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## **Answers to Common Questions for Conservation Easements**

### **What is a Conservation Easement?**

A Conservation Easement (CE) is a legal agreement between a landowner and a land trust (such as the Athens Land Trust (ALT)) that restricts the type and amount of development that may take place on the property. Each CE is unique, based on the property's conservation values and the landowner's wishes. The CE sets out what can and cannot be done on the property, and specifies that ALT is able to enforce the agreement.

### **Why grant a CE?**

People grant CEs to protect their land from inappropriate development while retaining private ownership. By granting a CE, the landowner is assured that the property's conservation values will be protected forever. A CE may also provide federal, state, and estate tax savings, as discussed below, as well as reduce property taxes.

### **What kind of property can be protected by a CE?**

CEs can protect many different kinds of property, including natural forests and habitats, wetlands, riparian buffers, farms, working forests, scenic areas, historic areas, and more.

### **How restrictive is a CE?**

A CE restricts development to the extent that is necessary to protect the property's conservation values. If the goal is to preserve a pristine natural area, for example, a CE may prohibit all construction, as well as activities that would alter the land's present natural condition. If the goal is to protect farmland, however, a CE may restrict subdivision and development while allowing for structures and activities necessary for, and compatible with, agricultural operations. Each CE is specifically tailored to the particular property, and to the landowner's conservation goals. CEs typically permit landowners to continue traditional uses of the land. CEs often contain provisions that restrict the following:

- cutting or removing vegetation
- commercial and industrial uses
- subdivision
- some agricultural practices
- impervious surfaces
- excavation, mining, and altering the land surface
- posting of signs
- construction
- dumping/depositing of waste materials
- underground storage tanks
- impact to stream/pond/wetland buffers

- number and location of residential structures

In addition to these restrictions, the CE will contain boilerplate provisions relating to:

- administration and enforcement of the CE
- condemnation and extinguishment
- notice and approval
- interpretation

#### **How long does a CE last?**

A CE is permanent and will be binding on all future landowners. The CE is recorded at the relevant county records office (where the land is located), and is attached to the property's ownership deeds, so that all future owners will be aware of the restrictions.

#### **What are the Athens Land Trust's responsibilities?**

ALT is responsible for enforcing the CE's provisions. To do this, ALT will monitor the property on a regular basis, typically once a year, to ensure that the CE is complied with. These visits also allow ALT to keep in touch with the landowner and discuss any questions or plans that the landowner might have. If a monitoring visit reveals that the CE has been violated, ALT has the legal rights to require that the violation be remedied and that the property be restored to its prior condition.

#### **Is public access required?**

Landowners can determine whether to grant public access to their property. Some owners convey certain public rights, such as allowing hiking or fishing in specific locations, or permitting guided tours once a month or once a year. Others do not. If the CE is given for public recreation or educational purposes, public access is required. Public access is generally not required for CEs that protect wildlife or plant habitats or agricultural land.

#### **How can donating a CE reduce a property owner's income tax?**

The donation of a CE is a tax-deductible charitable gift, provided that the CE meets certain requirements. The CE must be perpetual and be donated "exclusively for conservation purposes." Internal Revenue Code Section 170(h) generally defines "conservation purposes" to include the following:

- preservation of land for outdoor recreation by, or the education of, the general public
- protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems
- preservation of open space (including farmland and forest land) for scenic enjoyment of the public, or pursuant to governmental policy and yielding a significant public benefit
- protection of working farms and forest lands that meet state or local policies
- preservation of historically important land or buildings

Please note that there is no guarantee that a tax deduction will result from any CE donation.

### **Are there state income tax benefits?**

Georgia offers a state tax credit for CEs that meet state requirements. See the website at <http://glcp.georgia.gov>. Taxpayers can claim a credit against their state income tax liability of 25% of the fair market value of a qualifying donated conservation up to a maximum of \$250,000 for individuals, \$500,000 for corporations and partnerships. The tax credit may not exceed the amount of tax owed for the taxable year, but any unused portion of the easement value may be carried forward for up to 10 years. Donors may also sell their tax credits to another Georgia state income tax payer. The value of the CE is determined by a qualified appraisal. Georgia has its own set of requirements and process, which must be met in order to qualify for state tax credit. The state also offers a pre-certification process where landowners can determine if their particular land and CE meet state requirements. Under Georgia law (O.C.G.A. §48.7.29.12), in order to qualify for the state tax credit, CEs must satisfy two of the following five “conservation purposes”:

- water quality protection for wetlands, rivers, streams or lakes
- protection of wildlife habitat consistent with state wildlife conservation policies
- protection of outdoor recreation consistent with state outdoor recreation policies
- protection of prime agricultural or forestry lands
- protection of cultural sites, heritage corridors, or archeological and historic resources

It is important to understand that a tax deduction or a state tax credit will only be allowed if the IRS or Georgia State Tax Credit program determine that the CE meets their conservation purposes test. Potential easement donors should seek professional advice.

### **How is the value of the CE determined?**

The CE’s value is determined by a qualified appraisal. Typically, the appraiser will subtract the fair market value of the CE-encumbered property from the value of the property without the CE. Detailed federal regulations govern these appraisals.

