Land Conservation Clinic
School of Law
UNIVERSITY OF GEORGIA

Landowner's Guide to Conservation Easements

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Cover photo by Dawson Williams

Introduction to Conservation Easements for Landowners[1]

Conservation easements are used to permanently conserve land, including privately owned land. Conservation easements have been used to protect over 61 million acres in the United States[2] and over 900,000 acres in Georgia.[3] This publication provides an introductory overview of conservation easements for landowners who are interested in knowing more about the what, why, and how of conservation easements. It is strongly recommended that landowners seek legal and tax advice from their own advisors as applied to their own situation and property so as to ensure successful projects for all.

What is a conservation easement?

A conservation easement is a voluntary, legally binding agreement between a landowner and a holder (typically a land trust or government agency[4]) in which a landowner permanently limits uses of their property in order to protect their property's conservation features. The agreement will permit certain uses, prevent other uses, and give the land trust (or other holder such as a government agency) the ability to monitor and enforce the agreement. The landowner retains ownership and management of the property as limited by the conservation easement, and public access is not required. Landowners who place a conservation easement on their property may continue to live on the land, sell it, or pass it to their heirs. Once a conservation easement is signed and recorded, it is binding on the landowner and all future landowners.

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[1] **DISCLAIMER:** This Guide was produced with the assistance of students at the University of Georgia School of Law Land Conservation Clinic. The Guide is not intended to be, and does not constitute, legal advice. Laws and how courts interpret them can change and vary by jurisdiction. Readers should consult an attorney for their specific situation. Furthermore, the contents of the Guide do not necessarily represent the views of the University of Georgia, or the University of Georgia Law School, and no official endorsement of the Guide or its findings should be inferred.

[2] https://landtrustalliance.org/land-trusts/gaining-ground/georgia

[3] *See https://gis-gadnrwrd.opendata.arcgis.com/datasets/georgia-conservation-lands-1/explore?location=33.019643%2C-85.732461%2C7, and per Georgia Department of Natural Resource input.*

[4] See "Who can hold a conservation easement" below.

A conservation easement in Georgia is perpetual unless the agreement provides otherwise.[5] In order to be valid, the conservation easement must support conservation purposes as provided by Georgia law, such as the protection of scenic or natural open space, natural habitats, farms, forest land, historical features, and enhancing air or water quality.[6]

<u>What does a conservation easement contain?</u>

A conservation easement is a legal agreement that must be signed, witnessed, notarized and recorded with the Clerk of the Superior Court's office in the county where the property is located. It will contain many typical contract clauses as well as provisions designed to permanently protect the land and protect the conservation goals. While every conservation easement is different, reflecting different land, landowners, and land trust/holders, most conservation easements will typically identify:

- The landowner, the land trust or other easement holder, and the property's location;
- The property's conservation features and the conservation purposes that the agreement seeks to protect;
- Prohibited uses and activities: Common prohibited activities include: mining, dumping of waste, industrial uses, building near streams, disturbing priority habitats, installing billboards, etc.;
- Permitted existing and future uses and activities and the limits on these actions: Examples of permitted uses include: maintaining existing buildings, roads, and trails; conducting forestry and agriculture activities in defined areas; low impact recreational uses; creation of new trails and roads; and construction of additional structures. Examples of limits on uses include requiring best management practices, creating use zones or envelopes for certain activities, limiting the number or location of structures.

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[5] In Georgia, CEs are presumed perpetual unless otherwise provided in the agreement. O.C.G.A. §44-10-3(c). In addition, federal and state tax benefits are only available for perpetual CEs. See IRC 170(h)(2)(C), Ga. Comp. R. & Regs. 391-1-6-.03(4) and (6)(c)(I) (2026).

[6] O.C.G.A. §44-10-2(1).

- When the landowner must give notice or seek approval prior to certain activities; and
- The land trust's rights to monitor and enforce the provisions of the conservation easement.

How do conservation easements protect the places we love?

