



# Georgia Department of Revenue

## **2015 CAVEAT SPECIALIZED ASSESSMENTS**

Conservation Use (O.C.G.A. 48-5-7.4)

Includes Residential Transitional  
and Environmentally Sensitive





## Georgia Department of Revenue

### Conservation Use

Definition of Current Use Value of bona fide conservation use O.C.G.A. 48-5-2 (1)

**“Current use value”** of bona fide conservation use property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm’s length bona fide sale and shall be determined in accordance with the specifications and criteria provided for in subsection (b) of Code Section 48-5-269.

Application must be recorded



If not recorded, a transferee shall not be bound by the covenant or subject to any penalty for a breach.



# Georgia Department of Revenue

## Conservation Use

2000 acres of a single person

Primary purpose must be good faith production of agricultural or timber products

- Includes subsistence farming

Factors which may be considered

- Nature of terrain
- Density of marketable product
- Past usage
- Merchantability of the agricultural product
- Use or non-use of proper care, cultivation & harvesting practices normally associated with the product being produced

**Buildings on the property that are connected to the farming or timber operation are to be included in the covenant**

- Residential home and relevant improvements are excluded



# Georgia Department of Revenue

## Conservation Use

### Ownership Requirements

Property must be owned by

- One or more citizens
- An estate of which heirs are citizens
- A trust of which the beneficiaries are citizens
- A family farm corporation with certain qualifications
- A bona fide nonprofit conservation organization [IRS 501(c)(3)]
- A bona fide club organized for pleasure, recreation & other non-profitable purposes pursuant to Section 501(c)(7) IRS code
- No ownership requirements for constructed storm water wetlands





# Georgia Department of Revenue

## Conservation Use

### Additional Rules Applying to Eligibility for Conservation Use

- Only ½ of a tract must be in a qualifying use for entire tract to qualify
- Unused portion cannot be used for other type business
- Lease of hunting rights is not considered another business
- Unused portion must be managed so that it does not contribute to erosion or other conservation problems.
- Corn Mazes
- Agri-tourism “Play farmer for a day”
- Wildlife habitat
- May lease up to 6 ac for cell tower site
- <10 ac must submit additional information regarding proof of bona fide conservation use



## Georgia Department of Revenue

### Conservation Use 48-5-7.4 (b)(2)

(2) The owner of a tract, lot, or parcel of land totaling less than ten 10 acres shall be required by the tax assessor to submit additional relevant records regarding proof of bona fide conservation use for qualified property that on or after the effective date of this paragraph is either first made subject to a covenant or is subject to a renewal of a previous covenant. If the owner of the subject property provides proof that such owner has filed with the Internal Revenue Service a Schedule E, reporting farm related income or loss, or a Schedule F, with Form 1040, or, if applicable, a Form 4835, pertaining to such property, the provisions of this paragraph, requiring additional relevant records regarding proof of bona fide conservation use, shall not apply to such property. Prior to a denial of eligibility under this paragraph, the tax assessor shall conduct and provide proof of a visual on-site inspection of the property; Reasonable notice shall be provided to the property owner before being allowed a visual, on-site inspection of the property by the tax assessor;



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### 48-5-7.4 (b)(4)

- (4) No property shall qualify as bona fide conservation use property if it is leased to a person or entity which would not be entitled to conservation use assessment;



# Georgia Department of Revenue

## Expiration and Renewal

- 48-5-7.4 (d) No property shall qualify for current use assessment under this Code section unless and until the owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in bona fide qualifying use for a period of ten years beginning on the first day of January of the year in which such property qualifies for such current use assessment and ending on the last day of December of the final year of the covenant period. After the owner has applied for and has been allowed current use assessment provided for in this Code section, it shall not be necessary to make application thereafter for any year in which the covenant period is in effect and current use assessment shall continue to be allowed such owner as specified in this Code section.



