of the application will include review of all submitted materials as well as any other relevant information that is available to the Department. If a site visit is required, the landowner and/or land manager will be contacted to secure permission for accessing the site. In making application for certification under this program, the landowner acknowledges the need to provide reasonable access to the property for a site visit by Department staff.

Pre-Certification

Since certification required for the tax credit can only be made after the conservation donation has been completed, pre-certification is an optional intermediate step that may be of interest to landowners contemplating a conservation donation under this program. Pre-certification provides the landowner with an estimate of the likelihood that a completed donation will meet the Conservation Purposes of this program and therefore be eligible for certification. It does not include an assessment of the resulting tax credit or suitability of the donation for any other conservation program. Applications for pre-certification can be made prior to donation, and determinations of likely eligibility for certification are based on assumptions that all other requirements of the program will be met.

Within 60 days of receipt of the application package the Department will notify the applicant by letter as to the finding of eligibility for certification under this program and any conditions that must be met. Pre-certification applications that have been rejected because of incomplete or incorrect information may be revised and resubmitted for consideration by the Department. If the application does not meet the conservation values requirement, it may not be resubmitted. All resubmissions will be reviewed within 60 days of receipt. Pre-certification is not binding on the landowner or the Department.

Certification

Application for certification can only be made after the conservation donation has been completed and the property transaction recorded by deed or other legal instrument. The Department will review all applications for certification and make a determination of whether or not the donation meets the Conservation Purposes defined for this program. The Department will provide written notification from the Director of the Wildlife Resources Division of this finding to the landowner within 90 days of receipt of the application.

Owners of properties that have been approved for certification under this program will receive an official certification document that may be used to apply for the state income tax credit. If the application for certification has been rejected, the response letter from the Department will indicate which requirements were not met. Certification applications that have been rejected based on erroneous or insufficient information may be revised and

resubmitted for consideration by the Department; all such resubmissions will be reviewed within 90 days of receipt.

Appeal of Certification Determinations

A final determination by the Department with respect to the suitability of donated property for Conservation Purposes will be subject to review and appeal under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

Qualified Organizations

Organizations that are qualified to accept donations of conservation land under this program are defined as follows:

“Qualified Organization” means the state, a county, a municipality, or a consolidated government of this state; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code. To be a Qualified Organization, a charitable nonprofit must:

- (a) Be authorized to do business in Georgia and have tax-exempt status as a charity under section 501c(3) of the Internal Revenue Code of 1986;
- (b) Meet the requirements of section 1.170A-14(c) of the Internal Revenue Code of 1986, and therefore have the power to acquire, hold, or maintain land or interests in land;
- (c) Have adopted the Land Trust Alliance’s *Land Trust Alliance Standards and Practices (2004)* as guidelines for the organization’s operations and commit to making continual progress toward implementation of these Standards and Practices; and
- (d) Have received a Determination Letter from the Internal Revenue Service.

Documentation of these qualifications must be provided to the Department in a Qualified Organization Certification Application form with every application. In addition, to be a Qualified Organization, conservation easements approved under previous applications shall be monitored annually and a copy of the monitoring report shall be sent to the Department.

Permanent Protection

The Department will only consider eligibility for conservation lands that are permanently protected, as defined below.

“Permanent Protection” means those resources:

- (a) Owned by the State of Georgia, and dedicated or intended to be dedicated as a Heritage Preserve;
- (b) Owned by a Georgia taxpayer, and subject to a conservation easement held by a Qualified Organization that ensures that the land will be maintained as Conservation Land; or
- (c) Owned by a Qualified Organization, and subject to:

1. A conservation easement that ensures that the land will be maintained as conservation land;
2. Contractual arrangements that ensure that, if the protected status is discontinued on a parcel, such property will be replaced by other conservation land which at the time of such replacement is of equal or greater monetary and resource protection value; or
3. A permanent restrictive covenant as provided in subsection (c) of Code Section 44-5-60.

Criteria Considered by the Department in Determining Suitability for Certification

In determining the suitability of a donation for certification under this program, the Department takes several factors into consideration. These include the following:

- Type of property (see Exhibit A)
- Size of property (See below)
- Condition of property
- Presence of significant natural or cultural resources
- Location of property relative to other conservation lands
- Current and future management and use
- Contribution to local, regional, or state conservation objectives
- Terms of the easement, deed, or other legal instrument (see Exhibit B)
- Qualifications and stewardship capacity of the fee or conservation easement holder
- Any other factors affecting long-term protection or viability of the property

Each conservation donation proposed for certification under the GCTCP is evaluated in the context of the property's unique geographic setting and site characteristics. For this reason, the Department does not apply rigid standards relating to the size of a tract or other factors. Instead, the Department evaluates the overall contribution of the proposed donation to the indicated Conservation Purposes as well as the probability that these Conservation Purposes can be supported in perpetuity.

