

## GEORGIA OPEN SPACE PROGRAM

### I. Overview

Georgia is the largest state east of the Mississippi River. It was the fifth fastest growing state in the nation between 1990 and 2000 with a population increase of 26.4 percent. Approximately three-fourths of the state's population is in North Georgia, primarily in the Piedmont and Ridge and Valley regions. The second fastest growing part of the state is along the ecologically fragile coast. Since 1974, the state has conserved land primarily by fee simple purchase through several state programs. These efforts have resulted in the conservation of approximately one-third of one million acres, according to some estimates. During the same period of time, however, almost one million acres became urbanized.<sup>1</sup>

The Georgia Land Conservation Act was enacted in 2005 to promote partnerships for the conservation of land resources identified by cities or counties as locally valuable or identified by the Georgia Department of Natural Resources (GDNR) as having state-wide significance.<sup>2</sup> The program is the major open space program for the state and replaces a prior program, the Georgia Greenspace Program. The Land Conservation Program, which began accepting applications in December 2005, relies on fee title acquisition, conservation easements, purchase of development rights, leases, and technical support to foster the conservation of land.

In reviewing proposals to recommend to the Georgia Land Conservation Council, the GDNR must consider several factors: strategic investment in land resources with high environmental values or conservation benefits; consistency with the land conservation goals set forth in the Act and the land conservation priorities set forth by the Governor; and the merit of a plan for long-term management of the conservation land or conservation easement.<sup>3</sup> The goals set forth in the Act include but are not limited to: water quality protection for rivers, streams, and lakes; wetlands protection; protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species; and connection of existing or planned areas contributing to the goals of the statute.<sup>4</sup>

The initial program priorities selected by the Governor include, but are not limited to, the conservation of lands for the protection of fragile natural habitats.<sup>5</sup> In 2005, the program approved projects that will preserve 18,892 acres.<sup>6</sup>

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<sup>1</sup> Georgia Department of Natural Resources, in cooperation with the Carl Vinson Institute of Government, University of Georgia, and Marty Maxwell, President, Creative Compositions, *Georgia Land Conservation Partnership Plan, A Report of the Governor's Advisory Council for the Georgia Land Conservation Partnership (Aug. 2004)*, available at: [http://www.gadnr.org/glcp\\_old/Assets/Documents/GLCP\\_Final\\_Report\\_for\\_web.pdf](http://www.gadnr.org/glcp_old/Assets/Documents/GLCP_Final_Report_for_web.pdf).

<sup>2</sup> House Bill 98 (as passed House and Senate, Section 2, lines 3-8, 14-20). To be codified as Chapter 36, Title 22 of the Official Code of Georgia Annotated (O.C.G.A.).

<sup>3</sup> O.C.G.A. § 36-22-8 (c)(1).

<sup>4</sup> O.C.G.A. § 36-22-2(5); *see also*: Georgia Department of Natural Resources - Land Conservation Program, *Criteria for Land Conservation Projects - Georgia Land Conservation Act (Nov. 22, 2005)*, available at [http://www.gadnr.org/glcp/Documents/Evaluation\\_Criteria.pdf](http://www.gadnr.org/glcp/Documents/Evaluation_Criteria.pdf).

<sup>5</sup> Georgia Department of Natural Resources - Land Conservation Program, *supra* note 4.

<sup>6</sup> Georgia Department of Natural Resources - Land Conservation Program, *2005 Georgia Land Conservation Projects (2005)*, available at [http://www.gadnr.org/glcp/Documents/Recent\\_Projects.pdf](http://www.gadnr.org/glcp/Documents/Recent_Projects.pdf).

## II. Georgia's Land Conservation Program

The intent of the statute that establishes the program is to “provide a flexible framework within which cities and counties in this state can protect the state’s valuable natural resources.” The statute recognizes that “the state-wide network of land and water resources, the state’s prime agricultural and forestry lands and its natural, cultural, historic, and recreational areas are a priceless legacy that enhance the health of ecosystems, encourage the working landscapes, foster natural resource stewardship, sustain a healthy economy, and promote a sustainable high quality of life for current and future generations of Georgians.” The process set out in the statute is intended “to promote partnerships for the conservation of land resources that are identified by cities or counties as locally valuable or identified by the [GDNR] as having state-wide significance.”<sup>7</sup>