Conservation easements preserve wildlife, natural habitats, water, timber, farms, and many other important conservation resources by permanently restricting what can be done on that property. These restrictions protect the conservation resources on the property from future disturbance and development while often allowing for uses that are consistent with the conservation purposes. Projections suggest that by 2060, Georgia's population will grow to be around 14 million people.[7] Population growth will lead to development pressure on Georgia forests, farms, and wetlands and will put land currently used for natural habitat, agriculture, water, forestry, and outdoor recreation at risk of being converted to other uses. Conservation easements provide numerous public benefits, including: protecting important natural habitat; keeping working lands productive while steering growth to more suitable locations; safeguarding water quality, wildlife, and carbon storage; and reducing the risks of flooding and air and water pollution. By protecting their land with conservation easements, landowners ensure Georgia's undeveloped landscapes remain intact, for generations to come.

Who can donate a conservation easement?

Any landowner with clear title to their property may place a conservation easement on their property. Individuals, married couples, partners, LLCs, corporations, trusts, estates, and local and state governments can all place a conservation easement upon land in Georgia.[8]

[7] https://opb.georgia.gov/census-data/population-projections.
[8] O.C.G.A. §44-10-3.

What type of land can be conserved?

A conservation easement can be used to protect a wide variety of properties and conservation features, including: managed pine forests, farms, wetlands, streams, natural forests, archeological and historic sites, scenic vistas, and public recreation areas. Typically there is no size minimum or maximum, depending on the land trust and the conservation purposes served. Conservation easements have been used to protect properties that are less than 1 acre in area to more 1,000 acres in area.

Who can hold a conservation easement and what do they do?

A conservation easement must be held by a qualified holder as defined by statute, in order to be a permanent valid easement and to qualify for the possible tax benefits discussed below. Qualified holders include federal, state, county, and local governments and agencies, such as the Georgia Department of Natural Resources or the Natural Resources Conservation Service; and charitable nonprofit organizations such as land trusts. Qualifying non-profit holders must have a mission related to conservation or preservation of land, natural resources or historical, architectural, and cultural aspects of real property.[9] Holders such as land trusts vary in size, mission, and geographic reach, giving a landowner a wide array of options from which to choose a partner.

Conservation easement holders typically work with the landowner to draft the conservation easement, assemble the necessary documentation, and are responsible for ensuring the conservation easement is complied with in perpetuity. The conservation easement will expressly give the land trust the right to monitor the conserved property and to take legal action to resolve any violations if necessary.

[9] O.C.G.A. § 44-10-2 (2) (2024).

What are the costs to landowners?

Landowners who want to place a conservation easement on their property generally will incur some costs. Prior to finalizing a conservation easement, landowners should obtain the advice of their legal and financial advisors to explore the legal requirements and financial considerations of a conservation easement and planning for the future. In addition to the cost of this legal and financial advice, a title review is required. If the legal description and survey for the property are inadequate, then a new survey may be needed. Other costs to the landowner may include a project fee to the land trust which supports the preparation of the conservation easement and baseline documentation (see discussion below). The land trust may also request a fee or gift for its future stewardship of the easement. This money ensures that the land trust has the resources to monitor and enforce the easement in perpetuity.[10] If a landowner seeks tax benefits, they must also pay for a qualified appraisal of their land.

What are the possible benefits to the landowner for donating a conservation easement?

Landowners who donate a conservation easement do so for many reasons. Some might donate a conservation easement to preserve their land for their family's future enjoyment. Others act to benefit their larger community, or to protect some special conservation feature such as river frontage, a wetland, or mature forest.

In addition to these personal benefits, landowners may also seek to qualify for tax benefits after donating their land to a qualified easement holder. These potential tax benefits reflect the reality that placing a conservation easement on property impacts a property's value forever by preventing the property's more intense development. Possible tax benefits include a federal charitable tax deduction, a state tax credit, reduced estate taxes for heirs, and lower ad valorem property taxes. Each tax benefit has very specific requirements that must be met and landowners are urged to discuss their particular situation with their legal and tax advisors.

