

Valuing Conservation Easements: A Guide for Georgia Tax Assessors



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Cover photo: Buffalo Creek bottomland forest conservation easement, Hancock County. © Georgia Conservancy.

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Valuing Conservation Easement Properties: A Guide for Georgia Tax Assessors

I. PREFACE

Conservation easements protect land from development and provide significant benefits to Georgia landowners, local governments, and community residents. They give landowners the ability to permanently preserve their property and the opportunity to obtain tax benefits for doing so. Conservation easements benefit local governments by providing environmental services that save government resources and make communities attractive places to work and live, reducing the amount of land for which infrastructure and other services are needed, and increasing tax revenues from adjacent, developable property. Communities as a whole benefit from the environmental and other services that protected open space provides.

One of the most frequently cited motivations for property owners to place conservation easements on their land is tax incentives. Federal and state tax incentives are standardized and generally somewhat predictable. In Georgia, local property tax incentives for conservation easements are not standardized and may be unpredictable. Although state law requires tax assessors to consider the effect of a conservation easement when valuing land, the complexities of valuing the impact of the easement can make this a daunting task. Valuation methods for these properties can vary from county to county and easement to easement, and this unpredictability serves as a disincentive for the use of conservation easements in the state.



The Groton Place conservation easement in Oglethorpe County protects 366.7 acres that include several diverse ecosystems and hiking and mountain biking trails.

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This Guidebook provides Georgia tax assessors with the tools needed to value conservation easement properties. These tools meet current legal requirements, are equitable to Georgia taxpayers, and are predictable to both the taxpayer and local government. This Guidebook contains information on conservation easements (including their benefits and valuation issues); an overview of Georgia law for ad valorem taxation of real property in general and specifically for property encumbered by conservation easements; a hierarchy of valuation techniques for conservation easement properties, including identification

of methods that should not be used; and guidance on how to evaluate a conservation easement to understand how it impacts the fair market value of property.

NOTE: The conservation easements referred to in this Guidebook are those that satisfy state and federal requirements for income tax benefits. These easements must be **permanent** and enforceable against **all** future owners. Term easements, which restrict property uses for a limited number of years, are not covered by this Guidebook, but may also impact ad valorem valuation.

II. CONSERVATION EASEMENTS IN GEORGIA

What they are. The Georgia Uniform Conservation Easement Act (UCEA) defines a conservation easement as:

“[A] nonpossessory 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, archeological, or cultural aspects of real property.”ⁱⁱ

In simpler terms, a conservation easement is “a legal agreement between a landowner and an eligible organization . . . that restricts the activities that may take place on a property in order to protect the land’s conservation values.”ⁱⁱⁱ The property owner *permanently* gives up specific property rights while maintaining private ownership and retaining rights to use the property consistent with its conservation values. In exchange, the property owner is assured that the land is permanently protected and can also receive significant state and federal tax benefits. Conservation easements are a particularly important conservation tool in Georgia because over 90% of the land in the state is privately owned. As of 2012, there were over 300,000 acres of land in the state permanently protected in through conservation easements.ⁱⁱⁱ This number is expected to grow as additional tax incentives become available, such as the ability to transfer conservation easement state income tax credits.^{iv}

The conservation easement itself is a legal document that can be rather long and complicated. It is often called a “Deed of Conservation Easement,” but this “deed” does *not* transfer an ownership interest in the property. The terms of the easement enumerate uses that are restricted or prohibited (such as mining, subdivision, structures, impervious surfaces, disturbance of special habitat, etc.) and those that are allowed (such as farming, fishing, hunting, construction of a single-family homestead, etc.). A conservation easement can apply to all or only a portion of a property, and some apply different restrictions and reserved rights to different portions of a larger tract. Restrictions in a conservation easement are recorded on the deed for the property, and apply to the current and all future landowners in perpetuity (i.e., *forever*). Conservation easements are tailored for each specific property depending on the conservation values of the land, the interests of the landowner, and the policies and purposes of the easement holder.^v Every conservation easement is unique, and each has different land value implications.

The Georgia Department of Natural Resources certifies conservation easements for state income tax credits. There are several major requirements for eligibility. First, the land must provide at least two of five conservation values, including protection of water quality, protection of wildlife habitat, maintenance of farm or forestland, provision of outdoor recreation, and protection of archaeological or historic sites.^{vi} Second, the easement holder, which drafts the easement with the landowner and has the right to enforce its restrictions, must be an eligible organization certified by DNR (see Appendix E).^{vii} Beginning in 2014,

eligible non-governmental organizations must be accredited by the Land Trust Alliance. Third, the easement must be a valid legal instrument; it must permanently protect the land's conservation values^{viii} and comply with a host of legal formalities.^{ix} The fourth requirement is a completed DNR application, which includes a Baseline Documentation Report, appraisal, and a copy of the executed easement. Finally, the easement holder must conduct annual monitoring of the property to ensure compliance with the terms of the easement.^x

Revaluation for ad valorem tax purposes. The UCEA requires tax assessors to reevaluate the value of land once it is encumbered by a conservation easement (for an overview of the methods available for determining value and a hierarchy of methods for these properties, see Sections II and III below, respectively). It reads (with emphasis added):

A conservation easement may be recorded in the office of the clerk of the superior court of the county where the land is located. *Such recording shall be notice to the board of tax assessors of such county of the conveyance of the conservation easement and shall entitle the owner to a revaluation of the encumbered real property so as to reflect the existence of the encumbrance on the next succeeding tax digest of the county.* Any owner who records a conservation easement and is aggrieved by a revaluation or lack thereof under this Code section may appeal to the board of equalization and may appeal from the decision of the board of equalization in accordance with Code Section 48-5-311.^{xi}

In addition to the UCEA, Georgia law that lays out general requirements for local ad valorem taxation of all real property states that, when tax assessors are determining the fair market value (FMV) of real property, they must consider the “[d]eferred value of the property based on limitations and restrictions resulting from the property being in a conservation easement.”^{xii}

In Georgia, real property is taxed according to its FMV with few exceptions. The UCEA and accompanying regulations do not provide for another taxable value for conservation easement property, so it must be assessed according to its FMV.

Conservation covenants distinguished. In Georgia, the conservation covenant is another land conservation tool that provides tax benefits to landowners. Although similar to conservation easements in some ways, conservation covenants are a distinct tool and tax assessors and property owners must understand the differences between the two. The most important differences are that conservation covenants are *not permanent* and for these covenants there is a standardized ad valorem tax valuation based on the *current use value* of the property, not FMV. This current use value is *only* meant for properties under a conservation covenant; applying this value to a conservation easement property that is not also under a conservation covenant is contrary to Georgia law.

Conservation covenants can be created through county programs authorized by one of two laws: the Conservation Use Valuation Act^{xiii} (CUVA) and the Forestland Protection Act^{xiv} (“Super” CUVA). CUVA provides a reduced ad valorem tax rate for owners of agricultural, timber, or environmentally sensitive properties 2,000 acres or smaller who covenant with their county board of tax assessors to keep the land in agriculture or timber production or in its natural condition, respectively, for a period of 10 years. CUVA properties are assessed at 40% of their current use value instead of their FMV. Current use values for different property types are standardized in Georgia Department of Revenue (DOR) regulations. Property owners who breach their agreement must pay back up to twice the savings they received over the life of the covenant. Under Super CUVA, large working forests are also eligible for current use ad valorem tax rates. Owners of working forests greater than 200 acres are eligible for property tax benefits if they enter into a 15-year conservation covenant with their county board of tax assessors. There is no maximum tract size,

and anyone who owns eligible property and is registered to do business in Georgia may participate in the program. Super CUVA current use values are also contained in DOR regulations.

Although CUVA and Super CUVA properties are taxed at established current use rates, tax assessors must also determine their FMV. The penalty for violating a CUVA covenant is based on the difference between the current use rate and what the landowner would have paid if the land were not enrolled in one of these programs.^{xv} The Super CUVA penalty varies depending on how long the property was enrolled before the violation occurred, and is also based on the difference between the current use rate and what the landowner would have otherwise paid.^{xvi}

The current use property tax rates under CUVA and Super CUVA are intended *only* for those properties enrolled in those programs. Applying this reduced rate to conservation easement properties not enrolled in either CUVA program is contrary to state law. Eligible land can, however, be simultaneously placed under a conservation easement and enrolled in either CUVA program. In this case, using the CUVA or Super CUVA current use tax rates for the property is appropriate while the covenant is in place.

Figure 1. Major Differences Between Conservation Easements and Conservation Covenants		
	Duration	Ad valorem tax standard
Conservation easement	Permanent	Fair Market Value (determined by local market)
Conservation covenant	10 or 15 years	Current Use Value (legislated; FMV still needed for penalties)

Conservation easement ad valorem valuation issues. Although the UCEA and other provisions of Georgia tax law require tax assessors to take the easement into consideration when valuing conservation easement-encumbered property, there have been issues with conservation easement property valuation in the state. Conservation easements permanently limit development potential of property, so it follows that the value of that property should in many cases decrease. Some property owners and land trusts, however, contend that conservation easement properties have been over-valued by tax assessors.^{xvii} In some cases, they maintain that easements have been ignored altogether. Another issue is that some assessors apply the standardized valuation rates in CUVA or Super CUVA, even if a property is not enrolled in one of those programs.^{xviii} Because this tax rate is lower than that applied to traditional FMV valuations, it does seem to recognize the effect of the easement on the property's value. This rate may, however, overstate the effect in a significant number of cases. And as noted above, utilizing CUVA valuations for conservation easement properties not enrolled in one of the CUVA programs is contrary to Georgia law.

