

GEORGIA DEPARTMENT OF NATURAL RESOURCES

Georgia Conservation Tax Credit Program - GCTCP

Certification Process and Procedures, 2013 Rules

This document provides a description of the objectives of the Conservation Tax Credit Program, requirements for participation, and procedures relating to the Department's certification process.

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." The Official Code of Georgia was amended in 2012 adding further stipulations taking effect in 2013. Donations recorded in 2012 or earlier will be reviewed using the rules in effect in 2012. Donations completed after January 1, 2013 will be reviewed using current rules.

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 ten additional years. The overall goal is to provide permanent protection for a variety of important conservation areas throughout Georgia through voluntary donations of property and easements.

Qualified donations are full or partial donations of land, or permanent interest in land, that provide for at least two of the five Conservation Purposes outlined in O.C.G.A. §48.7.29.12 and defined by the Department. The five Conservation Purposes are:

- **Water quality protection for wetlands, rivers, streams, or lakes** Protection of water quality through the conservation of land containing a substantial amount of 100-year floodplain or containing streams, rivers, springs, marshlands, or natural wetlands.
- **Protection of wildlife habitat consistent with state wildlife conservation policies** Protection of wildlife habitat through the conservation of high priority plants, animals, and habitats as defined by Georgia's Comprehensive Wildlife Conservation Strategy dated August 31, 2005, a copy of which can be obtained online at www.georgiawildlife.com or from the Wildlife Resources Division of the Department of Natural Resources 2070 U.S. Hwy. 278, SE, Social Circle, GA 30025 (Tel: 770-918-6411);
- **Protection of outdoor recreation consistent with state outdoor recreation policies** Protection of land which is accessible for substantial and regular use by the general public at little or no cost and which provides low-infrastructure natural-resource based outdoor recreation as described in Georgia's Statewide Comprehensive Outdoor Recreation Plan 2008-2013, a copy of which can be obtained online at www.gastateparks.org or from the Georgia State Parks & Historic Sites Division of the

Department of Natural Resources at 2600 Hwy 155 SE, Suite C Stockbridge, GA 30281 (Tel: 404-656-2770);

- **Protection of prime agricultural or forestry lands** Protection of prime agricultural and forestry land managed according to current Best Management Practices as defined by the Georgia Soil and Water Conservation Commission and/or the Georgia Forestry Commission, such land to be used for production of timber products, crops, or livestock;
- **Protection of cultural sites, heritage corridors, or archeological and historic resources** Protection of land with significant archaeological and/or historic sites, listed in or eligible for the Georgia Register of Historic Places either individually, or as a contributing building or land area within a historic district.

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 by all donations:

- 1) The landowner must donate or bargain sell a fee-simple interest or a permanent conservation easement on the property, as evidenced by a certified property appraisal;
- 2) The donation must be accepted by a Qualified Organization, which includes Federal, State, county, municipal or consolidated governments, or a bona-fide charitable nonprofit organization that, beginning on January 1, 2014, is accredited by the Land Trust Accreditation Committee;
- 3) The subject property must meet two or more of the five Conservation Purposes defined by the Department and listed above;
- 4) All fee donation properties not donated to the Federal or the State government must be permanently protected either by placing a conservation easement or restrictive covenant on the property. The restrictive covenant must be permanent and provide access to the general public.
- 5) Subdivision is prohibited for a donated property of less than 500 acres and limited to one subdivision for a donated property of 500 acres or more;
- 6) New construction on donated property of structures, roads, impoundments, ditches, dumping, or any other activity that would harm the protected conservation values of such donation is prohibited on such property;
- 7) New construction on donated property within 150 feet of any perennial or intermittent stream is prohibited;
- 8) A buffer of at least 100 feet on each side of any perennial streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained and a buffer of at least 50 feet on each side of any intermittent streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained;
- 9) Timber and agricultural activities undertaken on the donated property are prohibited unless in accordance with best management practices published by the State Forestry Commission or the Soil and Water Conservation Commission, as the case may be;
- 10) New construction on donated property causing more than 1 percent of such property's total surface area to be covered by impervious surfaces is prohibited;
- 11) Mining on the property is prohibited; and
- 12) Planting on the donated property of non-native invasive species listed in Category 1, Category 1 Alert, or Category 2 of the "List of Non-Native Invasive Plants in Georgia" developed by the Georgia Exotic Pest Council is prohibited.