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### 48-5-7.4 (a)(1)(E)

(E) Such property shall, if otherwise qualified, include, but not be limited to, property used for:

- (i) Raising, harvesting, or storing crops;
- (ii) Feeding, breeding, or managing livestock or poultry;
- (iii) Producing plants, trees, fowl, or animals, including without limitation the production of fish or wildlife by maintaining not less than ten acres of wildlife habitat either in its natural state or under management, which shall be deemed a type of agriculture; provided, however,



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### 48-5-7.4 (a)(1)(E) Con't

- that no form of commercial fishing or fish production shall be considered a type of agriculture; or
- (iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry, and apiarian products





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### 48-5-7.4 (a)(1)(F)

- The primary purpose described in this paragraph includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain.



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# Conservation Use-Residential Trans.

Definition of Current Use Value of bona fide Residential Transitional Property -  
- O.C.G.A. 48-5-2-(2)

- “Current use value” of bona fide residential property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm’s length, bona fide sale. The tax assessor shall consider the following criteria, as applicable, in determining the current use value of bona fide residential transitional property
- (A) The current use of such property;
- (B) Annual productivity; and
- (C) Sales data of comparable real property with and for the same existing use.





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### Expiration and Renewal

- At least 60 days prior to the expiration date of the covenant, the county board of tax assessors shall send by first-class mail written notification of such impending expiration. On the expiration of any covenant period, the property shall not qualify for further current use assessment under this Code section unless and until the owner of the property has entered into a renewal covenant for an additional period of ten years; provided, however, that the owner may enter into a renewal contract in the ninth year of a covenant period so that the contract is continued without a lapse for an additional ten years.



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### Conservation Use 48-5-7.4(j)(1)

- Applications...When to apply
  - During the annual return period
  - (During the original 45 day period that NOA's are out and option to file appeal is open)
  - AG opinion states that CUVA may be applied for during initial return period and that is the **ONLY** time and BOE does not have authority to grant if not during such period.





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### Conservation Use 48-5-30.

#### Filing extension for service personnel serving abroad

- Notwithstanding any provision of Code Section 48-5-7.1 or 48-5-7.4 to the contrary, a member of the armed forces of the United States serving outside the continental United States may file such member's initial or renewal application for special assessment at any time within a period of six months following the return of such member to the continental United States.



## Georgia Department of Revenue

### Conservation Use

#### RESIDENTIAL TRANSITIONAL PROPERTY

- Limited to 5 acres
- Single family owner occupied property
- Located in a transitional developing area experiencing a change in use
- Value must have been changed to a level higher than that of residential property in the area as a result of its location in a transitional area



# Georgia Department of Revenue

## Conservation Use

### Qualifying Uses of Environmentally Sensitive Property

- Certain mountain areas
- Certain wetlands
- Significant ground-water recharge areas
- Undeveloped barrier islands
- Habitats of endangered species
- River corridors
- Constructed storm-water wetlands



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## Conservation Use

Environmentally sensitive property, if qualified, may include:

- crests, summits, and ridge tops;
- wetland areas as determined by the United States Army Corps of Engineers in accordance with Section 404 of the federal Clean Water Act, as amended, or wetlands that are shown as such on maps compiled by the Department of Natural Resources of the United States Fish and Wildlife Service;
- significant ground-water recharge areas shown as such on maps or data compiled by the Department of Natural Resources;
- undeveloped barrier islands or portions of undeveloped barrier islands as provided for in the federal Coastal Barrier Resources Act, as amended;
- habitats certified by the Department of Natural Resources that contain endangered or threatened species as listed under the federal Endangered Species Act of 1973, as amended; and
- river corridors that are within the 100 year flood plain as shown on official maps prepared by the Federal Emergency Management Agency.



# Georgia Department of Revenue

## Conservation Use

- Environmentally Sensitive Property
  - In most cases it must be determined as Environmentally sensitive by the appropriate agency
  - Excludes any improvements
  - Primary use must maintain property in its natural condition



## Georgia Department of Revenue

### Conservation Use

560-11-6-.04

- (4) Applications for current use valuation provided for environmentally sensitive properties may be filed without certification by the Department of Natural Resources; provided, however, that the specific property is stipulated to be environmentally sensitive. Failure to file such certification with the board of tax assessors within thirty (30) days of the last day for filing the application for current use assessment may result in the application being denied by the board of tax assessors.





