



Mountain Conservation Trust of Georgia's Mission

The Mountain Conservation Trust of Georgia is dedicated to the permanent preservation of the natural resources and scenic beauty of the mountains and foothills of North Georgia through land protection, collaborative partnerships and education.

General Guidelines For Conservation Easement Projects

What is a Conservation Easement?

A conservation easement is a legally binding contract between a landowner and a land trust. With this contract, the landowner agrees to permanently eliminate some of the uses of their land while retaining ownership and control. The landowner and land trust work together to determine which uses should be prohibited to protect the conservation values of the land and which uses should be retained for future owners. For instance, our easement donors usually decide to retain the right to continue to live on the land, to farm and manage timber, enjoy hunting and other pursuits, to allow for a limited number of additional future residences for their children, and to sell, lease or bequeath the land to their heirs. In accepting the easement, the land trust is obligated to forever ensure the provisions of the easement are upheld.

What a Conservation Easement does?

An easement agreement typically:

- Restricts the uses of a property as necessary to protect its important natural, scenic and historic features
- Specifies the number, type and locations of dwellings and other buildings
- Prohibits quarrying and excavation of minerals
- Prohibits dumping of solid and liquid waste
- Limits the removal of trees without an approved woodlot management plan
- Restricts or eliminates industrial and commercial activities, except for agriculture.

What a Conservation Easement does not do?

An easement agreement typically:

- Does not permit public access to the protected areas, unless specifically desired by the landowner and the conservation organization (In certain situations, public access to a portion of the property may be necessary to meet the IRS's public benefit right.)
- Does not change the ownership of the land. Property owners continue to use and enjoy the land consistent with the terms of the easement
- Does not prohibit all subdivision. The property can often be subdivided, subject to the terms of the easement agreement.
- The purpose is to protect the natural, scenic or historic value of the property.

Scope of Work

Completing a conservation easement involves a number of specific activities leading from the first meeting with the landowner to the final recording of the easement document. The process includes extensive field work to document, inventory, and catalog the property's existing conditions and to determine the status of the natural and cultural resources. Federal regulations require that the condition of the property at the time of the easement donation be well documented. All pertinent information (reports, inventories and ordinances) will be compiled into a Baseline Document Report (BDR). The conservation easement will ultimately be tailored to protect those resources that are depicted in the BDR, and will serve as an ecological standard for future monitoring. Once the landowner and the Trust are in agreement regarding the scope of the easement, the final document can be created.

The Conservation Easement Project Proposal

The Conservation Easement Project Proposal (CEPP) is based upon current billing rates and best estimate of expenses required for completion of your Conservation Easement Project. You will only be charged for actual expenses, and will be notified on a bimonthly basis of the accrual balance. If we anticipate substantially exceeding the original CEPP, you will be notified immediately.

If at any time you wish to terminate the project or to temporarily postpone work, you are free to do so. If the nature or circumstances of the actual easement differ significantly from the original CEPP, the Trust also reserves the right to discontinue its participation. If either situation were to occur, an invoice for services rendered to date will be delivered to the landowner.

What is Tax Deductible?

The donation of a conservation easement is treated as a tax deductible charitable contribution if it meets the "qualified conservation contribution" requirements of Internal Revenue Code § 170(h). In order to qualify under these requirements, an easement must be granted in perpetuity and exclusively for at least one of the conservation purposes described below:

- i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
- (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- (iii) the preservation of open space (including farmland and forest land) where such preservation is--
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
- (iv) the preservation of a historically important land area or a certified historic structure.

Although our staff makes every effort to insure that the technical requirements of the tax code are met, the Mountain Conservation Trust of Georgia cannot guarantee that a tax deduction will result from every easement donation. While none of our current conservation easements have been challenged by the IRS, it is important to understand that a tax deduction will only be allowed if the easement meets the conservation purposes test. As a corollary to the conservation purposes test, if the easement meets one of the four aforementioned conservation purposes but permits the corruption of other conservation interests, the easement will not qualify as a tax deductible contribution.

State Conservation Easement Laws

The conservation easement must also comply with applicable state conservation easement laws. In the state of Georgia, compliance is regulated by Georgia Code § 44-10-1 of the Georgia Uniform Conservation Easement Act. Copies of this Code are available at <http://www.wildlaw.org/easements/44-10-1.html>

In addition, on April 21st, 2006, Georgia Governor Sonny Perdue signed House Bill 1107 which sets forth:

A taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or Code Section 48-7-21 for each qualified donation of real property for conservation purposes. Except as otherwise provided in subsection (d) of this Code section, such credit shall be limited to an amount not to exceed the lesser of \$500,000.00 or 25 percent of the fair market value of the donated real property as fair market value is established pursuant to Code Section 48-5-2(3) for the year in which the donation occurred.

Please make sure that your tax professional is knowledgeable of all current federal and state tax codes regarding conservation easements.

Will There Be Additional Expenses?

