

# Tools for Quality Growth

## Conservation Easements

### What is a conservation easement?

A conservation easement is a legally binding agreement between a property owner and a second party (the easement holder) that restricts the use of the property. A landowner may voluntarily agree to give up one or more property rights in order to protect a particular natural or historical resource.

### Who holds the easement?

A government body (local, state or federal) or a land trust (non-profit organization whose mission includes the protection of land).

The agreement restricting and reserving certain uses is binding on future purchasers of the property and is recorded as a Deed of Conservation Easement. It is the responsibility of the easement holder to routinely monitor the property, usually once a year, to ensure that the agreement is not violated and to pursue legal recourse to compel compliance if necessary. When the landowner bequeaths a conservation easement to a land trust in his will, the value of the easement is dedicated from the estate.



### What property rights may be retained?

- Selling, leasing, assigning and using the property
- Public access restriction
- Farming
- Construction of additional dwellings

It is important to note that under no condition may these reserved rights impair the resource or conservation value the easement seeks to protect.

### What property rights may be given up?

- subdividing
- land disturbance
- timber harvesting
- mining
- building

### What are the potential benefits to the community?

- Protection of water quality and natural habitat
- Preservation of open space (including farmland and forest land)
- Outdoor recreation and education for the general public
- Increased property values on adjacent land
- Decreased costs of drinking water treatment
- Increased revenues generated by recreational users
- Viability of agricultural-dependent businesses assured in the community through easements protecting agricultural uses

### What are the benefits to the individual landowner?

- 🍁 Assurance that land will be protected for future generations while remaining in private hands
- 🍁 Possible federal and state income tax deductions
- 🍁 Possible decreased property and estate taxes (based on the restricted value of the property)

## Do conservation easements require changes to local ordinances?

Before allowing a federal income tax deduction for a specific open space easement, the IRS must determine that the preservation of that open space is pursuant to a clearly delineated conservation policy of the federal, state or local government. Language in a local government's comprehensive plan and land use regulations describing areas of the jurisdiction worthy of protection and mechanisms for that protection is helpful. Designation of certain types of land for preferential tax assessment purposes or for open space, farmland, scenic or river overlay zones, for example, are likely to satisfy the IRS.



## Have conservation easements been used in Georgia?

In 1992 the Georgia General Assembly passed the Uniform Conservation Easement Act which authorizes and promotes the use of conservation easements in Georgia. As of 1999, there were 70 conservation easements protecting 37,723 acres throughout the state.

## Land trusts active in Georgia

There are over 40 land trusts active in Georgia as of April, 2001. A complete, up-to-date list may be obtained from the Georgia Land Trust Service Center via their Web site: [www.GEPIInstitute.com](http://www.GEPIInstitute.com) or by calling (706) 546-7507.

## References

“Conservation Easements for Natural Resource Protection,” by Laurie Fowler, published by the Georgia Environmental Policy Institute, Athens, Georgia, 1994.

“Open Space Preservation: An Analysis of the Internal Revenue Code Definition of a Conservation Purpose,” by Mark E. Elliott, published in *The Back Forty* by the Hastings School of Law, San Francisco, California, October 1991.

“Protecting Farmland in Developing Communities: A Case Study of the Tax Implications of Agricultural Conservation Easements,” by Nanette Nelson, Laurie Fowler and Jeffrey Dorfman, published by the University of Georgia Institute of Ecology Office of Public Service and Outreach, Athens, Georgia, 2001.

## For more information

Please visit the University of Georgia Institute of Ecology's Office of Public Service and Outreach Web site: [www.ecology.uga.edu/outreach](http://www.ecology.uga.edu/outreach) or contact us at (706) 583-0463.