# Georgia Department of Revenue

## Constructed Storm Water

- 2) The applicable local governing authority shall accept applications for approval of property for purposes of subparagraph (a)(2)(G) of this Code section and shall certify property to the local board of tax assessors as meeting or not meeting the criteria of such paragraph. The local governing authority shall not certify any property as meeting the criteria of subparagraph (a)(2)(G) of this Code section unless:
  - (A) The owner has submitted to the local governing authority:
    - (i) A plat of the tract in question prepared by a licensed land surveyor, showing the location and measured area of such tract;
    - (ii) A certification by a licensed professional engineer that the specific design used for the constructed storm-water wetland was recommended by the engineer as suitable for such site after inspection and investigation; and
    - (iii) Information on the actual cost of constructing and estimated cost of operating the storm-water wetland, including without limitation a description of all incorporated materials, machinery, and equipment; and
  - (B) An authorized employee or agent of the local governing authority has inspected the site before, during, and after construction of the storm-water wetland to determine compliance with the requirements of subparagraph (a)(2)(G) of this Code section.



# Georgia Department of Revenue

## Conservation Use

(O.C.G.A. 48-5-7.4 (I))

Breach with Penalty of Twice the Tax Savings:

- Sale of all or part of the property to an owner that does not continue the covenant, or is not a qualified owner
- Changing use of property to a non-qualifying use

Penalty applicable to entire tract which was subject to original covenant and shall be twice the difference between the total amount of tax paid and the amount that would have been due if assessed at fair market value for each year or part of a year of the covenant period. Interest begins accruing on the date the breach.

$(FMV \times .40) - (CUV \times .40) = SA \times 2 \times \text{millage rate for each year in the covenant}$



## Georgia Department of Revenue

### Conservation Use (O.C.G.A. 48-5.7.4 (k.1))

- In the case of an alleged breach of the covenant, the owner shall be notified in writing by the board of tax assessors. The owner shall have a period of 30 days from the date of such notice to cease and desist the activity alleged in the notice to be in breach of the covenant or to remediate or correct the condition or conditions alleged in the notice to be in breach of the covenant. Following a physical inspection of property, the board of tax assessors shall notify the owner that such activity or activities have or have not properly ceased or that the condition or conditions have or have not been remediated or corrected. The owner shall be entitled to appeal the decision of the board of tax assessors and file an appeal disputing the findings of the board of tax assessors. Such appeal shall be conducted in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.



## Georgia Department of Revenue

### Penalties

#### **No penalty imposed if breach due to:**

- The property being acquired under eminent domain
- The sale to an entity that has the power of eminent domain
- The death of an owner who was a party to the covenant
- Sale of 5 ac or less to relative within 4<sup>th</sup> degree for residential purposes only beginning within one year after date of transfer and continuing during the life of the covenant



# Georgia Department of Revenue

## Penalties

### **No penalty imposed Con't**

- (o)(1-2) Sale of 5 ac or less to relative within 4<sup>th</sup> degree for residential purposes only beginning within one year after date of transfer and continuing during the life of the covenant and in any such case the property so transferred shall not be eligible for a covenant for bona fide conservation use, but shall, if otherwise qualified, be eligible for current use assessment as residential transitional property and the remainder of the property from which such transfer was made shall continue under the existing covenant until a terminating breach occurs or until the end of the specified covenant period.



# Georgia Department of Revenue

## Conservation Use

O.C.G.A. 48-5-7.4

- **The following shall not constitute a breach of a covenant:**
  - Mineral exploration of possible mines
  - Allowing all or part of the property to lie fallow for conservation purposes or for hardship not to exceed 2 of 5 years
  - Transferring up to 25 acres to a place of religious worship, burial, or purely charitable entity
  - Cell tower installation( $\leq 6$  acres) Lease only
  - Growing a corn maze as long as crop is harvested
  - Agritourism
  - Leasing the property provided Leasee qualifies and continues allowable use.