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[10] Note that donated stewardship contributions that meet tax code requirements may also be considered a charitable donation. See Conservation Easement Audit Technique, rev. 1/21/2021, IRS. https://www.irs.gov/pub/irs-pdf/p5464.pdf.

Possible tax benefits associated with the donation of qualifying donations include:

I. Federal Tax Deduction

The federal tax code provides a charitable deduction for qualifying conservation easement donations. To qualify for a federal income tax deduction under IRC § 170(h), the landowner must make a qualified contribution such as a conservation easement[11] to a qualified organization,[12] and that conservation easement must serve **one or more** of the following conservation purposes:

- Preserving land for outdoor recreation or for the education of the general public;
- Protecting significant relatively natural habitats of fish, wildlife, plants, or other similar ecosystems;
- Preserving open space, including farmland and forest land:
  - for the scenic enjoyment of the public and which provides significant public benefit; **OR**
  - in line with clearly defined federal, state, or local policies and which provides significant public benefits.
- Preserving historically important land areas or certified historic structures.[13]

A qualifying conservation easement must comply with detailed requirements in the tax code, including, but not limited to, ensuring the conservation purpose is protected in perpetuity; prohibiting any inconsistent uses or reserved rights that would impair the conservation purposes; granting the holder the legal right to inspect and enforce the easement; subordinating any mortgages to the easement; and documenting the property's condition in a baseline documentation report.

[11] Treas. Reg. § 1.170A-12(b).
[12] IRC § 170(h)(2) (2024).
[13] *Id., See also IRC § 170 (h)(4).*

Qualifying conservation easements are generally valued based on the fair market value of the perpetual conservation restriction at the time of the contribution.[14] If, however, there is substantial record of sales of easements comparable to the donated easement, the fair market value is based on the sales prices of such comparable easements.[15] However, if there are no comparable sales or donations, the value of the federal tax deduction will be determined by the difference between the fair market value of the property before and after the conservation easement is placed on the property. Generally, landowners may deduct up to 50% of their Adjusted Gross Income ("AGI") each year and have up to 16 years to use the deduction.[16] If more than 50% of a landowner's annual AGI derives from farming or ranching, they can deduct up to 100% of their AGI for their conservation donation.[17]

II. Georgia Conservation Tax Credit

Landowners who donate a qualifying conservation easement may obtain a Georgia conservation tax credit against their state income tax owed if they meet certain requirements.[18] (Note this tax credit is currently scheduled to sunset on December 31, 2026, unless it is reauthorized in 2027.) The easement must be perpetual and held by a qualified organization. In addition, the property must meet **at least two** of the following conservation purposes:

- Protecting water quality for wetlands, rivers, streams, or lakes;
- Conserving wildlife habitat in a way that aligns with state wildlife conservation policies;
- Preserving outdoor recreation opportunities consistent with state recreation policies;
- Protecting prime agricultural or forestry lands that contribute to Georgia's working landscapes;
- Safeguarding cultural sites, heritage corridors, or archaeological and historic resources.

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[14] Treas. Reg. § 1.170A-14(h)(3).
[15] *Id.*
[16] IRC § 170(b)(1)(E).
[17] IRC § 170(b)(1)(E)(iv).
[18] O.C.G.A. §48.29.12 (2024).

In addition, to qualify for the state tax credit, the conservation easement must also:

- Prohibit subdivision if the parcel is less than 500 acres and permit at most one subdivision if the property is greater than 500 acres;
- Prohibit any new construction, roads, impoundments, ditches, dumping, or any other activity that would harm the protected conservation values;
- Prohibit any new construction within 150 feet of any perennial or intermittent stream;
- Require vegetated buffers of at least 100 feet on each side of perennial rivers or streams and at least 50 feet on each side of intermittent streams;
- Maintain at least 75 percent tree canopy in those buffers after harvest;
- Require all timber and agricultural activities to follow Georgia Forestry Commission and Georgia Soil and Water Conservation Commission Best Management Practices; and
- Limit impervious surfaces to no more than 1 percent of the property's total surface area.[19]