Table 1 provides a description of the primary criteria taken into consideration by Department staff in determining the suitability of a donated property for certification under the GCTCP.

TABLE 1. CRITERIA FOR ASSESSING SUITABILITY FOR CERTIFICATION UNDER GCTCPRequirements for eligibility:

All three of the criteria listed below must be met for the conservation donation to be considered eligible for certification under this program.

- 1) The property presented in the application fits one or more of the descriptions of “conservation land” specified in the Rules
- 2) The recipient meets all specifications for Qualified Organization defined in the Rules
- 3) The executed instrument of transfer provides for protection of specified Conservation Purposes in perpetuity

Other factors in determining suitability for certification under this program:

These factors represent other important criteria taken into consideration by Department staff in determining suitability of a conservation donation for certification under this program. These factors relate to the overall condition and viability of the site as well as the compatibility of future management and uses and surrounding land uses for maintenance of conservation values.

Ranking	Site Condition	Subdivision	Development	Management	Recreation	Surroundings	Stewardship
Favorable	Site is of uniformly good condition and sufficient size to maintain Conservation Purposes, assuming other favorable factors	Additional subdivision of the property is specifically prohibited	Additional development of the property is specifically prohibited	A formal management plan that will protect or enhance Conservation Purposes has been developed	Recreational uses of the property will be consistent with maintenance of Conservation Purposes	Surrounding land uses are entirely compatible with site conservation, or site serves as a connection between other conservation lands	The recipient has sufficient resources as well as a plan to provide stewardship for the Conservation Purpose
Marginal	Site is of minimum size and condition to maintain the Conservation Purposes, assuming other favorable factors	Additional subdivision that is consistent with Conservation Purposes is allowed	Additional development that is consistent with Conservation Purposes is allowed	An agreement to develop a plan to guide specific management actions or adhere to management standards has been signed	Recreational uses of the property may be incompatible for long-term maintenance of Conservation Purposes	Surrounding land uses are not consistent with conservation, but do not seriously compromise site integrity	The recipient has no formal plan and marginal capacity to provide for stewardship activities
Unfavorable	Maintenance of conservation values is severely compromised by the site’s size, configuration, or condition	Additional subdivision that is inconsistent with Conservation Purposes is allowed	Additional development that is inconsistent with Conservation Purposes is allowed	No formal management plan or agreement for planning exists, or management plan is deemed unacceptable	Recreational uses are clearly incompatible with long-term maintenance of Conservation Purposes	Surrounding land uses are clearly incompatible with site conservation and threaten site integrity	Recipient has no plan or resources for execution of stewardship activities

Exhibit A

Eligible Conservation Purposes

The following conservation purposes are considered eligible for certification under the Georgia Conservation Tax Credit Program. The descriptions of lands that support these conservation purposes are provided for illustrative purposes, and are not intended to represent an exhaustive list of eligible lands under this program, nor can they be interpreted to represent, affect, or control the Department's determination on any particular application.

- A. Water quality, protection for rivers, streams, and lakes: Land that protects water quality, in addition to the protection of natural buffers described in (E), can include properties adjacent to rivers, lakes and streams that filter pollutants and decrease sediment loads, as well as maintaining natural water temperature regimes.
- B. Flood protection: Land that provides flood protection includes natural land or water features that help protect adjacent or downstream properties by reducing or ameliorating the impacts of floods. Examples include undeveloped floodplains, sloughs, oxbow lakes, bluffs, and natural river levees.
- C. Wetlands protection: Land that consists primarily of wetlands either verified by the Corps of Engineers as jurisdictional wetlands or ecologically significant isolated wetlands, and upland areas adjacent to wetlands that provide a vegetated buffer.
- D. Reduction of erosion through protection of steep slopes, areas with erodible soils, and stream banks: Land with high erosion potential due to steep slopes or soil types that if conserved would reduce erosion and protect water quality
- E. Protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species: Includes intact riparian buffers along rivers and streams, as well as non-riparian areas, that provide significant conservation value as wildlife corridors and habitat for native plants and animals.
- F. Protection of prime agricultural and forestry lands: Prime agricultural land is land that currently is in agricultural uses other than forestry, and is managed in a manner consistent with a conservation plan prepared in consultation with the Natural Resources Conservation Service (NRCS) of the US Department of Agriculture and approved by the local conservation district. The conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide (FOTG) and 7 C.F.R. Part 12 that are in effect as of the date of conveyance. The Applicant may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS FOTG standards and specifications. Prime forestry land is land in an undeveloped condition where forestry use provides a high quality water supply, clean air, improved timber, and wildlife habitat for a variety of game and non-game species, and may also provide recreational or scenic benefits.