### **How can granting a CE reduce a property owner’s estate tax?**

The burden of estate taxes can lead to a break-up, sale or development of family-owned property, even though a family wants to keep the land intact. CEs typically reduce the value of property, which in turn reduces the value of the decedent’s estate for estate tax purposes. Reducing the value of estate property reduces possible estate taxes. In addition to the reduction in value of estate property resulting from the restrictions of a CE, federal tax law allows 40% of the restricted value of property subject to a CE (up to \$500,000 per individual) to be excluded from a decedent’s estate.

### **Can granting a CE reduce an owner’s property taxes?**

Property taxes may also be reduced on a property protected by a CE. If the CE reduces the fair market value of the land, then the local tax assessor may recognize that the property taxes should likewise be decreased. The local assessor is required by state law to reevaluate the property once the CE is recorded, but there is no standardized treatment by assessors. Each property owner must work with their local assessor to determine the CE’s effect on property taxes.

### **What will it cost?**

ALT requests the following in order to complete a CE:

- Project Fee - This supports the preparation of the Baseline Documentation Report and CE document

- Stewardship Donation – A donation (tax deductible) to cover the future expenses associated with monitoring and enforcing the CE

Other costs to the landowner:

- Legal and tax advice
- Appraisal
- Survey, if necessary
- Title search or insurance
- Closing costs
- \$5,000 application fee (payable to “The State of Georgia”) if applying for state tax credit

ALT is not qualified to offer professional tax and/or legal services to landowners. Landowners should consult their personal tax advisor and legal counsel.

### **What are the appraisal requirements?**

ALT is not a party to the appraisal, and it cannot determine easement values. The donor is responsible for any determination of the value of the donation. ALT can provide a list (non-exhaustive) of appraisers who are experienced with conservation easements.

Federal law and regulations govern the appraisal process. Landowners should have their appraisers review these provisions. These provisions include the following requirements:

- The donor must obtain a written “qualified” appraisal. Regulations set forth specific information that must be included in the appraisal.
- The appraisal must be prepared by a “qualified” appraiser as defined by regulations. Landowners should use a state-licensed or state-certified appraiser who follows the Uniform Standards of Professional Appraisal Practice (USPAP).
- The appraisal must be done during a defined time frame. It must be done no earlier than sixty (60) days before the CE is recorded and no later than when the donor’s taxes are due, and must state the fair market value of the gift as of the date of the contribution.
- A copy of the appraisal must be provided to ALT before it is able to sign the donor’s tax form 8283. This form is required when seeking a federal deduction.

ALT is not responsible for the appraisal. However, ALT will require a copy of the appraisal before closing on a project, and ALT will not knowingly participate in projects where it has significant concerns about the tax deduction.

### **What is the Stewardship Donation?**

After accepting a landowner’s CE donation, ALT will be responsible for enforcing it, forever. These responsibilities include the following:

- annual monitoring visits of the property
- review of construction, forest management and other plans
- administration and retention of all easement documents and records
- insurance
- legal defense of easement provisions

While ALT does not wish to place an undue burden on individuals who wish to conserve their lands, we are required to have certain levels of monetary resources in order to fulfill our obligations. The Stewardship Donation is designed to support ALT's future responsibilities.

The Stewardship Donation is determined based on the particulars of each project, including the following:

- location of property
- number and/or type of reserved rights
- complexity of CE
- size of property

### **Confidentiality and publications**

ALT will make every effort to respect a landowner's privacy during the course of a CE project. Unless otherwise requested, information regarding the specifics of a particular project will be limited to ALT Conservation Committee, Board Members and Staff, and will not be shared with public officials or the general public. Once the CE has been duly recorded, however, it will become a matter of public record. At this point, ALT may choose to include cursory information about the property and CE in ALT information brochures and newsletters. Occasionally, articles are submitted to local, regional, and national news agencies for publication. Landowners who wish to remain anonymous should inform ALT accordingly.

### **The Athens Land Trust's commitment**

Our commitment does not end when the CE is recorded. By definition, a CE is perpetual. ALT will monitor the property on a regular basis, and will maintain an archive of all activities. If necessary, we will defend the CE in a court of law.

ALT Board Members and Staff will always be available to answer queries, provide assistance in plan reviews and land management practices, provide information on local property tax issues, and work with legal counsel and/or tax professionals. Please feel free to contact us regarding any conservation issues that may arise. In an effort to keep our CE donors well informed, landowners will receive a copy of our bi-annual newsletter.

### **Sources and Recommended Reading:**

*Preserving Family Lands: Book II* by Stephen J. Small. 1997. Landowner Planning Center, Boston, Massachusetts

*Saving America's Countryside: A guide to rural conservation* by Samuel N. Stokes with Elizabeth Watson. 1989. National Trust for Historic Preservation

*The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs* by Janet Diehl and Thomas Barrett. 1988. Land Trust Alliance, Washington D.C.

*To learn more about protecting your land, please contact Athens Land Trust's Conservation Staff at 706-613-0122, or email [conservation@athenslandtrust.org](mailto:conservation@athenslandtrust.org)*