The conservation easement must be reviewed and certified by the Georgia Department of Natural Resources ("DNR") to establish that the property meets conservation requirements and the donor's appraisal must be approved by the State Properties Commission. The certification application must include an appraisal, the conservation easement, a baseline documentation report, and a filing fee of $5,000. Landowners may seek pre-certification from DNR without a fee as well.[20]

The value of the donor's tax credit is equal to 25% of the appraised value of the conservation easement, with a maximum of $250,000 for individuals and $500,000 for corporations and partnerships. Any unused portion may be carried forward for up to five years.[21]

[19] Ga Comp. R. & Regs. 391-1-6-.03.
[20] Ga Comp. R. & Regs. 391-1-6-.04.
[21] O.C.G.A. § 48-7-29.12(d)(1), Ga. Comp. R. & Regs. 560-7-8-.50(10) (2025).

In addition, the tax credit in Georgia is transferable.[22] Finally, the landowner is prohibited from using a tax credit for any amount that has already been deducted from net income as a charitable contribution under federal law.[23] The state program is capped at $4 million a year for all applicants and will sunset on December 31, 2026.[24]

III. Estate Taxes

The value of a landowner's estate for tax purposes can be impacted by a conservation easement. A conservation easement typically reduces the value of a property, thereby reducing the total value of the landowner's estate. The tax code also provides an estate tax exclusion of up to 40% of the value of land protected by a qualifying conservation easement (the "2031(c) exclusion").[25] The exclusion is capped at $500,000 for each property. Moreover, the $500,000 cap is reduced if the easement diminished the value of the land by less than 30% at the time of donation. To qualify for the 2031(c) exemption, the easement must serve at least one conservation purpose outlined in 170(h). However, to qualify for the 2031(c) exclusion, the conservation purpose cannot be for "historic preservation", and the easement must prohibit more than a de minimis commercial recreational use.

IV. Property Taxes

Georgia law provides that once a landowner records a conservation easement with the Clerk of the Superior Court where the land is located, the landowner is entitled to a revaluation by the assessor for the next county tax digest.[26] Restricting a property with a conservation easement will typically reduce the value of the property. Due to the lower value of the encumbered property, the revised value should therefore result in lower property taxes for the landowner.

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[22] OCGA 48-7-29.12.
[23] O.C.G.A. § 48-7-29.12.
[24] O.C.G.A. § 48-7-29.12(d)(A).
[25] 26 USC §2031 C.
[26] O.C.G.A. § 44-10-8.

V. Example

To illustrate the potential benefits of donating a conservation easement, consider the following simplified example. Note that this example is very generalized, and Grandma should consult her advisors on the requirements and mechanics of claiming the deduction and tax credit given her own unique situation. Grandma owns 100 acres valued at $250,000. Grandma donates a qualified conservation easement on her land to a local land trust. A qualified appraiser determines that the value of the property after the easement is placed is $100,000. The value of the easement is therefore: $250,000-$100,000 = $150,000.

A. Federal Tax Savings: For federal income tax purposes, the value of Grandma's charitable deduction is equal to the value of the easement, or $150,000, under I.R.C. §170(h).[27]

B. State Tax Credits: The value of Grandma's state tax credit is 25% of $150,000, or $37,500.

C. Estate Tax Credits: Assuming the conservation easement meets the requirements for this exclusion, Grandma's heirs can exclude 40% of the encumbered value of this property ($100,000) from Grandma's estate. The decreased value of the encumbered property already reduces the estate value. However, by utilizing the 2031(c) exclusion, Grandma's heirs may potentially exclude an additional $40,000 from the estate calculation.

D. Property Tax: Once Grandma records her conservation easement with the county clerk, she is entitled to a revaluation of her property for property tax purposes.[28] Thus, since the conservation easement reduced her property's value, Grandma's property taxes should also be reduced.

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[27] The actual amount Grandma uses of the value of the easement will be limited to 50% of her AGI in any one year and Grandma will have 16 years to use up that value.
[28] O.C.G.A. § 44-10-8 (2025).

How are conservation easements valued for tax purposes?