There are several reasons for these issues. First is assessor unfamiliarity with conservation easement properties. Conservation easements have been used for over 100 years, but the incidence of their use increased significantly in the 1980s when federal tax incentives were established. The amount of land encumbered by conservation easements has increased in Georgia, but because of the large number of counties in the state (159), there are still many assessors who have little to no experience with these types of properties. A second issue is the low turnover of conservation easement encumbered properties in the state, which makes it difficult for assessors to utilize the comparable sales data approach when valuing properties (see Section III below for a discussion of this method). Without comparable sales data and a limited knowledge of conservation easements, valuing these properties can be quite difficult. A final anecdotal reason for conservation easement property valuation issues is that tax assessors are hesitant to reduce their FMV because of fears of losses in tax revenues. Most assessors are aware, however, that regardless of assessments (low or high) local governments will levy the amount of tax needed to satisfy budget requirements.

Benefits of appropriate valuation. Predictable conservation easement property valuation can provide benefits to landowners, local governments, and communities. Tax incentives are a major reason why people place conservation easements on their land. State and federal tax benefits for conservation easements are standardized and predictable, which makes it easy for landowners to determine the tax benefit they will receive if they place their land in permanent conservation. More predictable local tax assessments would provide another incentive for landowners interested in placing their land under a conservation easement.

Appropriate, predictable easement valuation can encourage easement use in communities, which can in turn provide important benefits to local governments. First, conservation easement encumbered property can actually increase the value of other land in the community, which can have a net positive benefit for local tax revenues. Under the “betterment theory,” land adjacent to property that is permanently conserved becomes more valuable to prospective buyers because they know that development will never occur on the conserved land.^{xx} People value open space, so they are willing to pay a premium for land adjacent to permanently protected natural or agricultural/timber areas. When the FMV of property adjacent to conserved property increases, so do local tax revenues. In addition, easement encumbered property will not likely need the expensive infrastructure and services required by developed areas; although local governments may receive less tax revenue from these properties they avoid having to provide expensive services. This is particularly important for conserved land that would otherwise be developed for residential uses, as studies consistently show that the cost of providing local services to residential developments exceeds the tax revenues these properties generate.^{xx} Cost of community services studies conducted in Georgia show the same results.^{xxi}



The Rivermont conservation easement in Johns Creek protects a 27.4-acre park on the Chattahoochee River, providing permanent recreational opportunities for community residents and water quality improvements downstream.

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Local governments also benefit from proper valuation of conservation easement properties because of important natural services open space provides. Natural spaces can protect water resources, wildlife and biodiversity, and recreational, historic, and cultural assets, enhance quality of life, and control development,^{xxii} all of which make a community more desirable for residents and businesses alike. Many Georgia localities now have greenspace plans that target areas in the community for natural open space preservation so that these values are maintained. If local valuation of conservation easement properties is

predictable and proper, communities may be able to better encourage landowners with properties that would add to or enhance greenspace plans to permanently conserve their land.

A final benefit local governments can expect from proper valuation of conservation easement properties is avoidance of legal challenges to ad valorem property assessments. These challenges have occurred in Georgia in the past,^{xxiii} and it can be expensive and time consuming for local governments to defend such objections. Using proper and defensible easement valuation methodology will streamline the processing of property tax objections and increase the local government’s likelihood of success. If landowners know that tax assessors are properly considering the effect of the easement on the value of their property, they may be less likely to challenge tax assessments in the first place.

The general public can also benefit from proper valuation of conservation easement encumbered properties because it may increase the amount of permanently conserved greenspace in the community. Like the local government, residents can benefit from the important values and services these areas provide. Indeed, studies generally show that people place a monetary value on open space areas, though the values can vary depending on “the size of the area, the proximity of the open space to residences, the type of open space, and the method of analysis.”^{xxiv}

Figure 2. The Value of Open Space
Tourism and recreation. Outdoor recreation was the primary reason for 7% of all tourist travel to Georgia in 2004 – drawing nearly 2 million people.
Water quality and quantity. Trees in metropolitan areas in the U.S. contribute \$400 billion/year in stormwater retention. Swamps, wetlands, and floodplains provide \$11,240-\$89,740/acre per year in disturbance avoidance, water supply, water filtration and waste treatment benefits.
Increased property value. Homes within 15,000 feet of Sandy Creek Park in Athens-Clarke County sold for \$5,330 to \$8,757 more than homes farther away. This increased property valuation in higher property tax income for county government, providing \$43,490 more per year. In Atlanta, homes with trees are 5-20% higher in cost than those without.
Avoiding development costs. For each \$1 in expenditures, residential properties return a revenue of \$0.87 while farm and forest lands return a revenue of \$2.70.
Air quality. In Atlanta forested areas are responsible for removing approximately 19 million pounds of air pollutants each year; this is worth about \$47 million annually.
Carbon sequestration. Canadian forests have carbon sequestration benefits valued at \$865-\$1,018/acre per year. In 2006, the U.S. carbon market was valued at \$91 million and 36% of voluntary carbon offsets were generated through forestry activities.
Hunting and fishing. In Georgia, these activities generate \$61.5 million in sales tax revenue annually, are enjoyed by over 1.2 million people, support 21,000 jobs, and have an overall economic benefit of \$2 billion.
<i>Source: Georgia Forestry Commission, The Value of Conservation Easements in Georgia, http://www.gfc.state.ga.us/ForestManagement/documents/ValueofConservationEasementsinGA08.pdf.</i>

III. GEORGIA LAW REQUIREMENTS FOR AD VALOREM VALUATION OF PROPERTY

Ad valorem property taxes are taxes that an owner of real property (i.e., land and improvements on it) pays on the value of the property being taxed. They are the primary source of revenue for Georgia counties, and are a major source of revenue for cities. Georgia tax assessors must abide by state law and rules and regulations adopted by DOR. Assessors assess the value of all real property within the county at 40% of FMV.^{xxv} FMV is defined as “the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale.”^{xxvi}

Georgia property owners may make a declaration of the value of their real property by filing a property tax return with their tax assessor in one of two ways. The first is to pay taxes in the prior year on their property; the value of the property in the prior year becomes the declaration of value for the current tax year.^{xxvii} The second way is to file a special property tax return that declares the property's value between January 1 and April 1.^{xxviii}

When determining the FMV of a property, Georgia tax assessors must consider three approaches in property valuation: sales comparison, cost, and income.^{xxix}

Sales comparison approach. If adequate sales data are available, assessors are required by law to utilize the sales comparison approach. The tax assessor estimates value by “comparing the subject property to similar properties that have recently sold.”^{xxx} When using the sales comparison approach, tax assessors must follow four steps: market research and verification, select appropriate units of comparison, make reasonable adjustments based on the market, and apply the adjusted comparison units to the subject of appraisal.^{xxxi}

Cost approach. Under the cost approach, local assessors estimate the depreciated cost of reproducing real property improvements. DOR regulations require the cost approach to be conducted in three steps.^{xxxii} First, appraisal staff must estimate the “cost new” of any buildings, structures, or improvements to the land. Second, they must estimate the accrued depreciation by “determining the difference between replacement or reproduction cost new and the current market value of an improvement.” Finally, appraisal staff add the value of the land to the value of depreciated improvements. Value of land is determined via the sales comparison or income approaches.^{xxxiii}

Income approach. Under the income approach, appraisal staffs estimate the projected future income stream from the property based on typical management and current market conditions.^{xxxiv} DOR regulations provide procedures for capitalizing the income into an estimate of value.^{xxxv}

The county board of tax assessors must send property owners an annual assessment notice that provides information on filing an appeal. If the property owner disagrees with the tax assessor's valuation of the property, s/he must file a written appeal within 45 days of the date on which the assessment notice was mailed. Appeals must be based on taxability, value, uniformity, or the denial of an exemption. Written appeals are initially filed with the county board of tax assessors, but the taxpayer must indicate in the written appeal whether s/he wants the appeal to be heard by the county board of equalization, a state certified hearing officer, or an arbitrator.

Decisions by an arbitrator are final, but decisions by a county board of equalization or hearing officer may be appealed to the county superior court. Taxpayers may appeal to the superior court by filing or mailing a written notice of appeal to the county board of tax assessors. This must happen within 30 days of the mailing of the decision of the board of equalization or hearing officer. DOR may not override decisions of the board of assessors, board of equalization, a hearing officer, arbitrator, or Superior Court on individual appraisals and assessments.^{xxxvi}



The Jelks Pasture conservation easement in Liberty County is a 5,285-acre tract, the permanent protection of which will conserve maritime forests, coastal hammocks, and tidal marshes.
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IV. HIERARCHY OF VALUATION TECHNIQUES FOR CONSERVATION EASEMENT PROPERTIES

Appropriate methods for valuing conservation easement property are described below, along with methods that should not be used when assessing such land. If sufficient data are available, Georgia assessors must use the sales comparison method to value land. If a conservation easement property is also enrolled in CUVA or Super CUVA, the valuations required under those statutes should be used while the conservation covenant is in place. In other cases, assessors may choose between other methods. They are listed below in likely order of usefulness, but factors unique to individual counties and assessments will dictate which is most appropriate.

A. Sales comparison approach. Georgia law requires tax assessors to utilize comparable sales data for valuing land when available.^{xxxvii} To accomplish this, assessors keep records of qualified sales^{xxxviii} that are classified according to land type, size, and other factors, and develop valuation schedules for both large and small acreage tracts.^{xxxix} Values for large undeveloped tracts are based on land productivity (based on soil data and pond values) with adjustments for location and other factors included.^{xl} Small tract valuations do not take land productivity values into consideration; these valuations are generally based on desirability and accessibility. When assessing the value of an individual property, assessors conduct a site analysis to identify factors influencing value and classify the property for comparison to qualified sales.^{xli} Improvements are valued separately.^{xlii} Assessors consider existing zoning and use; covenants; use restrictions; environmental, economic, governmental, and social factors; location; accessibility; and other factors.^{xliii} After analysis and classification, the property is valued according to the large or small tract schedule, with adjustments made for factors such as desirability, location, and access.