Some 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). Another type of ineligible land is 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. Also, only one qualified donation may be made on a property that was part of a larger tax parcel under the same ownership in the prior 5 years, except as otherwise provided in O.C.G.A. § 48-7-29.12 (d)(2),

Role of the Department of Natural Resources

For eligible applications, the Department is responsible for determining whether or not a donated property is suitable for Conservation Purposes and for providing certification of suitability to the landowner. The Department has the authority to promulgate rules and regulations necessary to carry out this mandated responsibility. The Department considers a variety of factors to determine whether a donation is suitable for certification under the GCTCP. These include the characteristics of the property, 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. These factors are used to determine if two of the five Conservation Purposes are met. The Department does not take into account or evaluate any financial aspects of the conservation donation. The appraisal required with an application to the Department for certification is reviewed and approved by the State Properties Commission.

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 and grantee;
- b. Digital or paper survey plats and maps that show the legal boundaries of the property, the provisions of the conservation easement or restrictive covenant, and the location of natural, historic, or archaeological resources of significance;
- c. For conservation easements, a Baseline Documentation Report showing the condition of the property at the time of donation;
- d. General information about the Conservation Purpose(s) met by the project;
- 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 and recorded instrument of transfer and evidence of clear title;
- g. A digital copy of the conservation easement appraisal to be reviewed by the State Properties Commission as described in O.C.G.A. § 48-7-29.12; and
- h. A check or money order made out to "The State of Georgia" for the non-refundable \$5,000 application fee (not required for pre-certification).

Program rules, instructions and application forms are available online at www.glcp.ga.gov/taxcredit or 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
(770) 918-6411

Submission of Applications

Applications may be submitted by mail or electronically, 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.

Review of Applications

Completed applications are reviewed by Department staff. Evaluation of the application includes appraisal review by the State Properties Commission and 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. Precertification 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 and does not include appraisal review.

Applications for pre-certification can be made prior to donation to avoid forfeiture of the \$5,000 application fee should the application be rejected. 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 pre-certification application package the Department will notify the applicant by letter as to the finding of eligibility for certification under this program and any additional 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 a resubmitted application does not meet the conservation purposes requirement, it may not be again 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 is 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 two of the Conservation Purposes defined for this program. The State Properties Commission will review conservation easement appraisals and make a determination

of the value estimates. Upon approval of the appraisal by the State Properties Commission, 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 letter that must be submitted with their tax return if claiming the state income tax credit. If the application for certification has been rejected, the response letter from the Department will state that insufficient Conservation Purposes were met and/or that value estimates were determined to be invalid. 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.

The application fee already paid will serve as the fee for the re-submission. No refunds are made for rejected applications.

Appeal of Certification Determinations

A final determination by the Department on a Certification application shall be subject to review and appeal under Chapter 13 of Title 50, the Georgia Administrative Procedure Act. To contest the Department's final determination, an applicant must file a petition for a hearing within thirty (30) calendar days after issuance of notice of the Department's final determination. A petition for hearing must be in writing and must comply with all applicable requirements set forth in Rules 391-1-2-.03, 391-1-2-.04 and 391-1-2-.05. The date upon which a petition for hearing is deemed to be filed with the Department is determined in accordance with Rule 391-1-2-.04. The failure of an applicant to file a petition for hearing within thirty (30) calendar days after issuance of notice of the Department's final determination shall operate as a waiver of the applicant's right to contest the determination and the determination shall become the final decision of the Department in accordance with O.C.G.A. § 50-13-19.