The objectives of the program include preservation of: open space; farmland; greenways; recreational, geological, and historical areas; forestland; wildlife; natural areas and biodiversity; and watersheds. The law also seeks to encourage connection of existing or planned areas that contribute to the goals set out in the statute.<sup>8</sup> The program is administered by the Georgia Environmental Facilities Authority (Authority) and the decision-making body is the Georgia Land Conservation Council (Council).<sup>9</sup>

### ***Program Funding***

The Land Conservation Revolving Loan Fund established under the program is funded by \$55 million from the federally-funded State Clean Water Revolving Fund. The Land Conservation Trust Fund, which is also established under the program, is funded by monies paid under inter-governmental contract, voluntary contributions, any federal monies deposited, and other monies acquired by fundraising or other promotional techniques. The authorizing statute provides for each state income tax return to offer the taxpayer the opportunity to contribute to the Georgia Land Conservation Trust Fund by donating all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer’s payment. Through this mechanism, \$90,000 dollars were donated to the Land Conservation Trust Fund in 2004.<sup>10</sup> A private foundation, the Robert W. Woodruff Foundation, has also pledged \$25 million for land acquisition and easements, as opposed to loans, under the program. The funds will be administered by the Foundation. In addition, on January 6, 2006, the Governor announced that an additional \$5 million would be included in his FY 2007 budget for the program to be used for grants to local government land conservation projects.<sup>11</sup>

The program began accepting applications December 2005. The program provides funding directly to state agencies and county and municipal governments. The program does not fund land trusts but does provide for “partnerships” with tax exempt organizations for the identification and development of land conservation project proposals, for the establishment of a

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<sup>7</sup>O.C.G.A. § 36-22-1.

<sup>8</sup> O.C.G.A. § 36-22-2(5); *see also*: O.C.G.A. § 305-01-.04.

<sup>9</sup> O.C.G.A. §§ 36-22-3 (a), 36-22-12.

<sup>10</sup> O.C.G.A. § 36-22-4.

<sup>11</sup> Georgia Governor’s Office, *Governor Perdue Proposes Georgia Conservation Tax Credit*, at <http://gov.state.ga.us/press/2006/press1019.shtml> (Jan. 6, 2006).

local funding match, and to accept and administer property acquired by a city, county or GDNR.<sup>12</sup>

To be eligible for grants, a city or county must have an approved community land conservation project to protect locally identified land resources with high environmental values or conservation benefits.<sup>13</sup> Similarly, for GDNR to be eligible, it must have an approved state land conservation project to accomplish the strategic investment in protection of land resource identified by GDNR as having high environmental values or conservation benefits.<sup>14</sup> In addition, city and county conservation projects are reviewed by the Authority for: fiscal merit, the capacity of the applicant to fulfill its matching fund or loan repayment commitments, the fiscal solvency of the entity identified as responsible for protecting and managing the conservation land or conservation easement, and compliance with all applicable terms and conditions of the regulations.<sup>15</sup> Recipients are not specifically required to develop an open space plan or to certify that actions are consistent with an existing open space plan; but recipients are required to be in compliance with requirements issued by the Georgia Department of Community Affairs. These requirements include the development of land use plans. Matching funds are not required to receive funds under the Georgia Land Conservation Trust Fund, but matches are strongly encouraged. For the Land Conservation Revolving Loan Fund, the loan repayment itself is considered a match, because it includes interest.

### **III. Land Protection Strategy**

The Georgia Land Conservation Act requires GDNR to review each land conservation project proposal and to make recommendations to the Georgia Land Conservation Council. The statute requires that in reviewing each proposal, GDNR must consider: strategic investment in land resources with high environmental values or conservation benefits; consistency with the land conservation goals set forth in the Act and the land conservation priorities set forth by the Governor; and the merit of a plan for long-term management of the conservation land or conservation easement.<sup>16</sup>

The goals set forth in the Act include: water quality protection for rivers, streams, and lakes; flood protection; wetlands protection; reduction of erosion through protection of steep slopes, areas with erodible soils, and stream banks; protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species; protection of prime agricultural and forestry lands; protection of cultural sites, heritage corridors, and archaeological and historic resources; scenic protection; provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities; and connection of existing or planned areas contributing to the goals set out in the Act.<sup>17</sup>

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<sup>12</sup> O.C.G.A. § 305-01-.05.

<sup>13</sup> O.C.G.A. §§ 36-22-2-(3), 36-22-4 (b), and 305-01-.05.

<sup>14</sup> O.C.G.A. §§ 36-22-4 (b); 305-01-.05.

<sup>15</sup> O.C.G.A. § 305-01-.05.