There are three potential ways to utilize the sales comparison approach to assess the value of conservation easement properties. They are:

1. Compare sales of similar conservation easement properties. Comparing qualified sales of similar conservation easement properties is the best way for tax assessors to determine the FMV of such properties. Unfortunately, most, if not all, Georgia counties have not had sufficient sales of properties encumbered by a conservation easement to make this approach feasible. Conservation easement use is becoming more common across the state, however, so in the not-too-distant future it may be possible for some assessors to use this method. To make comparison of such properties more straightforward, assessors should group conservation easement properties into common categories and develop specific FMV adjustment valuations for each. Some types of easements, such as those where habitat preservation is the primary goal (and, therefore, development and agriculture are likely prohibited or significantly restricted), may result in a lower FMV than others, such as those where agricultural uses are allowed. Of course, other factors such as location will also impact FMV. Common CE categories include:

- a. Conservation
 - i. Water quality
 - ii. Habitat
 - iii. Erosion control
 - iv. Buffers to protected land
- b. Agriculture
 - i. Timber production
 - ii. Crops
 - iii. Livestock
- c. Historic/Cultural
- d. Miscellaneous
 - i. Scenic vistas
 - ii. Public recreation/education

2. Compare sales of similar, non-conservation easement property with similar use restrictions. Although most counties do not have many (or any) conservation easement property sales, some may have sales of land on which development is similarly restricted for other reasons. The presence of sensitive environmental resources, such as wetlands or groundwater recharge areas, steep slopes, and other site features or circumstances may limit development in a manner akin to the presence of an easement where conservation of habitat or sensitive ecosystems is the primary goal. Land zoned for agricultural uses may have similar restrictions as agricultural conservation easement property. Assessors may utilize the “base” agricultural property value for such properties, but must be careful to take into account the *permanent* nature of the easement and additional use restrictions it may impose. An examination of a qualified private appraisal (see Section IV.C) may help assessors pinpoint the impact of restrictions, such as those that limit agricultural practices. If similar property sales data are available, assessors should utilize it when determining FMV of the conservation easement property.

3. Use agricultural and residential comparisons to develop conservation easement desirability diminution. A third method for valuing conservation easement properties uses sales comparisons of specific kinds of agricultural properties to develop a FMV desirability diminution that reflects the limited uses available on most conservation easement properties. This method, used in Morgan County between 2005 and 2008 when there was sufficient property turnover, uses the difference in sales prices for properties used for agricultural and residential purposes to approximate the kind of FMV diminution that could be expected for a property encumbered by a conservation easement. Assessors should use caution when utilizing this method, as it may result in overestimates of FMV loss for some properties. Indeed, this method is not universally accepted and may be inappropriate for some counties.

To use this method, the Morgan County assessor compared large tract sales of two kinds of agricultural properties: those on which residential developments were constructed two to three years after purchase and

those that remained in agriculture. The assessor concentrated on large tract sales because all conservation easement properties in the county were larger than the minimum large tract size of twenty-five acres.^{xiv} The assessor reasoned that the difference between sales prices for agricultural properties used for agricultural and those used for residential purposes reflected the development potential of the land sold, and because the major impact of a conservation easement is to eliminate or significantly restrict development potential, this difference could be used to approximate the FMV impact of a conservation easement. To approximate this impact and develop a diminution adjustment for conservation easement properties, the Morgan County assessor looked at tracts of agricultural land of varying sizes. He identified the highest per acre price of tracts of varying sizes bought for residential developments and the lowest per acre price of tracts of those sizes that remained in agricultural use. On average, the difference between the per acre price for these two kinds of properties was about 60%, which the assessor saw as development potential value. He reasoned that someone purchasing land in Morgan County that had no development potential (but for which agricultural uses remained) would be willing to pay about 40% of the price of land with development potential. The assessor then created a new desirability diminution for properties with conservation easements; he set the FMV value of a 50-acre conservation easement property at .4000 of the value of the benchmark “normal” desirability 50-acre property in the rural large tract acreage schedule (valued at 1.0000). Then, in accordance with state law, he adjusted this value for different tract sizes in the schedule to represent the likely FMV per acre as the size of the tract increases (see Figure 1 below).

Figure 3. Morgan County, GA, Accessibility/Desirability Schedule for Tracts Above I-20

Accessibility/Desirability for Accessibility 7 (Above I-20)					
Acreage	A	B	C	D	E**
25	2.4731	1.7204	1.0899	0.9775	0.4360
50 *	2.3656	1.5054	1.0000	0.8652	0.4000
75	2.1505	1.3978	0.8682	0.7528	0.3473
100	1.9355	1.1828	0.8209	0.7079	0.3284
200	1.7204	1.2903	0.7760	0.6742	0.3104
1000	0.9355	0.7527	0.6270	0.5730	0.2508
5683***	0.9348	0.7520	0.5619	0.5730	0.2248
9999	0.7527	0.6452	0.5618	0.5056	0.2247

*50 acres is the bench mark
 ** Category E represents values of tracts with conservation easements
 *** The largest tract in Morgan County in 2011 was 5,683 acres

As an example, a 100-acre tract of agricultural land with a productivity value of “good” would, according to Morgan County’s large tract schedule, have a FMV of \$880,000 (100 acres x \$8,800/acre). If the tract were encumbered with a conservation easement, the assessor would multiply \$880,000 by 0.3284 according to the accessibility/desirability adjustment for conservation easement properties. With the easement in place, the FMV of the property would now be \$288,992.

Two things must be noted with regards to this approach. First, this methodology compared tracts that were desirable for development at the time of sale to those that were not. The diminution value established here may be an overestimate for conservation easement properties for which there is no immediate development potential. Second, because agricultural uses were permitted on the properties the Morgan County assessor used for his low FMV comparison figure, the FMV figures received by applying this Category E diminution would work best for conservation easement properties where agricultural uses are maintained.

B. CUVA or Super CUVA valuation for properties enrolled in these programs ONLY.

Conservation easement properties can also be enrolled in CUVA or Super CUVA. Indeed, many conservation easement properties that qualify for state and federal tax benefits will have the characteristics necessary for inclusion in a CUVA or Super CUVA program.^{xlv} For a conservation easement property that is also enrolled in one of these programs, the ad valorem tax valuation method under the program is appropriate. This is the *only* situation in which using one of these methods is appropriate for a conservation easement property.



The Candler Oak, a 300-year-old live oak in Savannah, is protected by a conservation easement held by the Savannah Tree Foundation.

© Fran Dwight

Under CUVA, property is assessed at 40% of its current use value as opposed to 40% of its FMV.^{xlvi} Specially trained DOR staff determine the value of the various kinds of CUVA property (agricultural lands, timberlands, and environmentally sensitive property)^{xlvii} and publish per acre values in DOR regulations.^{xlviii} If property characteristics do not change, current use valuations for CUVA property cannot increase or decrease by more than three percent from the valuation from the immediately preceding tax year or be increased or decreased during the entire CUVA covenant period by more than 34.39 percent from the property's current use valuation for the first year of the CUVA covenant period.^{xlix} As with CUVA, Super CUVA properties are also assessed at current use values set by DOR and published in DOR regulations. The three percent tax valuation restriction that applies to CUVA also applies to Super CUVA properties.¹ Although current use values are used for ad valorem taxation of CUVA and Super CUVA properties, local assessors must still determine actual FMV to assess penalties should the landowner violate the conservation covenant.

C. “Qualified Appraisal” by a “Qualified Appraiser.” If there are not enough local data for an assessor to use the sales comparison approach and the conservation easement property is not also enrolled in CUVA or Super CUVA, it may be possible to rely on a private appraisal to determine FMV. Under state and federal tax law, a professional appraisal is required to prove the FMV of the conservation easement, which is considered a charitable donation. When determining FMV, private appraisers usually perform a “before and after” analysis where the FMV of the property before and after recordation of the easement is analyzed and the difference between the two is the value of the easement itself. The “after” FMV of the property, included in the appraisal report, may be used for ad valorem tax purposes. Private appraisers are not, however, required to abide by Georgia local assessment regulations. Specifically, they do not have to

conform to the state constitutional uniformity requirement and may include timber values in the appraisal. Tax assessors must take this into consideration when utilizing private appraisals and should adjust the appraisal's FMV accordingly.

Figure 4. State Properties Commission Valuations

Under new Georgia law passed in 2012, the State Properties Commission (SPC) will review appraisals of conservation easement properties before they are certified for state income tax benefits. The SPC can approve the appraisal, recommend a lower appraisal based on its review, or submit appraisals with substantial valuation misstatements to the Georgia Real Estate Commission for further investigation and disciplinary action.^{li} If relying on a qualified appraisal to determine FMV, tax assessors can also take into account the SPC review of the private appraisal, and may adjust FMV accordingly.

The use of conservation easements has increased in popularity in recent years, thanks in part to heightened federal tax benefits and new tax benefit programs in many states. Tax benefits encourage people to put land into permanent conservation, so private appraisers who can maximize these benefits are often desirous. Although inflated or fraudulent appraisals are by no means the norm, their increased incidence did in part prompt portions of the Pension Protection Act of 2006 (PPA) that lowered the threshold for appraisals to be considered substantial or gross misstatements of a conservation easement's value.^{lii} The PPA also removed a "reasonable cause" exception for taxpayer liability for gross misstatements.^{liii} The PPA should make private conservation easement appraisals more reliable, but local assessors still need to exercise due diligence when utilizing them to determine FMV. Indeed, because state conservation easement tax benefits are now transferable, it is very likely that the incidence of conservation easements will increase. The business of transferable easements may result in an increase in appraisal misstatements, so assessors should always make sure to rely on a "qualified appraisal" by a "qualified appraiser."