The value of a conservation easement must be calculated by a qualified appraiser according to very specific requirements. In general, however, the value of a conservation easement for tax purposes is generally represented by the reduction in the property's value caused by the easement. In practice, this means determining the appraised fair market value of the land at its highest and best use before the donation of a conservation easement and subtracting the property's value after it is encumbered by the easement. The difference between these amounts represents the conservation easement's value. However, if comparable market sales are available for the value of the conservation easement, appraisers will also rely on market sales to determine the value of the easement.[29]

To receive tax benefits, landowners must obtain a qualified appraisal by a qualified appraiser that complies with strict federal and state requirements. It is best practice for landowners to work with qualified and experienced appraisers to ensure accuracy and compliance.

What are the differences between a donation, sale, and bargain sale?

Landowners who wish to place a conservation easement on their property have three potential options: they can donate, sell,[30] or enter a bargain sale for a conservation easement. If a landowner donates a conservation easement, they do not receive a payment, but they may qualify for state and federal tax benefits. If a landowner sells a conservation easement for its full value, then they receive payment for the easement's value and the landowner is not eligible for a federal deduction or a state tax credit. A bargain sale is a mix of a sale and a donation, where the landowner receives a payment for part of the conservation easement value, and the uncompensated portion may be considered a donation for tax purposes if their easement meets the tax incentive program's requirements. Agencies and programs that are sometimes able to provide funding for purchasing conservation easements (and may or may not actually hold the

[29] Treas. Reg. § 1.170A-14(h)(3).

[30] Note that not all conservation easements qualify for the various purchased conservation easement programs, nor do the programs have sufficient funding to purchase all conservation easements at this time.

easement) include: Natural Resources Conservation Service (NRCS) Agricultural Conservation Easement Program Agricultural Land Easements; Natural Resources Conservation Service Agricultural Conservation Easement Program Wetland Reserve Easements; the federal Readiness and Environmental Protection Integration Program; Forest Legacy Program; Georgia Farmland Conservation Program; and the Georgia Outdoor Stewardship Program.[31] The requirements for each purchase program and the tax consequences of participating in that program should be carefully reviewed by the landowner and their advisors. Moreover, if participating in current NRCS programs, please contact the NRCS to ensure compliance with program requirements.

What are the differences between CUVA and conservation easements?

A common source of confusion arises when landowners in Georgia try to distinguish between a Conservation Use Valuation Assessment ("CUVA") contract with their county and a conservation easement. CUVA is a state authorized program that allows counties to reduce property taxes on land used for qualifying agricultural, forestry, or conservation purposes. Land enrolled in the CUVA program is taxed based on the value of the current use of land, as opposed to the fair market value of the property. The current use of the land refers to how the landowner actively uses the property, such as for farming, forestry, or conservation, and it generally reflects a lower value than the property's fair market value. Under CUVA, landowners must agree by covenant with the county to maintain the eligible property in bona fide qualifying use for a period of ten years.[32] Qualifying properties must be between 10 and 2,000 acres in size. Only individuals, families, estates, trusts, and certain closely held entities that use the land for agriculture or conservation can qualify for the program. CUVA has specific requirements regarding land use, acreage, and ownership to ensure the program supports working and conservation lands.[33] If CUVA agreements are broken, then the landowner is subject to financial penalties. Generally,

[31] Natural Resources Conservation Service Agricultural Conservation Easement Program Agricultural Land Easements; Natural Resources Conservation Service Agricultural Conservation Easement Program Wetland Reserve Easements ; Georgia Farm Preservation Program; Department of Defense; Georgia Outdoor Stewardship Program; Forest Legacy Program.

[32] *See* O.C.G.A. § 48-5-7.4(d) (2024).

