

RULES OF GEORGIA DEPARTMENT OF NATURAL RESOURCES

CHAPTER 391-1-6

GEORGIA CONSERVATION TAX CREDIT PROGRAM

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391-1-6-.01 Purpose and Scope

- (1) To provide for state income tax credits with respect to qualified donations of real property for conservation purposes and to provide for authority of the Department of Natural Resources to provide conditions, limitations, and exclusions for the Georgia Conservation Tax Credit Program
- (2) The Department of Natural Resources shall be the certifying agency by:
 - (a) determining that property donated under this program is a Qualified Donation of Conservation Land; and
 - (b) providing an official certification form to the donor of Conservation Land that qualifies the donor for a state income tax credit.

391-1-6-.02 The Name of the Program

The program shall be referred to as the Georgia Conservation Tax Credit Program (GCTCP).

391-1-6-.03 Definitions

- (1) "Applicant" means a Georgia taxpayer, either individual, partnership, corporation, professional association, limited liability company, or other entity, who makes or contemplates making a Qualified Donation to a Qualified Organization.
- (2) "Certification" means final determination by the Department that an Applicant has made a Qualified Donation of Conservation Land.
- (3) "Conservation Easement" means a non-possessory interest of a holder in real property as defined in O.C.G.A. § 48-7-29.12(a) (1).
- (4) "Conservation Land" means Permanently Protected land and water, or interests therein, that is in its undeveloped, natural state and that serves at least two conservation purposes or that has been developed only to the extent consistent with, or is restored to be consistent with at least two Conservation Purposes.

(5) “Conservation Purpose” is defined in O.C.G.A. § 48-7-29.12(a)(2). For purposes of the GCTCP and as used in this chapter, the following phrases contained in the definition shall have the following meaning:

(a) “Water quality protection for wetlands, rivers, streams, or lakes” means 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. Any wetland or natural lake must have a vegetated buffer with a width of at least 100 feet as measured from its edge for that part of the edge within the applicant's property, which ensures at least 75 percent tree canopy evenly distributed after harvest must be maintained. Buffer requirements for rivers and streams are addressed in Section (10)(d)(iv) of this Rule.

(b) “Protection of wildlife habitat consistent with state wildlife conservation policies” means 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 on the web 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;

(c) “Protection of outdoor recreation consistent with state outdoor recreation policies” means 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 current Statewide Comprehensive Outdoor Recreation Plan, a copy of which can be obtained on the web at www.gastateparks.org or from the Georgia State Parks & Historic Sites Division of the Department of Natural Resources at 2 Martin Luther King, Jr. Dr., Suite 1352 East, Atlanta, GA 30334;

(d) “Protection of prime agricultural or forestry lands” means 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 properties must consist of a minimum of ten (10) contiguous acres and be used for production of timber products, crops, or livestock;

(e) “Protection of cultural sites, heritage corridors, or archeological and historic resources” means 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.

(6) “Permanent Protection” and “Permanently Protected” mean the protection of land and water resources as defined below:

(a) Owned by the Federal Government or State of Georgia, or owned by a County, a Municipality, or a consolidated government of this State, and designated and managed for Conservation Purposes. Properties owned by a County, a Municipality, or a consolidated government of the State are also subject to the conditions of Sections 6 (c) and 11 of this Rule but properties owned by the State of Georgia or the Federal Government are not subject to Sections 6(c) and 11;

(b) Owned by a Qualified Organization other than the Federal Government, the State of Georgia, a County, a Municipality, or a consolidated government of this State with the following supporting documents:

(i) A letter from the State, Federal Government, a County, a Municipality, or a consolidated government of this State, stating intent to acquire the tract from the Qualified Organization at a later date and to designate and manage the land in accordance with 6 (a); and

(ii) A Resolution from the board of the Qualified Organization stating that the Qualified Donation is being acquired, with the intent to transfer the Qualified Donation to the State, Federal Government, a County, a Municipality, or a consolidated government of this State, for designation and management in accordance with 6 (a), and that the Qualified Organization will manage the Qualified Donation for Conservation Purposes until the Qualified Donation is

transferred to the State, Federal Government, a County, a Municipality, or a consolidated government of this State; and

(iii) A letter from the landowner stating they are making the Qualified Donation, to the Qualified Organization with the intent that the Qualified Donation will be transferred to the State, Federal Government, a County, a Municipality, or a consolidated government of this State, for designation and management in accordance with 6 (a); or

(c) Owned by any Individual, entity, or a Qualified Organization other than the State of Georgia or Federal Government, and subject to:

(i) A permanent conservation easement where the Department is assured that the language of the conservation easement will protect the conservation values of the land; or

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

(7) "Department" means the Department of Natural Resources.

(8) "Pre-Certification" means preliminary determination by the Department that an Applicant's proposed Qualified Donation meets the criteria for Conservation Land.

(9) "Donation" includes a conveyance by full donation, by a discounted sale below Fair Market Value, or by an interest in property which qualifies as a permanent conservation easement

(10) "Qualified Donation" shall have the meaning set forth in O.C.G.A. § 48-7-29.12(a)(6).