Under federal law, a qualified appraisal is one made no earlier than 60 days prior to the date of the tax contribution and does not involve a prohibited appraisal fee (such as a percentage of the deduction obtained).^{liv} In addition, and most importantly, a "qualified appraiser" must prepare the appraisal. For federal tax purposes, a qualified appraiser is a person who:

- Holds him/herself out to the public as an appraiser or performs appraisals on a regular basis
- Is qualified to make appraisals of the type of property being valued because of his or her qualifications that are described in the appraisal
- Is not an excluded individual (such as donor's relative)
- Understands that an intentionally false overstatement of value of property may subject him or her to the penalty for aiding and abetting an understatement of tax liability^{lv}

An appraiser can meet all of the above requirements and still perform inappropriate conservation easement property appraisals. In order to weed out suspect private appraisals and find those that may be used for tax assessment purposes, local assessors should, in general, only rely on FMV determinations from appraisers with:

- Specialized training and education
- Competency valuing the underlying property type in question (preferably with experience making before and after value determinations of this kind of property under two different highest and best uses)
- In-depth knowledge of the intricacies of the highest and best use analysis

- Familiarity with different valuation techniques
- **The ability to communicate the intricacies of a conservation easement valuation in an appraisal report** (most important)

Of course, there is no substitute for judgment and common sense when determining if an appraisal is an accurate statement of FMV. Tax assessors are familiar with property values in their counties and should be able to spot substantial or gross misstatements of value if they occur. If considering relying on a private appraisal for local tax purposes, assessors should always carefully review the easement and the appraisal report to ensure the FMV claims made are substantiated and were derived using appropriate methods.

Figure 5. Using Multiple Valuation Techniques to Determine FMV

Often, one piece of property has several segments with very different characteristics. This is especially true for larger tracts, which often have an area containing residential buildings and areas dedicated to agriculture or containing environmentally sensitive or undevelopable areas. Tax assessors and private appraisers often utilize multiple valuation techniques for such properties. When using this “envelope method,” assessors and appraisers generally use comparable sales data for the building “envelope” and agricultural or environmental/undevelopable values for other land. When these values are assessed, the FMV is determined by simply adding them together. A form to assist local assessors in using the envelope method is located in Appendix B.

V. INAPPROPRIATE VALUATION TECHNIQUES FOR CONSERVATION EASEMENT PROPERTIES

The following valuation methods **should not be used** when assessing the FMV of a conservation easement property.

A. Ignore the easement. The Georgia Uniform Conservation Easement Act specifically requires tax assessors to consider the impact of a conservation easement when assessing the FMV of a conservation easement encumbered property.^{lvi} It is, therefore, contrary to state law for an assessor to ignore the presence of a conservation easement when valuing such land.

In areas with significantly limited development activity or potential, some local assessors may assume that a conservation easement will do little to impact FMV. While it may be true that an easement would have a much greater FMV impact in areas with development pressure, assessors should not fail to recognize the significance of a conservation easement’s *permanent* restrictions on the use of land. Even in rural areas with limited growth, a conservation easement should have an impact on the FMV of land. This is especially true if the easement not only forbids residential or commercial development but also prohibits or limits agricultural uses. Even in rural areas, local assessors who discredit the presence of a conservation easement when valuing land should expect challenges to such assessments.

B. CUVA or Super CUVA valuation for properties NOT enrolled in either program. CUVA and Super CUVA valuations are based on the current use value of land, and were intended only for properties enrolled in those programs. Georgia law requires local assessors to base ad valorem taxes on the FMV, not current use value, of land.^{lvii} Assessors who utilize CUVA or Super CUVA valuations for properties not in those programs are, therefore, acting contrary to state law.



*A conservation easement covering a 100-acre tract on the Toccoa River protects habitat in the Toccoa River watershed, a high biodiversity area that harbors 69 species of special concern.
© Georgia Conservancy*

VI. HOW TO EVALUATE A CONSERVATION EASEMENT

The provisions in the easement document are what limit the development potential of conservation easement property. Tax assessors must be able to evaluate these provisions to determine FMV for tax purposes. Tax assessors should know which easement provisions typically control allowable uses of the land, understand typical language and clauses, and be able to identify surrendered property rights. When determining how a conservation easement affects the FMV of a property, it may be helpful for assessors to meet with the easement holder for an overview of surrendered property rights before reviewing the language of the easement itself. Some easement holders draft easement summaries for landowners that might also be helpful for assessors.

A. Conservation easement provisions

Most conservation easements are similarly organized. The provisions below contain information that may be relevant to determining the FMV of a piece of property. Provisions found after those below contain mostly legal boilerplate and other terms that are irrelevant for determining FMV.

1. Form of conveyance. This provision contains a number of legal formalities, including a description of the property covered by the easement. In this provision, the property description is very likely the only element of importance for tax assessors, who should determine whether the easement covers the entire parcel or only a portion thereof.

2. Purpose. In Georgia, the purpose of the conservation easement must be to permanently preserve the conservation value(s) of the property and prevent incompatible uses of the property. The language of this section is usually very broad, but it can give tax assessors a general idea of what property rights the easement will impact and can be useful in determining the impact of flexible or qualitative

restrictions or performance standards. When interpreting these kinds of imprecise terms, an assessor should always refer back to the purpose of the easement.

3. “Whereas” clauses. “Whereas” clauses are almost always found near the beginning of the conservation easement and contain the justification for its establishment. They should include the conservation values of the property, and may do so in great detail. Like the purpose provision, whereas clauses can help assessors understand easement terms and its impact on property rights and FMV.

4. Land use provisions: Restrictions and reserved rights. This is the heart of the conservation easement. Restrictions and reserved rights are the *most important section for tax assessors* when determining the FMV of a conservation easement property. **Restrictions** describe limited and prohibited uses of the land; the limitations and prohibitions are designed to protect the conservation values of the property. A conservation easement that is designed to protect habitat will likely, for example, prohibit subdivision of the land and significantly restrict development/improvements. **Reserved rights** describe uses the landowner retains despite the presence of the easement, and are compatible with conservation values. A habitat protection conservation easement may, for example, allow a landowner to maintain and replace a single-family residence on the property in a specific location. Some easements provide for different use restrictions on different portions of the property; these segments are sometimes referred to as “Land Use Areas” here.^{lviii}

It is impractical (and likely impossible) to specifically enumerate every possible restricted and reserved right on a conservation easement property. Easement drafters, therefore, utilize a number of linguistic tools to guide the use of the property. Specific language is used to identify critical restrictions and reservations, such as a prohibition on road construction or reservation of the right to build a single-family residence. Flexible language is also used, often as a catchall to ensure that all uses of the land are compatible with the purpose of the easement and conservation values of the property.^{lix} Quantitative language, such as limiting the number of cattle on the property to 25 head, and qualitative language, such as requiring building height to preserve the undeveloped appearance of the land when viewed from public vantage points,^{lx} are also used. Performance standards govern uses by establishing objectives that landowners strive for with their resource management activities (maintaining water quality, for example). Self-executing restrictions are based on existing conditions at the time the easement is executed;^{lxi} they may require a timber stocking level at 75% of that on the property at the time the easement was executed, for example.

Taken together, restrictions and reserved rights show the tax assessor the permanent development and other use restrictions on the land, and as such offer the most important information for determining FMV. This part of the easement is often divided into categorical sections such as land use, subdivision, structures, surface alterations, etc. Section V.B below provides a list of property rights/uses that are commonly forfeited or restricted under a conservation easement.

5. Definitions. An easement’s definitions section may provide important information to tax assessors. If, for example, the easement allows the building of one single-family residence, the definitions section may specify the size and location of such a residence. If the easement prohibits alteration of wetlands on the property, the definition of wetlands for purposes of the easement may indicate whether they include all wetlands on the property or just those regulated under Section 404 of the Clean Water Act (i.e., wetlands for which an Army Corps permit is needed to impact).



The conservation easement on the 417-acre Leary Farm tract in Calhoun County focuses on sustainable forestry and wildlife management.

© Tall Timbers

B. Property rights often affected by a conservation easement

In the vast majority of conservation easements, property rights are significantly restricted and resulting development potential is negligible. The rights/uses that are reserved are generally narrow to protect the conservation values of the land. The following are categories of property rights/uses frequently affected by conservation easements, with specific examples in each category.

1. Alteration of the land surface. Conservation easements generally prohibit alteration of the land surface or surface waters, except where the landowner has reserved rights. “Alteration of the land surface” is usually broadly defined to include “all human-made alterations to the surface.”^{lxii} Cultivation and grazing should be listed as allowable uses here for conservation easement properties with agricultural rights reserved.

2. Structures, buildings, roads, other improvements. In a conservation easement, the term “structures” is usually much more broadly defined than in a zoning ordinance; it likely includes “all human made constructs or assemblages,”^{lxiii} which includes things like fences, satellite dishes, antennas, trailers, etc. The landowner may retain the right to maintain, replace, or construct such improvements in a “Building Area” (often called a Farmstead, Residential or Homestead Area, or Envelope), which is usually covered by the easement because if it were intensely developed or its uses were uncontrolled it could impact the conservation values of other parts of the property.^{lxiv} Restrictions on the built portion of a conservation easement property can range from minimal to extensive. Some easements even impose aesthetic considerations such as choice of materials and design standards.^{lxv} Limitations on agricultural structures are sometimes imposed on the Building Area to avoid potentially high impact poultry sheds, hog parlors, and other similar uses.^{lxvi}

a. Existing. Use provisions for existing structures include prohibition or restrictions on restoration, renovation, maintenance, and additions. There are usually special requirements for historic structures. Landowners are often provided with the right to replace existing structures with “substantially similar” ones, but can also be required to remove certain structures or improvements at some point in the future.

b. New. New structures and other improvements in a Building Area can be minimally or extensively restricted. Some easements restrict the right to build to the original grantors or their immediate successors or impose a time limit on new construction.^{lxvii} In Georgia, new construction that would harm

the conservation values of the property is prohibited.^{lxxviii} This includes construction within 150 feet of a perennial or intermittent stream and construction that causes more than 1% of the property's total surface area to be covered by impervious surface.^{lxxix}

c. Minor or temporary. Ability to construct minor or temporary structures is often retained, particularly in easements where agriculture and/or forestry uses are reserved and such structures are required.^{lxxx} Temporary roads for forestry uses may be reserved in non-sensitive areas.

