

Introduction to the Oconee River Land Trust and Conservation Easements

What is the Oconee River Land Trust?

The Oconee River Land Trust (ORLT) is a 501(c)(3) land conservation nonprofit founded in 1993. Working with private landowners, ORLT has protected natural forests, wetlands, working farms and forestlands, buffers along rivers and streams, and scenic vistas. Over the years, ORLT has partnered with more than 110 landowners to permanently preserve over 32,000 acres in Georgia.

What is a conservation easement?

- A conservation easement (CE) is a voluntary land protection agreement between a landowner and a land trust that permanently limits uses of the land in order to protect the property's important conservation values.
- The landowner continues to own and use the land, and may sell or leave the land to his/her heirs.
- The CE is recorded at the local courthouse and is binding on all future owners of the property.
- CEs are flexible and can be tailored to the unique situation of each property and landowner, so long as the property's conservation values are protected.
- The CE sets out what can and cannot be done on the property. For example, the landowner may give up the right to build additional homes or structures and subdivide his/her property, but retain the ability to continue to live on the land, farm with livestock, have cropland, and create walking trails.
- ORLT, as holder of the CE, will monitor the property annually and make sure that all future landowners comply with the provisions of the CE.



Benefits of a Conservation Easement

- Permanently protected green space may provide vital habitat for native plants and animals, enhance our water and air quality, protect working farms and forests, and conserve scenic views for future generations.
- A CE allows landowners to know that their land's important conservation values remain protected, no matter who owns the land in the future.
- Conservation easements may qualify for a federal charitable tax deduction, the Georgia State Conservation Tax Credit, and may reduce property taxes. In addition, there may be estate tax reductions if the easement reduces the value of the property. Each easement is unique, just as each landowner's situation is unique. Thus, landowners must seek competent professional advice in order to determine just what effect an easement might have on their financial situation.

Examples of ORLT Conservation Easements

Conservation easements can be used to protect many different types of conservation values:

Water Quality: A 260-acre conservation easement in Oconee County borders over one mile of the Apalachee River, preserving riparian habitats and native bottomland forest, and stabilizing streambanks that help protect the water quality of local rivers and streams.



Wetlands Protection: A 60-acre conservation easement in Barrow County protects a wetland along the Mulberry River by prohibiting disturbances to the wetland and its designated buffer. Wetland habitats help clean our water and provide a great home for wildlife and plants.



Habitat Protection: A 367-acre conservation easement in Oglethorpe County protects diverse habitats - wetlands, bottomland, and meadow - providing a refuge for many types of native animals and plants.



Working Farm: A 74-acre conservation easement in Walton County permits some agricultural activities on a portion of the land, while preserving the vital forest and habitats along the streams, and preventing erosion and sediment runoff.

Working Forest: A 40-acre conservation easement in Jackson County along the Middle Oconee River permits carefully stewarded timber management and responsible timbering.

Oconee River Land Trust Board of Directors 2018

Chris Canalos: GIS specialist with the Georgia Department of Natural Resources- knowledgeable of state-wide conservation efforts

Larry Dendy: former Assistant to the University of Georgia Vice President for Public Affairs, graduate of journalism school, co-founder of Athens GreenFest celebration

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Karen Middendorf: DVM, Long time veterinarian and local business owner, avid gardener and farm owner

Hans Neuhauser: Executive Director of the Georgia Land Conservation Center whose role is to guide Land Trusts in the state with policy, development, and resources. Also former director of the Coastal Office of The Georgia Conservancy

Roger Nielsen, Secretary: Journalist for 35 years, he now works in the Office of Communications at the Carl Vinson University of Georgia's Institute of Government focused on service to the state

Kathy Parker: PhD Geography, Professor Emerita, University of Georgia, with focus on plant population dynamics and genetics, and historical climate conditions in the southeast

Karen Porter: PhD Biology, Professor Emerita, University of Georgia Odum School of Ecology, with focus on ecology of lakes, wetlands, and coral reefs, member of the Oconee River Greenway Authority

Madeline Van Dyck: Nurse Practitioner, member and former Chair of the Oconee River Greenway Commission, founding chair of ORLT

John Willis, Vice-Chair: PhD Biology, retired from the University of Georgia Cellular Biology Department, member of the Audubon Society

Smith Wilson, Chair: President of S&W Development with a focus on preservation construction, former President of the Sandy Creek Nature Center, and former chair of the Classic Center Authority



Chris Canalos and founding board member Walt Cook doing field work on the Tallassee protected property



Oconee River Land Trust

Answers to Common Questions about Conservation Easements

What is a conservation easement?