The following types of properties and easements do not have a Conservation Purpose and are specifically not eligible as qualified donations:

(a) Any real property which is used for or associated with the playing of golf, or other high-infrastructure recreational facility;

(b) Any real property which is otherwise required to be dedicated open space pursuant to local governmental regulations or ordinances or to increase building density levels; and

(c) Except as otherwise provided in O.C.G.A. § 48-7-29.12 (d)(2), only one qualified donation may be made on a property that was part of a larger parcel under the same ownership in the prior 5 years.

(d) Any real property that does not meet the following additional requirements, where applicable, as outlined in O.C.G.A § 48-7-29.12(c):

i. 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;

ii. New construction on a 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;

iii. New construction on a donated property within 150 feet of any perennial or intermittent stream is prohibited;

iv. A buffer of at least 100 feet on each side of any perennial river or stream on the donated property which ensures at least 75 percent tree canopy evenly distributed after harvest must be maintained, and a buffer of at least 50 feet on each side of any intermittent streams on the donated property which ensures at least 75 percent tree canopy evenly distributed after harvest must be maintained. Where the river or stream is also the property boundary, only the side of the river or stream within the property requires the buffer. As used in the preceding sentence, "buffer" means a vegetated buffer;

v. 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;

vi. New construction on the donated property causing more than 1 percent of such property's total surface area to be covered by impervious surfaces is prohibited;

vii. Mining on the donated property is prohibited;

viii. 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.

(11) “Qualified Organization” means the federal government, state, a county, a municipality, or a consolidated government of this state with such donated property at least partially within its boundaries; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code. To be bona fide, a charitable nonprofit organization qualified under the Internal Revenue Code must:

(a) Be authorized to do business in Georgia and, if required, be currently registered with the Georgia Secretary of State;

(b) Be an organization operated primarily or substantially to conserve one or more of the conservation purposes specified in Section 391-1-6-.03 (5) (a-e), as evidenced in the organization’s mission and articles of corporation and other materials;

(c) 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;

(d) Meet the requirements of section 1.170A-14(c) of the Treasury Regulations of 1986, and therefore have the power to acquire, hold, or maintain land or interests in land; and

(e) 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

(f) Be accredited by the Land Trust Accreditation Commission (www.landtrustaccreditation.org) beginning on January 1, 2014.

391-1-6-.04 Application for Pre-Certification and Certification

(1) Application forms for Pre-Certification or Certification may be obtained from the Department. The Applicant shall submit the completed application to the Department with all attachments necessary to provide sufficient information for review and evaluation.

(2) The Department shall review all completed Pre-Certification applications and shall make a preliminary determination as to whether or not the proposed donation is a Qualified Donation of Conservation Land. The Applicant shall be notified of this determination by letter within 60 days of receipt of the application. The Department shall reject Pre-Certification applications that are incomplete, incorrect, or do not meet the definition of Conservation Land, including applications where the conservation easement does not provide for Permanent Protection as required in this chapter. If the Department rejected the Pre-Certification application because it was incomplete or incorrect, the Applicant may resubmit the Pre-certification application with revised or corrected information for consideration by the Department.

(3) Application for Certification of a donation may be made only after:

(a) The donor submits a non-refundable application fee of \$5,000; provided however, that the nonrefundable application fee for property donated to the state shall be 1 percent of the total value of the donation, unless such donation is being made to qualify the state for a federal or state grant

(b) An appraisal is submitted to the Department and forwarded to the State Properties Commission, which includes:

1. A certification page, as established by the Uniform Standards of Professional Appraisal Practice, signed by the appraiser; and

2. An affidavit signed by the appraiser which includes a statement specifying:

i. the value of the unencumbered property, the total value of the qualified donation in gross, and an accompanying statement identifying the methods used to determine such values;

- ii. whether a subdivision analysis was used in the appraisal;
- iii. whether the landowner or related persons own any other property, the value of which is increased as a result of the donation; and
- iv. that the appraiser is certified pursuant to Chapter 39 A of Title 43.

(c) The property transaction has been completed and recorded by deed or other method to assure Permanent Protection.

(4) Upon meeting the conditions of Section 3 of this Rule, the Department will proceed with the certification process and shall make a determination as to whether or not the donation is a Qualified Donation of Conservation Land. The Applicant will be notified of this determination, including the reason for rejection, if applicable, by letter within 90 days, subject to the Department's receipt of the State Properties Commission's (SPC) determination of an approved appraisal. If the Department does not receive SPC's determination of an approved appraisal within the 90 days, then the Department shall issue the determination within 10 days of receiving SPC's approved appraisal. The Department shall reject Certification applications that are incomplete, incorrect, or are not Qualified Donations of Conservation Land, including applications where the conservation easement does not provide for Permanent Protection as required in this chapter. If the Department rejected the Certification application because it was incomplete or incorrect, the Applicant may resubmit the application with revised or corrected information for consideration by the Department.

(5) 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.

391-1-06-.05 Monitoring and Reporting Requirements

(1) Holders of Conservation Easements certified under this program shall annually monitor the Conservation Easement to assure that the terms are maintained and shall prepare an annual monitoring report. The Department may request a copy of annual monitoring reports at any time. A Qualified Organization that fails to submit requested annual monitoring reports shall not be eligible to be a Qualified Organization until they are in compliance with this rule.

(2) The Department shall annually submit to its Board a status report of the GCTCP.

By Authority of O.C.G.A 48-7-29.12.