3. Commercial or industrial use. Industrial uses are usually prohibited. Commercial uses are usually significantly limited or prohibited.

4. Mineral development. Surface mining will be prohibited on all conservation easement properties eligible for federal or state tax benefits. The IRC prohibits the "extraction or removal of minerals by any surface mining method,"^{lxxxi} but does provide an exception for methods with a "limited, localized impact" that are "not irretrievably destructive of significant conservation interests."^{lxxxii} Georgia law prohibits mining on conservation easement properties eligible for an income tax credit.^{lxxxiii}

5. Surface waters/hydrology. Alteration of surface waters and hydrology of a property will be prohibited or restricted. In Georgia, 100-foot buffer must be maintained around all perennial streams; a 50-foot buffer is required for intermittent streams. The buffer must provide for at least 75% canopy cover.^{lxxxiv}

6. Soil and water. Most conservation easements address soil and water to some degree. Protection of these resources is often attempted through requiring Best Management Practices for grazing, forestry, and other such uses.^{lxxxv} Performance standards are also used.^{lxxxvi} Georgia law requires agriculture and silviculture to meet or exceed Georgia Soil and Water Conservation Commission or Georgia Forestry Commission Best Management Practices.^{lxxxvii}

7. Subdivision and development. Prohibition of subdivision is the primary goal of many easements. Restrictions here range from no subdivision at all to allowance of subdivision with a specified number of lots or required approval before subdivision.^{lxxxviii} In Georgia, no subdivision is permitted on properties smaller than 500 acres, and only one subdivision is permitted if the property is larger than 500 acres.^{lxxxix} If subdivision is allowed but only with prior approval from the easement holder, the tax assessor should discuss what kind of subdivision would be approved by the holder to determine FMV. Note that even if the property is already divided into separate lots under a plat or other instrument, a conservation easement can often effect a merger of these lots and prohibit their later conveyance.^{lxxx} In communities with a Transfer of Development Rights (TDR) ordinance, it may be possible that the easement provides that the landowner retains the right to transfer those rights.^{lxxxxi} If this is the case, it should be reflected in the FMV of the property until the development rights are transferred.



The Lakeridge conservation easement in Jones County covers a 481-acre tract on which foresting activities are preserved and governed by a forest management plan.

© Oconee River Land Trust

8. Trees, shrubs, and other vegetation. The spectrum of easement restrictions here ranges from simply preventing building/structural development and letting the landowner determine how to manage forest and agricultural land to establishing detailed management plans for such areas. Georgia law prohibits planting non-native invasive species designated as Category 1, Category 1 Alert, or Category 2 by the Georgia Exotic Pest Council on conservation easement properties eligible for the state income tax credit.^{lxxxii}

9. Waste disposal. Most conservation easements prohibit waste disposal sites on the property, including toxic waste dumps, municipal sewage, and others that could impact the conservation values of the property. Other restrictions or reservations here may concern septic systems.

10. Public recreation and access. Conservation easements range widely in their allowances for public access, from none at all to fee access to open access.

11. Wildlife and wildlife habitat. Easements that protect wildlife conservation values will prohibit or restrict uses and activities that could impact habitat, breeding and feeding grounds, etc.

Appendix C contains a worksheet designed to help tax assessors organize restricted and reserved uses of a conservation easement property. It is a simple document that covers the major use categories found in most easements.

VII. CONCLUSION

Conservation easements are an important tool for permanently preserving the significant values that open, natural space provides. They are particularly useful in Georgia because about 90% of land in the state is privately owned and there are significant state and federal tax benefits for private landowners who encumber their property with one of these instruments. Adjustments to ad valorem taxes can be another incentive for private landowners to place a conservation easement on their property, but many tax assessors are unfamiliar with these instruments and there is a lack of comparable sales for conservation easement properties in the

state. This Guidebook can help tax assessors analyze a conservation easement and determine its impact on the FMV of the land, hopefully making conservation easements an even more attractive conservation tool in Georgia.

ⁱ Ga. Code Ann. 44-10-2(1) (2011).

ⁱⁱ Elizabeth Byers and Karin Ponte, *The Conservation Easement Handbook* 14 (Trust for Public Land & Land Trust Alliance 2005).

ⁱⁱⁱ Georgia Land Conservation Program, Conservation Easement FAQs, at http://glcp.georgia.gov/00/channel_title/0,2094,82613131_82971403,00.html.

^{iv} Ga. Code Ann. § 48-7-29.12(d.1) (2012).

^v Byers, *supra* note 2 at 14.

^{vi} Ga. Comp. R. & Regs. 391-1-6-.03(4) (2011).

^{vii} The list of qualified organizations may be found at http://glcp.georgia.gov/vgn/images/portal/cit_1210/32/9/96100884Qualified%20LAND%20TRUSTS_7_11.pdf.

^{viii} Ga. Comp. R. & Reg. 391-1-6-.03(8) (2011).

^{ix} Byers, *supra*, note 2 at 291.

^x Ga. Comp. R. & Regs. 391-1-6-.05 (2011).

^{xi} Ga. Code Ann. § 44-10-8 (emphasis added) (2011).

^{xii} Ga. Code Ann. § 48-5-2(3)(b)(v) (2011).

^{xiii} Ga. Code Ann. § 48-5-7.4 (2011).

^{xiv} Ga. Code Ann. § 48-5-7.7 (2011).

^{xv} Ga. Code Ann. § 48-5-7.4(l) (2012).

^{xvi} Ga. Code Ann. § 48-5-7.7(m) (2012).

^{xvii} See Nannette Nelson, Laurie Fowler, *A Primer on Conservation Easements and Greenspace for the Property Tax Division of the Georgia Department of Revenue* 2 (describing Jackson County property owner challenge of assessment of CE encumbered property).

^{xviii} *Id.* (describing Gwinnett County tax assessor's use of CUVA rates for agricultural land for valuing CE encumbered property).

^{xix} See Chamblee, et al, *The Effect of Conservation Activity on Surrounding Land Prices*, 87 (3) *Land Economics* 453 (Aug. 2011).

^{xx} American Farmland Trust Farmland Information Center, Fact Sheet: Cost of Community Services Studies (2004), at http://www.farmlandinfo.org/documents/27757/FS_COCS_8-04.pdf.

^{xxi} *Id.*, noting revenue-to-expenditure ratios in dollars for residential land of 1: 1.29, 1: 1.72, and 1: 1.64, and for open space/working land of 1: 0.55, 1: 0.38, and 1: 0.66 for Carroll, Grady, and Thomas Counties, respectively. See also Jeffrey H. Dorfman, *The Local Government Fiscal Impacts of Land Uses in Morgan County: Revenue and Expenditure Streams by Land Use Category* (2008) (showing a revenue-to-expenditure ratio in dollars of 1: 1.15 for residential land uses and 1: 0.36 for farm/forest lands).

^{xxii} Liz Kramer and Jeffery Dorfman, *A toolkit for the evaluation of land parcels for green space planning*, available at <http://www.rivercenter.uga.edu/publications/pdf/toolkit.pdf>.

^{xxiii} See Nelson, Fowler, *supra* note 17, at 2 (describing Jackson County property owner challenge of assessment of CE encumbered property); *Brian Realty Corp. v. DeKalb County*, 493 S.E.2d 595 (Ga. App. 1997) (property owner challenged assessment of CE encumbered land, but case was reversed because property owner had to first appeal the tax to his county board of equalization).

^{xxiv} Virginia McConnell and Margaret Walls, *The Value of Open Space: Evidence from Studies of Nonmarket Benefits* (Resources for the Future 2005), available at <http://www.rff.org/Documents/RFF-REPORT-Open%20Spaces.pdf>.

^{xxv} Ga. Code Ann. § 48-5-7 (2011).

^{xxvi} Ga. Code Ann. § 48-5-2 (2011).

^{xxvii} Ga. Code Ann. § 48-5-20 (2011).

^{xxviii} Ga. Code Ann. § 48-5-18 (2011).

^{xxix} Ga. Comp. R. & Regs. 560-11-10-.09(1)(a) (2011).

^{xxx} Ga. Comp. R. & Regs. 560-11-10-.09(4)(b) (2011).

^{xxxi} *Id.*

^{xxxii} Ga. Comp. R. & Regs. 560-11-10-.09(4)(a) (2011).

^{xxxiii} Ga. Comp. R. & Regs. 560-11-10-.09(3) (2011).

^{xxxiv} Ga. Comp. R. & Regs. 560-11-10-.09(4)(c) (2011).