A conservation easement is a legal agreement between a property owner and a land trust that restricts the type and amount of development that may take place on the property. Each easement is unique as it is based on the property's conservation values and the landowner's wishes. The conservation easement sets out what can and cannot be done on the property and the ability of the land trust to enforce the agreement.

Why grant a conservation easement?

People grant conservation easements to preserve their land and its beauty while retaining private ownership. By granting an easement, the owner may be assured that the property's conservation values will be protected forever. An easement 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 conservation easement?

Conservation easements can protect many different kinds of property, including natural forests, wetlands, habitats along rivers and streams, farms, timber land, scenic areas, and historic sites.

How restrictive is a conservation easement?

An easement restricts development to the degree that is necessary to protect the property's conservation values. If the goal is to preserve a natural area, for example, an easement may prohibit most construction, as well as activities that would alter the land's present natural condition. If the goal is to protect farmland, however, an easement may restrict subdivision and development while allowing for structures and activities necessary for, and compatible with, agricultural operations. Easements typically permit landowners to continue traditional uses of the land. Easements often contain provisions that restrict the following:

- timber harvesting and wildlife food plots in riparian buffers
- commercial and industrial uses
- subdivision
- intensive agricultural practices
- amount of impervious surfaces
- excavation, mining, and altering the land surface
- posting of billboards
- construction
- dumping/depositing of waste materials
- underground storage tanks
- impact to stream/pond/wetlands and their buffers
- number and location of residential structures

In addition to these restrictions, the easement will contain standard provisions relating to:

- administration and enforcement
- condemnation and extinguishment
- notice and approval of certain activities, such as future home sites, roads, and management plans, that could impact the conservation values

How long does a conservation easement last?

A conservation easement is permanent and will be binding on all future landowners. The easement is recorded with the property deed at the county records office so that all future owners will be aware of the restrictions.

What are the land trust's responsibilities?

ORLT is responsible for enforcing the easement's provisions. To do this, the land trust will monitor the property on a regular basis, typically once a year, to ensure that there are no problems. These visits also allow the land trust to keep in touch with the landowner and discuss any questions or plans that the landowner might have. The land trust has the legal right to require that any violation that it finds be remedied and that the property be restored to its prior condition.

Is public access required?

Public access is not required. Landowners choose whether to grant public access to their property. Some easements convey full public access while others allow more limited access, such as hiking or fishing in specific locations or occasional guided tours. Other easements specify that no public access is created. Public access is not required for easements that protect wildlife or plant habitats or agricultural land. Easements created for recreation or educational purposes are required to provide some form of public access.

What will donating a conservation easement cost?

ORLT requests the following in order to complete a conservation easement:

- Project fee, which supports the preparation of the Baseline Documentation Report and Conservation Easement
- Initial title report and updated report at time of closing
- Stewardship donation, which covers future expenses associated with monitoring and enforcing the easement

Other possible costs to the landowner:

- Appraisal (if seeking a tax deduction)
- Title report
- Survey if necessary
- Legal and tax advice

What is the conservation easement stewardship donation?

After accepting your conservation easement, ORLT is now responsible for enforcing it, forever. These responsibilities include the following:

- annual monitoring visits of the property

- review of construction and other plans for improvements
- review of farm and forestry management plans
- administration and retention of all easement documents and records
- legal defense of easement provisions

While the land trust does not wish to place an undue burden on landowners who wish to conserve their lands, we must be able to support our long-term obligations. Thus, ORLT requests a donation to its Stewardship Fund, in order to support these future responsibilities. The tax treatment of stewardship contributions must be determined by the landowner and his advisors. Stewardship donations are generally based on the following criteria:

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

Are there tax benefits for donating a conservation easement?