- G. Protection of cultural sites, heritage corridors, and archaeological and historic resources: Land that contains Archaeological and Historic Resources (listed in or eligible for listing in the Georgia Register of Historic Places); land that contains places of national and/or state significance where natural, cultural, historic, and scenic resources combine to form a cohesive, distinctive landscape arising from patterns of human activity shaped by geography.
- H. Scenic protection: Land that contains significant scenic resources, including designated statewide resources such as scenic rivers, scenic highways or Georgia by-ways.
- I. Provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities: Land that is suitable for low-intensity or dispersed recreational uses such as boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities. Land intended for active uses such as golf, soccer, baseball, construction of lakes, etc. is not eligible.
- J. Connection of existing or planned areas contributing to the goals set out in this paragraph: Land that provides connectivity to existing conservation lands or is in close proximity to other designated statewide resources such as scenic rivers, scenic highways or Georgia by-ways, state or national parks, natural areas, wildlife management areas, wilderness areas, national natural landmarks, or properties listed on the Georgia Register of Historic Places.

Exhibit B

Requirements for Conservation Easements and Restrictive Covenants

The following are required components of conservation easements accepted under the GCTCP.

All Conservation Easements:

- A provision in the conservation easement that identifies the donation's Conservation Purposes;
- A provision in the conservation easement that states that the conservation restrictions run with the land in perpetuity and that any reserved use shall be consistent with the Conservation Purposes;
- A provision in the conservation easement that prohibits the Grantee from subsequently transferring the interest in land unless the transfer is to another Qualified Organization that will maintain the Conservation Purposes for which the donation was originally intended;
- A provision in the conservation easement that provides that the donation of the less-than-fee interest is a property right, immediately vested in the public or private conservation agency receiving the donation, and provides that the less-than-fee interest has a fair market value that is at least equal to the proportionate value that the conservation restriction at the time of the donation bears to the property as a whole at that time; the provision shall further provide that if subsequent unexpected changes in the conditions surrounding the property make impossible or impractical the property's continued use for Conservation Purposes and judicial proceedings extinguish the easement or restrictions then the Grantee is entitled to a portion of the proceeds from the property's subsequent sale, exchange, or involuntary conversion at least equal to the perpetual conservation restriction's proportionate value;
- A provision that states no amendments shall be made to the conservation easement without the approval of the Department, which approval may be withheld at the Department's sole discretion. The Department shall have 90 days to comment on any requested amendment; and
- A baseline documentation report that provides a detailed description of the condition of the land at the time the conservation easement is placed on the property, as well as a forest or agricultural management plan if the property warrants such a plan.

Conservation Easements for Special Conditions:

- **If the Conservation Purpose is for the preservation of a cultural site, heritage corridor, archaeological or historic resource, historically important land area,** documentation, in the form of the nomination or determination of eligibility for the Georgia Register of Historic Places. These resources may include an independently significant land area that meets the Georgia Register criteria for evaluation in Georgia Code 391-5-10, a land area within a registered historic district that can reasonably be considered as contributing to the district's significance, and a land area adjacent to a property listed individually in the Georgia Register of Historic Places where the land area's physical or environmental features contribute to the property's historic or cultural integrity.
- **If the Conservation Purpose is for the preservation of a historic resource,** documentation that the resource is eligible for or listed in the Georgia Register of Historic Places or located in a Georgia Register Historic District and certified by the Department as being of historic significance to the district. (Eligibility for certain federal tax incentives may require additional certification by the National Park Service).
- **All provisions or restrictions pertaining to mineral rights** must be consistent with the provisions of IRC Section 1.170A-14.

Restrictive Covenants

Eligible conservation land can include property owned by a Qualified Organization and protected through a permanent restrictive covenant as provided in subsection (c) of Code Section 44-5-60 when the land is for the use of the public. For a restrictive covenant to meet GCTCP objectives, at a minimum the deed or restrictive covenant document must include the following:

- A reference to the conservation program (GCTCP) under which the land was protected;
- A description of the Conservation Purpose(s) of the property that qualified it for this program;
- A statement that the property is permanently protected as conservation land; and,
- A statement that the land shall be used and managed only for purposes compatible with the GCTCP.

Exhibit C Definitions

“Archaeological and Historic Resources” means properties listed in or eligible for listing in the Georgia Register of Historic Places.

“Cultural Sites” means properties associated with cultural practices of a living community that are (a) rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.

“Conservation Easement” means a non-possessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property.

“Department” means the Department of Natural Resources

“Georgia Register of Historic Places” means the Georgia Register of districts, sites, buildings, structures, and objects significant in Georgia history, architecture, engineering and culture.

“Heritage Corridors” means places of national and/or state significance where natural, cultural, historic, and scenic resources combine to form a cohesive, distinctive landscape arising from patterns of human activity shaped by geography.