^{xxxv} *Id.*

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- xxxvi Ga. Code Ann. § 48-2-7(d) (2011).
- xxxvii Ga. Comp. R. & Regs. 560-11-10-.09(3) (2011).
- xxxviii Ga. Comp. R. & Regs. 560-11-10-.09(3)(a)(2) (2011).
- xxxix Ga. Comp. R. & Regs. 560-11-10-.09(3)(b) (2011).
- xl *Id.*
- xli Ga. Comp. R. & Regs. 560-11-10-.09(3)(a) (2011).
- xlii *Id.*
- xliii *Id.*
- xliv *See* Morgan County 2011 Large Acreage Valuation Schedule (on file with author).
- xlv CE properties that may not qualify for CUVA or Super CUVA include those established to protect cultural or historic resources or scenic vistas.
- xlvi Ga. Comp. R. & Regs. 560-11-6-.07 (2011).
- xlvii *Id.*
- xlviii Ga. Comp. R. & Regs. § 560-11-6-.09 (2011).
- xliv Ga. Comp. R. & Regs. § 560-11-6-.07(i) (2011).
- l Ga. Code Ann. § 48-5-271(b) (2012).
- li Ga. Code Ann. § 48-7-29.12(c.1) (2012).
- lii *See* Land Trust Alliance, Conservation Donation Rules, at <http://www.landtrustalliance.org/policy/tax-matters/rules/conservation-donation-rules>.
- liii *Id.*
- liv I.R.C. § 170(f)(11) (2011).
- lv *Id.*
- lvi Ga. Code Ann. § 44-10-8 (2011).
- lvii Ga. Comp. R. & Regs. 560-11-10-.09(4) (2011).
- lviii *See* Byers, *supra*, note 2, at 323.
- lix *Id.* at 295.
- lx *Id.*
- lxi *Id.* at 296.
- lxii *Id.* at 407.
- lxiii *Id.* at 401.
- lxiv Byers, *supra* note 2, at 403.
- lxv *Id.*
- lxvi *Id.* at 405.
- lxvii *Id.* at 404.
- lxviii Ga. Code Ann. § 48-7-29.12(c)(2) (2012).
- lxix Ga. Code Ann. § 48-7-29.12(c)(3) & (6) (2012).
- lxx Byers, *supra* note 2, at 402-403.
- lxxi I.R.C. § 170(h)(5)(B)(i) (2011).
- lxxii 26 C.F.R. § 1.170A-14(g)(4)(i) (2011).
- lxxiii Ga. Code Ann. § 48-7-29.12(c)(7) (2012).
- lxxiv Ga. Code Ann. § 48-7-29.12(c)(4) (2012).
- lxxv Byers *supra* note 2, at 406.
- lxxvi *Id.*
- lxxvii Ga. Code Ann. § 48-7-29.12(c)(5) (2012).
- lxxviii Byers, *supra* note 2, at 396.
- lxxix Ga. Code Ann. § 48-7-29.12(c)(1) (2012).
- lxxx Byers, *supra* note 2, at 396-397.
- lxxxii *Id.* at 398.
- lxxxiii Ga. Code Ann. § 48-7-29.12(c)(8) (2012).

Appendix A: Text of the Georgia Uniform Conservation
Easement Act
O.C.G.A. § 44-10-1 to § 44-10-8

§ 44-10-1. Short title

This article shall be known and may be cited as the “Georgia Uniform Conservation Easement Act.”

§ 44-10-2. Definitions

As used in this article, the term:

(1) “Conservation easement” means a nonpossessory 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, archeological, or cultural aspects of real property.

(2) “Holder” means:

(A) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(3) “Third-party right of enforcement” means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

§ 44-10-3. How conservation easements created, altered or affected; when right under easement arises; duration; impairment of interest in real property; liability of holder

<Text of section effective until January 1, 2013.>

(a) Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as

other easements, except that a conservation easement may not be created or expanded by the exercise of the power of eminent domain.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in subsection (c) of Code Section 44-10-4, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) The ownership or attempted enforcement of rights held by the holder of an easement shall not subject such holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of such property encumbered by a conservation easement.

§ 44-10-3. How conservation easements created, altered or affected; when right under easement arises; duration; impairment of interest in real property; liability of holder

<Text of section effective January 1, 2013.>

(a) Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except that a conservation easement may not be created or expanded by the exercise of the power of eminent domain.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in subsection (c) of Code Section 44-10-4, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) The ownership or attempted enforcement of rights held by the holder of an easement shall not subject such holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of such property encumbered by a conservation easement.

(f) No county, municipality, or consolidated government shall hold a conservation easement unless the encumbered real property lies at least partly within the jurisdictional boundaries of such county, municipality, or consolidated government.

§ 44-10-4. Actions affecting conservation easements

(a) An action affecting a conservation easement may be brought by:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement; or

(4) A person authorized by other law.

(b) The easement holder shall be a necessary party in any proceeding of or before any governmental agency which may result in a license, permit, or order for any demolition, alteration, or construction on the property.

(c) This article does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

§ 44-10-5. Validity of conservation easements

A conservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract.

§ 44-10-6. Applicability of law

(a) This article applies to any interest created after July 1, 1992, which complies with this article, whether designated as a conservation or facade easement, or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise.

(b) This article applies to any interest created before July 1, 1992, if such interest would have been enforceable had such interest been created after July 1, 1992, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This article does not invalidate any interest, whether designated as a conservation or preservation or facade easement or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

§ 44-10-7. Construction of law

This article shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of this article among states enacting it.

§ 44-10-8. Revaluation of property encumbered by conservation easement

A conservation easement may be recorded in the office of the clerk of the superior court of the county where the land is located. Such recording shall be notice to the board of tax assessors of such county of the conveyance of the conservation easement and shall entitle the owner to a revaluation of the encumbered real property so as to reflect the existence of the encumbrance on the next succeeding tax digest of the county. Any owner who records a conservation easement and who is aggrieved by a revaluation or lack thereof under this Code section may appeal to the board of equalization and may appeal from the decision of the board of equalization in accordance with Code Section 48-5-311.

Appendix B: Resources

Georgia Land Conservation Program

<http://glcp.georgia.gov/02/glcp/home/0,2682,82613131,00.html>

Georgia Forestry Commission Forest Legacy Program

<http://www.gfc.state.ga.us/ForestManagement/ForestLegacy.cfm>

Georgia Department of Revenue Local Government Services Division

<https://etax.dor.ga.gov/ptd/index.aspx>

Georgia Land Conservation Center

<http://www.galandcc.com/>

Land Trust Alliance

<http://www.landtrustalliance.org/>

Appraisal Institute's list of members who have completed the *Valuation of Conservation Easements* Professional Development Program, by state

http://www.appraisalinstitute.org/findappraiser/valuation_conservation_easements.aspx

Appraisal Institute "Find an Appraiser" application; users can search for an appraiser in their area who lists appraisal of conservation easements as a specialty

<http://www.appraisalinstitute.org/findappraiser/>

Appendix C: Conservation Easement Evaluation Worksheet

The worksheet on the following pages is designed to help tax assessors organize restricted and reserved uses of a conservation easement property into one easy to understand document. It is a simple document that covers the major use categories found in most easements. The “CE Section” placeholder is helpful because it shows assessors where in the easement they should look if they need clarification on a particular use category.

Property:		Purposes of Conservation Easement/Conservation Values:		
Use Category	CE Section	Restrictions	Reservations	Comments
Agriculture				
Alteration of land surface				
Structures, buildings, roads, other improvements				
Commercial or industrial uses				
Mineral development				
Surface waters/hydrology				

Soil and water				
Subdivision and development				
Trees, shrubs, and other vegetation				
Waste disposal				
Public recreation and access				
Wildlife and wildlife habitat				

Appendix D: Envelope Valuation Method Worksheet

Landowners should complete this form with assistance from the easement holder. The information provided will assist tax assessors in utilizing the envelope method for property valuation.

Conservation Easement Property Assessment

This form is designed to assist your county tax assessor's office in reassessing the value of your property to reflect the impacts of the existing conservation easement. Please include a copy of the easement agreement and the fee appraisal when submitting this form to your tax assessor.

Name: _____

Parcel ID: _____

I. Total acres under conservation easement: _____
Appraised value of easement: \$ _____
Appraised value of unencumbered property (before value) \$ _____
Appraised value of encumbered property (after value) \$ _____
Date of appraisal _____

II. Within the conservation easement-encumbered property, are there (Circle No or Yes):

A. Existing residences and/or commercial buildings?

No Yes If yes, how many? _____

B. Provisions that allow the construction of additional residences and/or commercial buildings?

No Yes If yes, how many are allowed? _____

C. Provisions that allow subdivision of the property?

No Yes If yes, what is the maximum number of subdivisions allowed? _____

III. For each residence and associated outbuildings, please provide the set-aside acreage in which those buildings are or will be allowed (the "building envelope"). _____

IV. Not including the building envelope(s) and any associated residential facilities and activities, what are the primary **maximum** allowable uses of the remaining acreage? (Select at least one category overall, and select no more than one category from each section (A) and (B). To select a category, provide the number of acres in that land use category).

A. Income-producing uses (Select up to one category)

ACRES

1. Agriculture and/or forestry _____

2. Commercial recreation _____

3. Other (you **must** provide explanation on reverse) _____

B. Non-income-producing uses (Select up to one category)

ACRES

1. Communal use (multiple homeowners, neighborhood, public) _____

2. Personal recreation/subsistence use _____

3. Research/education/conservation values **only** _____

4. Other (you **must** provide explanation on reverse) _____

Provide any explanations for Part IV here:

V. If there are any other factors related to the conservation easement that you feel affect the value of your property for property tax assessment purposes, please provide an explanation here.

VI. Signatures

Property Owner

Date

Easement Holder

Date

Notary

Date

Appendix E: List of Qualified Organizations

The following organizations are qualified to hold conservation easements for properties eligible for the Georgia Conservation Tax Credit. Georgia city and county governments are also qualified entities. An updated list of qualified organizations can be found on the Georgia Land Conservation Program web site at glcp.georgia.gov.

* Indicates land trusts that have earned national accreditation through the Land Trust Alliance. For more information on LTA accreditation see www.landtrustalliance.org.