Possible tax benefits include a federal charitable tax deduction, a state tax credit, and property tax and estate tax benefits for qualifying donations. Please refer to the tax information handout for more information. ORLT cannot guarantee that a tax benefit will result from an easement donation and ORLT is not qualified to offer professional tax and/or legal services to landowners. A tax benefit will only be allowed if the easement meets federal and state requirements. ORLT strongly recommends that potential donors obtain professional advice in order to determine the tax consequences of the donation.

How do you determine the value of the conservation easement?

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

What are the appraisal requirements?

The easement donor is responsible for determining the value of the easement donation. The land trust is not a party to the appraisal, nor can it determine easement values.

Federal law and regulations govern the appraisal process. Please have your appraiser review these provisions. These provisions include the following:

- 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 easement 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 the land trust before it is able to sign the donor's completed tax Form 8283. This form is required when seeking a federal deduction.

Please note that ORLT will not participate in projects where it has significant concerns about the appraisal.

How can donating a conservation easement reduce a property owner's income tax?

The donation of a conservation easement is a tax-deductible charitable gift if the easement meets certain federal requirements. The easement must be perpetual and be donated "exclusively for conservation purposes." Conservation purposes include the following:

- preservation of land areas 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
- preservation of historically important land or buildings

The donor may deduct the value of the easement. The deduction is generally equal to 50% of the landowner's adjusted gross income (AGI) with a carry forward of 15 years.

Are there state income tax benefits?

Georgia offers a state tax credit for conservation easements that meet state requirements. Taxpayers may claim a credit against their state income tax liability of 25% of the fair market value of a qualifying donated conservation easement up to a maximum of \$250,000 for individuals, and \$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 the next 10 years. The value of the easement is determined by a qualified appraisal. Georgia's state tax credit program has its own requirements and process that must be met in order to qualify, including a \$5,000 application fee and an appraisal review process. In addition, the state offers a pre-certification process where landowners can determine if their particular land and easement meet state requirements and that there is an annual cap on the total amount of credits available.

How can granting a conservation easement reduce a property owner's estate tax?

Conservation easements typically reduce the value of a property because many forms of development are prohibited. This, in turn, reduces the value of the landowner'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 qualifying conservation easement, federal tax law allows 40% of the restricted value of property subject to a conservation easement (up to \$500,000) to be excluded from a decedent's estate.

Can granting a conservation easement reduce an owner's property taxes?

Property taxes may also be reduced on a property protected by a conservation easement. If the easement 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 easement is recorded, but there is no standardized treatment by assessors. Each property owner must work with their local assessor to determine the conservation easement's effect on property taxes.

Please note that ORLT encourages each landowner to consult their own tax and legal advisor about any possible tax benefits. The land trust cannot offer tax guidance to the landowner nor can it promise that there will be tax benefits.

Confidentiality and publications

ORLT will make every effort to respect the landowner's privacy during the course of an easement project. Unless otherwise requested, information regarding the specifics of a particular conservation easement will be limited to ORLT Board members and staff and will not be shared with the general public. Once the easement has been recorded, it will become a matter of public record. At this point, the land trust may include information about your conservation easement in land trust information brochures and newsletters. ORLT may also submit articles to news outlets for publication. If you wish to remain anonymous, please let us know.

The Oconee River Land Trust's commitment

Our commitment does not end when the easement is recorded. The easement is forever and so are ORLT's responsibilities. ORLT will monitor your property on a regular basis and will maintain records of all activities. If necessary, ORLT will take legal action to defend your easement. ORLT Board members and staff will always be available to answer your questions, and work with your 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 easement donors well informed, you will receive a copy of our newsletter.