Qualified Organizations

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

“Qualified Organization” means Federal, State, county, municipal, or consolidated governments within Georgia; 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, if required, be currently registered with the Georgia Secretary of State;
- (b) Have received tax-exempt status as a charity under section 501c(3) of the Internal Revenue Code of 1986 as stated in a Determination Letter provided by the Internal Revenue Service;
- (c) 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; and
- (d) Have adopted the Land Trust Alliance’s *Land Trust Standards and Practices (2004)*, a copy of which can be obtained from www.lta.org, as guidelines for the organization’s operations.
- (e) Beginning January 1, 2014, be accredited by the Land Trust Accreditation Commission.

Documentation of these qualifications must be provided to the Department in a Qualified Organization Certification Application each year upon request. In addition, Qualified Organizations must provide the Department with copies of monitoring reports, as requested, in

order to remain a Qualified Organization under this program. A list of currently qualified organizations can be found online at www.glcp.ga.gov/taxcredit.

Permanent Protection

To be eligible for this program, conservation lands must be permanently protected. "Permanent Protection" means permanently protected land and water resources as defined in O.C.G.A. § 12-6A-2 (10).

"Permanently protected land and water" means those resources:

(A) Owned by the federal government and designated for recreation, conservation, or natural resource;

(B) Owned by the State of Georgia and dedicated as a heritage preserve;

(C) Owned by a state or local unit of government or authority and subject to:

(i) A conservation easement that ensures that the land will be maintained for conservation purposes;

(ii) 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;

(iii) A restrictive covenant in favor of a federal governmental entity; or

(iv) A permanent restrictive covenant as provided in subsection (c) of Code Section 44-5-60;

(D) Owned by any person or not for profit or for profit entity, subject to a conservation easement that ensures that the land will be maintained for conservation purposes; or

(E) Acquired with funds from the revolving loan fund, owned by a nongovernmental entity, and subject to a contractual agreement that ensures that the land will not be disposed of except for conservation purposes during the period that the loan is outstanding.

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, size, and condition of property
- Presence of significant natural or cultural resources
- Location of property relative to other conservation lands
- Current and future management and use
- Terms of the easement, deed, or other legal instrument
- 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 have standards relating to the size of a tract or other factors, although agricultural lands must consist of a minimum of ten (10) contiguous acres. Instead, the Department evaluates the overall contribution of the proposed donation to eligible Conservation Purposes as well as the probability that these Conservation Purposes can be supported in perpetuity.

Exhibit A - Requirements for Conservation Easements and Restrictive Covenants

For All Conservation Easements:

- 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 easement deed warrants such a plan.
- A provision stating that no amendments shall be made to the conservation easement without the approval of the Department. The Department shall have 90 days to comment on any requested amendment; and
- A provision for a vegetated buffer of at least 100 feet with 75% canopy cover on each side of any perennial stream and a buffer of 50 feet with 75% canopy cover on each side of any intermittent stream; and
- A provision prohibiting subdivision on properties smaller than 500 acres and permitting only one subdivision if the property is larger than 500 acres; and
- 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 public or private conservation agency 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.
- All provisions or restrictions pertaining to mineral rights must be consistent with the provisions of IRC Section 1.170A-14.

Conservation Easements for Historic Resources:

- If one of the Conservation Purposes is for the preservation of an archaeological site, historic resource, or historically important land area, include 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.
- For Historic buildings, easements must protect the entire facade of the building and the associated land from alteration.

For Fee Simple Donations with Restrictive Covenants:

Eligible conservation land includes property owned by a Qualified Organization other than the Federal or State government and protected in perpetuity through a permanent restrictive covenant as provided in subsection (c) of Georgia Code Section 44-5-60. Note: under Georgia Code, the land must be open to public use to qualify as permanently protected. For a restrictive covenant to meet GCTCP objectives, at a minimum the deed or restrictive covenant document must include the following:

- 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;
- A statement that the land shall be used and managed only for purposes compatible with the conservation purposes; and
- A statement that the land must be accessible for substantial and regular use by the general public at little or no cost