<sup>16</sup> O.C.G.A. § 36-22-8 (c)(1).

<sup>17</sup> O.C.G.A. Sec. 36-22-2(5); *see also*: Georgia Department of Natural Resources - Land Conservation Program, *supra* note 4.

The Governor announced that the initial program priorities, which are drawn from the goals stated in the statute, are focused on the conservation of lands for the protection of: water quality and watersheds; prime agricultural and forest lands; and fragile natural habitats.<sup>18</sup>

The Council is required to use, at a minimum, the following criteria in granting project approval: “(1) The project shall promote the permanent protection of conservation land; (2) The identification and commitment to the employment of local land use ordinances and local conservation and preservation ordinances, policies, and regulations which further the achievement of the permanent protection of conservation land; and (3) Project proposals that are multi-jurisdictional in scope or regional in impact will receive additional ranking points.”<sup>19</sup>

In reviewing project proposals for purposes of making recommendations to the Council, GDNR initially examines three criteria: whether the project meets the goals of the Act and the priorities set forth by the Governor; the merit of the plan for long-term management; and the established minimum criteria for the Council to consider for granting approval. When a project meets these three considerations, GDNR then determines the project’s strategic investment in land resources with high environmental values or conservation benefits. This fourth set of criteria is scored based on how the project meets the overall goals of the Act and the land conservation priorities of the Governor.<sup>20</sup>

The GDNR uses several resources to achieve program goals, including a series of maps that identify areas where the state knows unique species are located or could be located, areas that are already identified as important natural areas, and areas that could be restored. The state also uses GIS-based tools. The state statute that establishes the program specifically requires that GDNR must establish the State Land Conservation Geographic Information System by: maintaining its current GIS data and maps related to land conservation; annually updating its land conservation data and maps based on the acquisitions of community and state conservation projects; and monitoring progress in protecting the states land resources.”<sup>21</sup> In addition, GDNR Natural Heritage Program staff evaluate projects using heritage data. Scientists from several state agencies participated in the development of the project review process, including GDNR staff from several offices and staff from the State Archeologist and State Parks. The Ranking Criteria and Score Card for evaluating projects are available to the public.

Biological information is used in developing land acquisition priorities. The following types of biological information are employed and are addressed in questions relied upon by the state in its Ranking Criteria: species locations/inventories; species life history information; natural community/ecosystem delineations; information on wildlife utilization or critical wildlife habitat; information on biodiversity hot spots; hydrology, water quality, and stream information; information on ecosystem functions, processes or landscape measures; topography and elevation; and soil types and information. The information is provided by: applicants to the program; the

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<sup>18</sup> Georgia Department of Natural Resources - Land Conservation Program, *supra* note 4.

<sup>19</sup> O.C.G.A. §§ 36-22-8(f); 305-01-.07.

<sup>20</sup> Georgia Department of Natural Resources - Land Conservation Program, *supra* note 4.

<sup>21</sup> O.C.G.A. § 36-22-13.

GDNR Natural Heritage Program and Environmental Protection Division; the State Archeologist; and the Georgia Forestry Commission.

### ***Protection in Perpetuity***

Land in the program must be permanently protected. Land bought by a county or by GDNR under the program can be sold after an easement is placed on it that restricts development.

The Program does not include funding for long-term stewardship, management, and monitoring. In reviewing proposals to recommend to the Council, however, the GDNR must consider the merit of a plan for long-term management of the conservation land or conservation easement.<sup>22</sup>

## **IV. State Wildlife Action Plan**

The GDNR's Wildlife Resources Division submitted Georgia's wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) in August 2005. The plan was subsequently approved.<sup>23</sup> The program anticipates using the wildlife action plan and integrating it with current land acquisition prioritization processes by considering whether potential projects should score higher if consistent with the plan.

## **V. Summary**

The program protects biologically diverse land by requiring that GDNR consider a strategic investment in land resources with high environmental values or conservation benefits in reviewing proposals to recommend to the Council for funding. GDNR must also consider the land conservation goals in the state statute that include the protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species. Finally, in reviewing proposed projects, GDNR emphasizes the conservation priorities set forth by the Governor, including the conservation of lands for the protection of fragile natural habitats.

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<sup>22</sup> O.C.G.A. § 36-22-8 (c)(1).

<sup>23</sup> Teaming With Wildlife, *Georgia*, at [http://www.teaming.com/state\\_pages/georgia\\_cwcs.htm](http://www.teaming.com/state_pages/georgia_cwcs.htm) (last updated Feb. 6, 2006).