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Steps for Completing a Conservation Easement

1. ORLT staff visits with the landowner to walk the land, obtain information about the property, learn about the landowner's goals, and explain a land trust's role and responsibilities. ORLT also gives the landowner information regarding ORLT, conservation easements, and associated costs.
2. Landowner reviews fees/contributions that ORLT requests for each project: project contribution fee and stewardship donation. In addition, ORLT and landowner discuss other items or services that the landowner might have to pay for, including: independent legal and financial advice, an appraisal (if landowner is seeking a tax deduction), title report, and survey (if necessary).
3. The future uses of the property are discussed, along with typical permitted and prohibited uses so as to protect the land's important conservation qualities (such as natural habitat, water quality enhancement, preservation of scenic views, etc.).
4. ORLT staff presents the proposed project to the ORLT Board, which votes on whether to proceed or not, based on ORLT's project criteria.
5. If the ORLT Board votes to proceed, then staff sends the landowner a letter that documents the easement goals, requirements, and process.
6. If the landowner decides to proceed, he/she will then submit the project fee and the title report. Note that the title must also, at the end of the process, be updated within 30 days of signing the easement. In addition, if the landowner entity is made up of multiple unrelated parties, then ORLT has additional due diligence requirements and fee.
7. After receiving the survey and the title report, ORLT will then begin drafting the easement. Note that all encumbrances that might affect the conservation values must be reviewed. If there is a mortgage on the property, then the landowner will be required to have his/her mortgage holder execute a mortgage subordination that is recorded prior to the easement, or obtain a release. The landowner should consult his/her legal and tax advisors about this issue.
8. ORLT compiles a Baseline Documentation Report (BDR). The BDR is required by law and is an inventory of the property at the time the conservation easement is placed. The BDR includes maps, photographs, and descriptions of the natural resources and improvements on the property (i.e. plant species and communities, wildlife species and habitat, as well as existing structures, driveways, fences, etc.).
9. The draft easement is reviewed by the landowner and necessary revisions are made. ORLT strongly encourages the landowner to obtain legal advice before finalizing the easement.

10. If the landowner intends to claim the easement as a federal charitable deduction, he/she must obtain a qualified appraisal.
11. ORLT staff presents the final versions of the conservation easement and BDR for ORLT Board's final approval.
12. The landowner and ORLT sign the conservation easement. The easement is then recorded with the Clerk of the Superior Court in the county in which the land is located. The landowner makes the stewardship donation at this time.

Project Fee: The project fee is requested to cover the cost of preparing the conservation easement and compiling the baseline documentation report.

Stewardship Contribution: Once the conservation easement is signed, ORLT is responsible for upholding its terms, in perpetuity. ORLT must annually monitor the easement and be prepared to enforce its terms, by legal means if necessary. In order to support this work, the land trust asks each easement donor to contribute to the Stewardship Fund. The interest from the Fund is used to support the cost of annual monitoring (as required by law). Stewardship contributions depend on the size of the property, the rights reserved under the easement, and the distance to the property. Thus, reserved rights that require more land trust involvement may result in a larger donation request. The landowner's contribution is made in consultation with the land trust. The landowner is encouraged to seek professional advice on the tax treatment of any contribution or fee.

Possible additional costs to the landowner: The landowner may incur legal and tax advisor's fees, surveyor's fees (if the boundaries are unclear, in dispute, or outdated), and appraiser fees.



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Possible Tax Benefits for Landowners Who Donate Conservation Easements

Donating a conservation easement (CE) will allow you to continue to own your own land while conserving the land you love and protecting Georgia's natural heritage. In addition, landowners may also be eligible for certain federal, state, and estate tax benefits for qualifying donations. Please seek professional help to determine whether your particular easement will qualify for any tax benefits and the nature of these benefits.

Federal Taxes

Federal law provides for a federal charitable tax deduction for the value of a qualifying easement. There are very specific requirements for the federal deduction that the landowner will need to review with their legal and financial advisers. The federal tax deduction requirements include the following:

- The CE must be donated, permanent, and held by a land trust.
- The CE must protect one or more of the following conservation values:
 1. outdoor recreation or education resources
 2. significant natural habitat
 3. open space for the scenic enjoyment of the public, providing a significant public benefit
 4. open space, including farms and forests, pursuant to governmental policy, providing a significant public benefit
- Landowner is required to obtain a qualified appraisal and submit a completed IRS Form 8283 and its Supplemental Statement.