Organization Name	Address	Contact
Athens Land Trust*	685 N. Pope Street Athens, GA 30601	Laura Hall (706) 613-0122 www.athenslandtrust.org
Central Savannah River Land Trust*	P.O. Box 148 Augusts, GA 30903	Hazel Langrall (706) 312-5263 www.csrlt.org
Mountain Conservation Trust of Georgia*	104 North Main Street, Suite B3 Jasper, GA 30143	Liz Cole (706) 253-4077 www.mctga.org
Oconee River Land Trust*	380 Meigs Street Athens, GA 30601	Steffney Thompson (706) 552-3138 www.orlt.com
Tall Timbers Land Conservancy*	13093 Henry Beadel Drive Tallahassee, FL 32312-0918	Kevin McGorty (850) 893-4153 x238 www.talltimbers.org
Atlanta Audubon Society	4055 Roswell Road Atlanta, Ga 30342	David Kuechenmeister (404) 822-8089 www.atlantaaudubon.org
Atlantic Coast Conservancy	634 S. Main Street Jasper, GA 30143	Robert Keller (706) 273-9173 www.atlanticcoastconservancy.org
Chattahoochee Valley Land Trust	P.O. Box 175 Columbus, GA 31902	Katherine Eddins (404) 861-8567 www.galandtrust.org
Chattooga Conservancy	8 Sequoia Hills Lane Clayton, GA 30525	(706) 782-6097 www.chattoogariver.org
Chattowah Open Land Trust	226 Old Ladiga Road Piedmont, AL 36272	Leslie Horne (912) 231-0507 www.galandtrust.org
Elachee Nature Science Center	2125 Elachee Drive Gainesville, GA 3050	Andrea Timpone (770) 535-1976 www.elachee.org
Georgia Agricultural Land Trust	P.O. Box 1680 Carrollton, GA 30117	John Pershing (770) 656-6743 www.georgiafarmland.org
Georgia Department of Natural Resources	2 Martin Luther King, Jr. Drive, Suite 1454 East Atlanta, GA 30334-9000	Steve Friedman (404) 656-9173 www.georgiawildlife.org
Georgia Forestry Commission	1055 E. Whitehall Road Athens, GA 30605	Buford Sanders (706) 553-4443 www.gfc.state.ga.gov

Georgia Land Trust	428 Bull Street, Suite 210 Savannah, GA 31401	Leslie Horne (912) 231-0507 www.galandtrust.org
Georgia Piedmont Land Trust	P.O. Box 3687 Suwanee, GA 30024	Carol Hassell (770) 945-3111 www.gplt.org
Georgia Soil and Water Conservation Commission	4310 Lexington Road, P.O. Box 8024 Athens, GA 30603	Brent Dykes (706) 552-4470 www.gaswcc.ga.gov
Georgia Wildlife Federation	11600 Hazelbrand Road Covington, GA 30014	Jerry McCollum (770) 787-7887 www.gwf.org
Historic Savannah Foundation	321 East York Street Savannah, GA 31405	Daniel Carey (912) 233-7787 www.myHSF.org
Livable Buckhead, Inc.	3340 Peachtree Road NE, Suite #1640 Atlanta, GA 30326	Denise Starling (404) 842-2682 www.livablebuckhead.org
National Wild Turkey Federation	770 Augusta Road Edgefield, SC 29824	Lynn Lewis-Weiss (706) 554-0592 www.nwtf.org
Newton County Land Trust Alliance	P.O. Box 208 Covington, GA 30015-0208	Frank Turner (770) 786-4390
North American Land Trust	P.O. Box 467 Chadds Ford, PA 19317	Lee Echols (706) 338-2157 www.nalt.org
Ocmulgee Land Trust	P.O. Box 6437, 479 Cherry St. Macon, GA 31201	Blake Lisenby (404) 464-5338
SE Regional Land Conservancy	6111 Peachtree-Dunwoody Road, Bldg E, Suite 102 Atlanta, GA 30328	James Wright (770) 351-0411 x307 www.serlc.org
Southeastern Trust for Parks and Land, Inc	4892 Hampton Lake Drive Marietta, GA 30068	Bill Jones (404) 376-7012 www.stpal.org
Southern Conservation Trust	192 McIntosh Trail Peachtree City, GA 30269	Pam Young (770) 846-4730 www.sctlandtrust.org
St. Simons Land Trust	P.O. Box 24615 St. Simons Island, GA 31522	Ben Slade (912) 638-9185 www.sslt.org
The Conservation Fund	4500 Hugh Howell Road, Suite 470 Tucker, GA 30084	Andrew Schock (770) 414-0211 www.conservationfund.org
The Nature Conservancy	1330 West Peachtree Street, Suite 410 Atlanta, GA 30309-2904	Precya Philipp (404) 873-6946 www.nature.org/Georgia
Trust for Public Land	600 W. Peachtree Street NW, Suite 1840 Atlanta, GA 30308	Curt Soper (404) 873-7306 www.tpl.org
Wetlands Foundation	10745 Westside Way, Suite 100 Alpharetta, GA 30009	Necholus Ogden (770) 541-4200

Glossary

Note: Most of these terms do not appear in the Guidebook, but they may appear in a conservation easement. The majority of these definitions are from *The Conservation Easement Handbook* (Trust for Public Land and the Land Trust Alliance, 2d ed., 2005).

Affirmative obligations, rights: (1) Easement provisions that require the property owner to maintain the resources protected by the easement (e.g., mow a field to keep open a view) or that require a holder to maintain if owner does not; (2) rights granted to the easement holder to perform physical acts on the property (e.g., build a trail or access the property for monitoring).

Appraisal: A report prepared by a professional appraiser that provides an estimate of the FMV of the property or conservation easement. A “qualified appraisal” is one prepared to substantiate the value of a donated property or easement, and meets IRS requirements.

Appurtenant easement: Under common law, an easement that benefits adjacent property in any number of ways, for instance by providing rights of access or protection of views.

Backup holder: A holder, named in the easement, that is empowered to enforce or hold an easement if the original holder is not able to do so.

Bargain sale: The sale of a property or easement to a qualified organization for an amount less than the appraised FMV.

Baseline documentation: A record of the conservation values identified in the easement and the relevant conditions of the property, used to monitor and enforce the easement. Contains maps, photographs, and text, and is signed by the landowner and the holder at or before closing.

Basis: The cost of a property at the time of acquisition or the value when inherited, plus the cost of capital improvements made to the property.

Bequest: A gift of money by will, as distinguished from a “devise” – a gift of real property, including land and easements, by will. The two terms are often used interchangeably.

CERCLA: The Comprehensive Environmental Response, Compensation, and Liability Act, enacted in 1980 and amended in 1986, which is the primary federal law governing hazardous waste cleanup.

Certified historic structure: Any structure, building, or land area that is individually listed in the National Register of Historic Places (see definition) or is located in a historic district (see definition) and that has been certified as contributing to the historical significance of the district by the secretary of the Department of the Interior.

Co-holder: A holder that jointly holds title to an easement with another holder.

Common law: As opposed to statutory law, the law that has been established by court decisions over the years.

Compliance certificate: See “statement of compliance.”

Condemnation: When land is taken by government or a government-empowered private entity (such as a utility corporation) for a public purpose. If the land is restricted by a conservation easement that prevents the proposed use, the easement or some of its restrictions may also be terminated by condemnation.

Conservation easement. A nonpossessory 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, archeological, or cultural aspects of real property. O.C.G.A. § 44-10-2(1).

Conservation easement defense: The holder’s legal defense of the easement if the landowner legally challenges the easement. The term “defense” is sometimes used interchangeably with “enforcement.”

Conservation easement enabling statute: The state law that authorizes the use of easements and specifies how easements can be used.

Conservation easement enforcement: The holder’s actions to uphold the terms of the easement if a violation should occur. These actions may range from negotiations with the landowner for voluntary reparation, to mediation, to litigation.

Conservation easement stewardship: All aspects of a holder’s management of a CE after its acquisition, including: monitoring; landowner relations; recordkeeping; processing landowner notices, requests for approval, and amendments; managing stewardship funds; and enforcement and defense.

Conservation purpose: Specifically, the purposes a conservation easement must serve to be a tax-deductible donation, as defined by Internal Revenue Code (IRC) § 170(h) and the associated Treasury Regulations. Not to be confused with the purpose statement (also called purpose clause) of a CE.

Covenant: A written promise contained in a contract, deed, or other form of agreement.

Cy pres doctrine: The court-exercised doctrine that permits modification or termination of charitable trusts for changed circumstances or due to impossibility of carrying out the precise original intention of a donor to a trust.

Deed: A legal document by which ownership to land and interests in land are transferred.

Deed restriction: A restriction in a deed that limits future uses of the property. A deed restriction may be enforced only by the individuals who imposed the restriction (usually the prior owner), or if appurtenant to other land, by all future owners of the land, unless previously terminated by mutual written agreement of all owners.

Development right: The right to develop a property in accordance with local land use regulations. A development right can be extinguished or relinquished through a CE, or transferred to another property through a statutory transfer of development rights program.

Devise: See “bequest.”

Doctrine of changed conditions: A court-imposed doctrine, similar to *cy pres*, that permits the modification or termination of restrictions on the land if the surrounding area or circumstances have

changed so that the restrictions can no longer fulfill their original purposes. In conservation easements, economic changes are generally not considered justification for modification or termination.

Eminent domain: See “condemnation” or “taking.”

Endowment: A permanent fund established to support a specific purpose. Generally, the beneficiary can only access income from investment of the fund, and there are restrictions on withdrawing from the endowment’s principal.

Environmental assessment: The process by which a buyer or donee evaluates whether hazardous substances are present on a property in order to qualify for the “innocent buyer” defense in hazardous waste clean up law.

Equitable servitude: A restriction on land that burdens the owner of the restricted land, and usually his or her successors in title, for the benefit of a person or nearby property, and is enforceable by injunction.

Estoppel: A legal term meaning that a person is precluded from complaining against a circumstance that he caused or contributed to, either by his silence, acquiescence, or affirmative approval.

Estoppel certificate: See “statement of compliance.”

Executory-interest holder: A named easement holder that may assume the original holder’s interest upon the occurrence of a stated condition, such as failure to enforce or dissolution.

Extinguishment: The termination of a conservation easement.

Fair market value (FMV): In real estate, the price that a willing buyer would pay a willing seller for a property offered for sale on the open market, when both have reasonable knowledge of all relevant facts and are not under pressure to buy or sell.

Fee simple: Full and unconditional ownership of land, with the right to use and sell during the owner’s lifetime, and then to pass on to one’s heirs.