[33] O.C.G.A. § 48-5-7.4 (2024).

they must pay a penalty equal to twice the difference between the taxes paid under the current-use valuation and the taxes that would have been due at fair market value for each completed or partially completed year of the covenant. The penalty becomes a lien on the property and is collected like delinquent ad valorem taxes.[34] The primary difference between conservation easements and CUVA is that conservation easements are perpetual, more complex agreements that impact many parts of a landowner's life, while CUVA contracts are for ten years and only impact property taxes. In addition, conservation easements are enforced by a holder such as a land trust. For more information about CUVA, landowners should contact their local county tax assessor's office.[35]

<u>What is a baseline and why is it needed?</u>

In addition to a conservation easement agreement, the landowner will also need a document called a baseline documentation report, or "baseline", which will include a written and photographic description of the property's condition at the time of the donation. A baseline documentation report is required if the landowner seeks a federal charitable tax deduction and retains rights to use the land. It is also necessary for the land trust's monitoring and enforcement work. A baseline will document the natural and man-made features of the property, such as the habitat types and special conservation features, as well as the location of planted pine stands, agricultural fields, buildings, and roads. The baseline ensures the landowner and the easement holder agree on the condition and features of the property at the time the conservation easement is signed, and will substantiate the easement's conservation purposes. Baselines are typically prepared by the land trust/holder or other professionals. For the federal charitable deduction, a baseline must be prepared and made available to the landowner and land trust/holder prior to the conveyance of the easement and must be acknowledged by both to be accurate as of the date of the easement. The baseline at a minimum may include:

- Topographical maps from the U.S. Geological Survey, showing property lines and other contiguous or nearby protected areas;

[34] O.C.G.A. § 48-5-7.4(l)–(m) (2025).
[35] *Supra* ft. 4.

- A map of the area showing all existing man-made improvements, land cover types and natural communities, land use history (present uses and past disturbances), and distinct natural features;
- An aerial photograph at an appropriate scale of the property taken as close to the date of the donation as possible; and
- On site photographs of the property displaying key features of the easement.[36]

<u>What other documents are needed?</u>

Landowners seeking to place a conservation easement upon their land must typically provide a number of documents to the land trust, including:

- A deed establishing the landowner's title to the property;
- A survey of the property;
- A title report, updated prior to closing to ensure clear title;
- If there is a mortgage on property, then a mortgage subordination;
- Appraisal if seeking tax deduction or credit.

<u>Working with a land trust</u>

There are many types of land trusts, from local to regional to national. While every land trust has their own process and requirements for establishing a conservation easement, the general process for the landowner seeking to protect their property with a conservation easement includes:

- Consult an attorney or financial advisor to determine financial implications of a conservation easement and to ensure compliance with legal requirements throughout the process.
- Identify a land trust whose mission aligns with the landowner's conservation goals;

[36] Treas. Reg. § 1.170A-14(g)(5)(i).

- Meet with the land trust staff to explore the landowner's goals for their property. The landowner and land trust staff will identify the conservation features of the property, what activities must be prohibited and the possible permitted uses.
- After the land trust agrees to hold the conservation easement, make the required payment, if any, to the land trust to start the conservation project.
- Provide the required documentation to the land trust.
- After the land trust prepares the draft conservation easement and baseline, review the conservation easement and baseline documentation with landowner's advisors and provide any corrections or clarifications to the land trust.
- After the conservation easement and baseline drafts are finalized, then:
    - The land trust authorizes their officer to sign the conservation easement and baseline.
    - The property title is updated,
    - Both the landowner and the land trust sign the conservation easement and baseline,
    - The conservation easement is recorded in the county where the land is located.
- The landowner makes a stewardship contribution to support the land trust's perpetual enforcement responsibilities.
- The landowner receives a written acknowledgement of the donation of the conservation easement and any other contributions to the land trust.

<u>What happens after a conservation easement is finalized?</u>

After a conservation easement is signed and recorded, the land trust is responsible for stewarding the easement in perpetuity. Stewardship responsibilities include responding to landowner requests for approval as provided in the conservation easement and ensuring compliance with the conservation easement. Land trusts typically arrange annual visits to ensure the terms of the easement are being followed. Land trusts typically work with the landowner to schedule a visit at a convenient, non-intrusive time. Monitoring visits are a good time for landowners to ask the land trust staff any questions they might have, and to update the land trust on future land activities.