The CEPP takes the following expense into consideration:

- cost of Baseline Documentation Report
- cost of Title Search
- cost of Title Insurance
- cost of Appraisal
- cost of an Easement Endowment

In addition, a survey of the property may be required. Easement donors should also anticipate additional expenses for tax and/or legal advice. The Mountain Conservation Trust of Georgia is not qualified to offer professional tax and/or legal services. Please be sure to consult your personal tax advisor and legal counsel to confirm the tax treatment of all such expenses.

Appraisals

As recipient of your easement donation, the Trust is prohibited from representing its value and maintains a neutral position regarding the hiring of appraisers. It is ultimately the donor's responsibility to contact a qualified conservation easement appraiser. However, we can provide a list of appraisers who are experienced in that particular field.

The cost of an appraisal depends on the complexity of the easement, the size of the property, and the fee schedule of the individual appraiser. Newly signed federal legislation (HR 4, 17AUG06) puts forth rigorous standards for qualified conservation appraisers. Your appraiser should be familiar with this new legislation.

Project Conditions

The Trust cannot accept an easement donation if conditions exist on the property that would violate the proposed terms of the easement. If any of those conditions (trash dumps, hazardous waste materials, improper land management practices) are discovered, the landowner will be informed at once and advised as to corrective measures to be taken.

Your easement will often contain provisions that restrict the following:

- cutting of vegetation
- commercial and industrial uses
- some agricultural practices
- impervious surfaces
- excavations
- posting of signs
- construction of improvements
- dumping/depositing of waste materials
- underground storage tanks
- destruction of stream/pond/wetland buffers
- size and location of residential structures

In addition to these restrictions, the easement will contain other boilerplate provisions relating to:

- administration and enforcement of the easement
- limitation of Trust liability
- condemnation
- secondary ownership

These provisions reflect current laws and regulations. Should you or your legal representative seek changes in these provisions, it will be necessary to confer with the Trust's legal counsel. Legal fees incurred during these revisions will be charged to the easement donor.

All conservation easements must be reviewed and approved initially by the Trust Land Acquisition Committee, and ultimately by the entire Trust Board of Directors. Potential conservation easement donations will be submitted to the Trust Land Acquisition Committee upon execution of the CEPP.

A conservation easement represents a real property interest conferred to the recipient organization. That makes the recipient organization potentially liable for cleanup and remediation of any hazardous waste materials found on eased land. Based on historical usages and/or observed conditions, the Trust may require a Phase I, Phase II or Phase III Environmental Impact Assessment (EIS). The Trust may further require indemnification against liability associated with the presence of hazardous or toxic materials should those materials be found.

Easement Endowment

In accepting your conservation easement, the Trust assumes a legal obligation to uphold the terms and conditions therein. These responsibilities include the following:

- regular inspection of the property
- review of construction and subdivision plans
- administration and archival of all easement documents and records
- legal defense of easement provisions

The Trust does not wish to place an undue onus on individuals that wish to conserve their lands, but certain levels of monetary resources are necessary to monitor and enforce easements as required by IRS Code. That is why we recommend that an Easement Endowment be provided to cover future operating expenses.

Endowment costs are generally based on the following criteria:

- size of property
- location of property
- complexity of easement
- number and/or type of reserved rights

The Trust projects that future Easement Endowments will yield 5% annually. Payment of the endowment may be accomplished in a variety of ways. Some landowners opt to pay a lump sum (in cash or stock) while others schedule their contribution over two or more years. If a deferred payment option is chosen, the Trust requests that the donor provide at least 50% of the endowment when the easement is granted with a pledge letter confirming the schedule of installment payments for the balance. (In special cases, Endowment costs may be calculated as a percentage of anticipated or real tax savings as a result of the conservation easement.)

Confidentiality and Publications

The Trust will make every effort to respect the landowner's privacy during the course of an easement project. Unless otherwise requested, information regarding the specifics of a particular conservation easement will be limited to Trust Board Members and Staff and will not be shared with public officials or the general public.

Once the easement has been duly recorded, it will become a matter of public record. At this point, the Trust may choose to include cursory information about your property and conservation easement in Trust information brochures and quarterly newsletters. Occasionally, articles are submitted to local, regional and national news agencies for publication. If you wish to remain anonymous, please let us know.

Mountain Conservation Trust of Georgia Commitment

Our commitment does not end when the easement is recorded. In fact, it has just begun! By definition, a conservation easement is perpetual. The Trust will monitor your property on a regular basis, and will maintain and curate an archive of all activities. If necessary, we will defend your easement in a court of law.

Trust Board Members and Staff will always be available to answer your queries, provide assistance in plan reviews and land management practices, provide information on local property tax issues, and work with your legal counsel and/or tax professionals. Please feel free to contact us regarding any conservation issues that may arise. In an effort to keep our easement donors well informed, you will receive a copy of our quarterly newsletter, and will receive an annual membership to the Mountain Conservation Trust of Georgia.

It is incumbent upon us to build a cooperative relationship with landowners and their successors in order to be good stewards of the land