How the federal tax deduction works:

- The CE value (the landowner's charitable donation) is calculated by finding the difference between the property's value before the CE and the value of the property with the CE, as determined by a qualified appraisal.
- The deduction is generally equal to 50% of the landowner's adjusted gross income (AGI) with a carry forward of 15 years.

Federal Tax Example: Landowner donates easement on 200-acre forest

Landowner donates an easement on land that is valued at \$1,000,000 before the CE donation. The land is now worth \$600,000. The value of the CE is therefore \$400,000. (i.e. \$1,000,000 - \$600,000). The landowner can deduct a portion of the CE value equal to 50% of her AGI. If the landowner's AGI is \$50,000, then she can take a \$25,000 deduction for the year of the donation and then continue to do so for an additional 15 years.

State Taxes

In Georgia, taxpayers who meet state requirement may claim a credit on their state income tax for the value of their qualifying conservation easement or fee simple donation. These requirements include the following:

- The property must meet two of the five possible Conservation Purposes as identified by the Department of Natural Resources (DNR) and listed by the Georgia Land Conservation Program (GLCP); please see this list at glcp.org.ga.gov/taxcredit or by calling 770.918.6411.
- Other requirements include mandatory a minimum 100-foot vegetated riparian buffers, no new construction within 150 feet of streams, no subdivision of parcels under 500 acres, only one subdivision permitted if property is greater than 500 acres, and new construction limited to 1% of property.
- A \$5,000 application fee to the state, certification of the CE by GLCP, and approval of the appraisal by the State Property Commission

How the state tax credit works:

- The tax credit is equal to 25% of CE value up to a maximum of \$250,000 for individuals, and \$500,000 for corporations and partnerships.
- The tax credit may not exceed the amount of tax owed.
- Any unused portion of the tax credit may be carried forward for the next 10 years.
- The State Tax Credit is transferrable. The rules governing this can be found in the Rules of Department of Revenue, Chapter 560-7-8-.50.
- There are other requirements that must be adhered to, and consultation with your tax adviser is strongly recommended.
- There is a process for pre-certification and certification of the CE.

Estate Taxes There are estate tax incentives for land conservation that may reduce a donor's estate taxes.

A conservation easement may reduce estate taxes in two ways:

1. **It reduces the value of the estate to be taxed.** Typically, a conservation easement lowers the value of a property — and, thus the value of the estate and any resulting estate taxes.
2. **Heirs may exclude an additional 40% of the value of land under a qualifying conservation easement, thereby reducing the value of their estate even further.** Section 2031(c) of the Internal Revenue Code provides an estate tax exclusion of up to 40% of the encumbered value of land (but not improvements) protected by a “qualified conservation easement.” This exclusion is capped at \$500,000. The cap is lower if the easement reduced the land's value by less than 30% at the time it was donated. To qualify, the easement must serve one or more of the conservation purposes recognized in Section 170(h) of the tax code. It must limit commercial recreational use to a minimum, and it cannot qualify solely for the purpose of historic preservation. Only members of the original easement donor's family, including spouses and descendants, can claim this exclusion.

Families are able to benefit from these estate tax advantages if the landowner donates an easement during life, or by their will, or if the heirs donate a posthumous easement. However, if the easement is donated by will or posthumously, the family foregoes the opportunity for the conservation easement income tax deduction.

Property Taxes

A conservation easement may also reduce property taxes. If the easement 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 easement 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.

Additional information

Landowners should note that conservation easements must meet specific criteria to qualify for tax benefits and that the tax implications of their decision will depend on their specific circumstances. Anyone considering a conservation easement is advised to consult with independent, qualified financial and tax advisors.

To learn more about protecting your land with a conservation easement, please contact Steffney Thompson at the Oconee River Land Trust by calling 706-552-3138 or emailing steffney@oconeeriverlandtrust.org