Geographic information system (GIS): Computer software that analyzes different data sharing the same geographic area and creates maps of the data layers. (For example, property boundaries can be overlaid with topography, land use, critical habitat, and soils and vegetation data.)

Geographic positioning system (GPS): Equipment that uses satellite readings to identify an exact position on the land.

Grantee: In real estate deeds, a person or organization that receives a conveyance of property (the buyer, donee, or new holder or owner).

Grantor: In real estate deeds, a person or organization that makes a conveyance of property (the seller or donor, or previous owner).

Historic district: A district that is not listed on the National Register but has been established under a state or local law. The law establishing the historic district must be certified by the secretary of the interior as containing criteria that will substantially achieve the purpose of preserving and rehabilitating

buildings of historic significance to the district and as meeting substantially all of the requirements for the listing of districts in the National Register.

Historic preservation easement: A conservation easement used to preserve the façade, interior, or surroundings of a historic structure. These easements require preservation of the essential character of the building while permitting changes that are necessary to ensure that the building is maintained and remains economically viable over time.

Hold harmless provision: The conservation easement provision that ensures that liabilities of landownership are not transferred to the easement holder.

Holder: (A) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property. O.C.G.A. § 44-10-2(2).

Holder's remedies: The relief that a court might award a holder in an enforcement action against a violation of an easement, such as an injunction, an order for restoration, or an award of damages.

Indemnify: To agree to compensate another party for any losses or damages due to specified occurrences – often coupled with an agreement to defend.

Indenture: Similar to a contract, a legal agreement contained in a deed and affecting land.

Internal Revenue Code § 170(h): The section of a federal law that sets forth the requirements a conservation easement must meet to qualify for federal income tax deductions. The term for easement gifts that meet these standards is “qualified conservation contributions.”

Internal Revenue Code § 2031(c): The section of federal law that sets forth certain estate tax rules for land subject to a qualified conservation easement.

IRS Form 8282: The form a donee must file if it resells donated property, including a conservation easement, within two years of its acquisition.

IRS Form 8283: The form attached to the easement donor's income tax return when an income tax deduction is claimed for an easement donation valued over \$500.

Land trust: A nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or easement acquisitions, or by engaging in the stewardship of such land or easements.

Land Trust Standards and Practices: The ethical and technical guidelines for land trusts, issued by the Land Trust Alliance.

Legal description: A written description of the property boundaries or easement boundaries that is part of the deed.

Less-than-fee interest: Less than full ownership of all the legal rights associated with a property. A conservation easement is a less-than-fee interest. See “fee simple.”

Marketable title act: A state statute that automatically extinguishes restrictions on real property 25 to 40 years after their creation, making it necessary to periodically re-record an easement. Several states have such statutes but specifically exempt conservation easements.

Merger: When the holder of a conservation easement becomes the owner of the restricted property, the “lesser” title represented by the easement is “merged” into the “greater” title represented by the fee ownership, and the easement is automatically extinguished. This merger occurs under the law of most states, with many exceptions and rules.

Metes and bounds: The boundaries of a property described by bearings (compass directions) and distances measured between clearly identified points on the land.

Mortgage subordination: A consent obtained from the lender when a conservation easement is acquired on a mortgaged property. The consent insures that the lender cannot extinguish the easement in the event of foreclosure.

National Register of Historic Places: The official list of all historic resources at the national level (located in the Department of the Interior), which includes districts, sites, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and culture.

Negative easement in gross: An easement imposing restrictions on the use of a parcel of land for the benefit of a person or entity, rather than for the benefit of a parcel of land. Although conservation easements are “negative easements” and usually “in gross,” but sometimes appurtenant to other benefited land, the term usually refers to a common law easement in gross, which does not run with the land indefinitely, is not transferable to another holder, and is generally only enforceable by and against the original parties.

Option: A temporary partial interest in real estate that a landowner deeds to a buyer, giving the buyer the right to purchase real estate at a specified price by a specified date, but which the buyer has no obligation to exercise.

Performance standards: The requirements in a conservation easement for limiting permitted land use activities that are based on the likelihood of achieving a desired outcome or goal, rather than mandating specific actions or prohibitions.

Permitted-use notifications: The notifications the landowner must give to an easement holder if the easement permits future construction or intense resource management activities, subject to review or approval by the holder before activities begin.

Policy: A holder’s position, usually written and adopted by the board, that guides decisions and actions.

Post-mortem easement: The creation of a conservation easement after the death of the decedent and before the decedent’s estate tax return is filed (which may reduce the amount of estate taxes due).

Practice: (1) The holder’s customary action, which may or may not be written as a policy or procedure. (2) Also refers to a practice defined in *Land Trust Standards and Practices*.

Preferred assignee: A holder that is named in a conservation easement, which does not acquire enforcement rights until it actually becomes the holder. A preferred assignee has the right to refuse the easement when and if it is offered, and may have the right to assign its own interest to another qualified holder.

Prescriptive standards: The restrictions in a conservation easement that forbid or limit certain activities, which are usually absolute and often quantifiable, such as the prohibition of construction within 300 feet of the water. Compare to “performance standards.”

Private letter ruling: A ruling from the IRS given in response to a taxpayer’s request for an IRS determination that a specific easement donation will be tax deductible. The ruling only tells easement donors whether or not their proposed contribution meets the standards for income tax deduction; it does not rule on the amount of the deduction.

Procedure: A series of steps (usually documented in writing) that holders regularly follow, which may or may not be approved by the board.

Purchase of development rights (PDR): The purchase of land use rights, usually coupled with a conservation easement, typically by a public agency. The easement extinguishes the development rights on the original property, but if used in conjunction with a transfer of development rights program, the holder may be entitled to transfer or sell the rights to another property (see “transfer of development rights”).

Qualified conservation contribution: A donation of a partial interest in land that is eligible for federal income and estate tax recognition as a charitable gift because it meets three basic tests under IRC § 170(h): the interest is a qualified real property interest (including a perpetual conservation easement); it is granted to a qualified organization (see definition); and it is granted exclusively for conservation purposes (see definition).

Qualified organization: An organization qualified to be an easement holder – a government agency or a conservation or historic preservation organization that qualifies as a tax-exempt entity under IRC § 501(c)(3) and either meets the public support requirements of IRC §§ 170(b)(1)(A)(vi), 509(a)(1), or 509(a)(2), or is deemed a supporting organization in accordance with IRC § 509(a)(3).

Quitclaim deed: A deed that conveys to the grantee only the right, title, and interest the grantor has to the property, if any. Compare to “warranty deed” and “quitclaim deed with covenant.”

Quitclaim deed with covenant: A deed in which the grantor transfers only the rights that he or she has, if any, but also warrants that the grantor has done nothing to compromise those rights, and will defend against the future claims of someone who asserts an interest in the property based on the grantor’s actions (such as previous deeds, tax liens, or mortgages).

Real estate transfer tax: A state or local tax imposed when a property transfers ownership.

Recording: When a copy of an easement deed is permanently recorded at the county or town office where deeds are filed.

Recreational use statute: A state statute that reduces or eliminates the liability of a landowner for injuries suffered by the public who recreate on private property.

Regulatory easement: An easement that is exacted by a federal, state, or local regulatory agency in return for approval or concessions in a development permit.

Right of first refusal: An interest in land conveyed by a deed from the landowner to a person or entity, granting the right to purchase a property if it is offered for sale on the same terms as offered to and accepted by another potential buyer.

Rule against perpetuities: A common law real property rule that limits the duration of restrictions on land, and voids conditional grants of future interests in land that may never come to pass.

Secretary of the Interior's Standards for the Treatment of Historic Properties: The standards and guidelines applied to all properties listed in the National Register of Historic Places, including buildings, sites, structures, objects, and districts. The standards cover the maintenance, repair, and replacement of historic materials, as well as alterations or the design of new additions.

Statement of compliance: A statement prepared by the holder for a landowner who is selling easement property. The statement reviews the condition of the property as of the holder's most recent inspection. Also called a "performance certificate" or "estoppel certificate."

Taking: A taking occurs when the government seizes title or takes physical possession of land under the powers of eminent domain, and requires compensation to the landowner.

Term easement: A conservation easement that is intended to terminate automatically after a specified period of years. A term easement does not qualify for income or estate tax benefits.

Third party right of enforcement: A right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder. O.C.G.A. § 44-10-2(3).

Title: Evidence of legal ownership to property. Title is transferred by a deed.

Title insurance: The insurance that protects landowners and easement holders against losses from defective or unmarketable title. Title insurance provides financial compensation if ownership is lost and defends the insured's title against adverse claims (subject to listed exceptions).

Title report: A report prepared by a title company or attorney – after a title search – that contains documentation of the quality of ownership held by a particular person or entity. It identifies any encumbrances on the property and any partial ownership interests.

Transfer of development rights (TDR): When a government program allows development rights to be moved from an environmentally sensitive site (a "sending area") to a location deemed more appropriate (a "receiving area"). Where development rights are removed from a sending area, a conservation easement is typically used to extinguish those development rights on land.

Treasury regulations: The regulations used by the Internal Revenue Service to implement the Internal Revenue Code. In this book, they refer to Title 26 of the Code of Federal Regulations at § 1.170A-14, which are the regulations associated with the IRC § 170(h) that explain in detail the requirements of deductible conservation easement gifts.

Uniform Conservation Easement Act: Written in 1981 by a commission on model statutes, this law has been adopted or adapted by many states. It was designed to serve as a model for state legislation

to remove the many common law impediments to permanent restrictions on land and easements in gross, and to enable qualified agencies and private conservation organizations to accept less-than-fee interests in land for the purposes of conservation and preservation.

Warranty deed: A deed that is transferred free and clear of liens and encumbrances, where the grantor will defend the title conveyed against all future adverse claims that derive from events that occurred prior to the date of the deed.