# Georgia Department of Revenue

## Conservation Use

O.C.G.A. 48-5-7.4(p)

- **The following shall not constitute a breach of a covenant:**
  - (8) Allowing all or part of the property which has been subject to a covenant for at least one year to be used as a site for farm weddings; or
  - (9) Allowing all or part of the property which has been subject to a covenant for at least one year to be used to host not for profit equestrian performance events to which spectator admission is not contingent upon an admission fee but which may charge an entry fee from each participant.



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## Penalty Calculation

- Penalty imposed of tax savings for current year in the following circumstances:
  - Foreclosure
  - Medically demonstrable illness or disability of one of the parties to the covenant
  - Breach of renewal covenant of  $\geq 65$  years old owner who has completed 3 years of the renewal covenant
  - Breach of covenant of  $\geq 67$  years old and he has either owned or inherited the property for at least 15 years and in the covenant at least 3 years.
  - Breach of renewal covenant after year 6 if property still owned by original owner, or someone related to him within the 4<sup>th</sup> degree of civil reckoning





## Georgia Department of Revenue

### Public Notice to be Posted

A public notice containing a brief, factual summary of the provisions of this Code section shall be posted in a prominent location readily viewable by the public in the office of the board of tax assessors and in the office of the tax commissioner of each county in this state.



# Georgia Department of Revenue

## 560-11-6-.04 Applications

- (2) In those counties where U.S. Department of Agriculture, Natural Resources Conservation Service soil survey maps are available, it shall be the responsibility of the board of tax assessors to delineate the soil types on the tax records of the applicant's property.
- (3) In those counties where the board of tax assessors has not been able to obtain U.S. Department of Agriculture, Natural Resources Conservation Service soil survey maps, the board of tax assessors shall determine the soil types of the applicant's property using the best information available.



## Georgia Department of Revenue

### 560-11-6-.04 Applications

- (6) Application for conservation use value assessment may be withdrawn prior to the current year's "final assessment" as defined in these regulations.



## Georgia Department of Revenue

### 560-11-10-.02 Definitions

- **(i) Final assessment.** “Final assessment” means the final assessed value that is determined for the property for the applicable tax year after the following events have occurred: the time period for filing appeals has expired and any appeals that have been filed have been resolved; the authorities authorized to levy taxes on property in the county have approved the final tax levy; the Revenue Commissioner has authorized that the digest may be used as the basis for collecting taxes; the tax commissioner has mailed the final tax bills based on the authorized digest; and in the case of personal property, the appraisal staff has completed its audit of the personal property pursuant to Rule 560-11-10-.08(4)(d) within the statute of limitations.



## Georgia Department of Revenue

### Notice of Intent of Breach

- When property receiving current use assessment and subject to a conservation use covenant is transferred to a new owner and the new owner fails to apply for continuation of the current use assessment on or before the deadline for filing tax returns in the year following the year in which the transfer occurred, such failure may be taken by the board of tax assessors as evidence that a breach of the covenant has occurred. In such event the board of tax assessors shall send to both the transferor and the transferee a notice of the board's intent to assess a penalty for breach of the covenant.



## Georgia Department of Revenue

### **Notice of Intent of Breach Con't**

**The notice shall be entitled "Notice of Intent to Assess Penalty for Breach of a Conservation Use Covenant" and shall set forth the following information:**

- (a) the requirement of the new owner of the property currently receiving current use assessment to apply for a continuation of the current use assessment within 30 days of the date of postmark of the notice;**
- (b) the requirement of the new owner of the property currently receiving current use assessment to continuously devote the property to an applicable bona fide qualifying use of the duration of the covenant;**
- (c) the change to the assessment if the covenant is breached; and**
- (d) the amount of the penalty if the covenant is breached.**



## Georgia Department of Revenue

# Notice of Intent to Terminate a Conservation Use Covenant

When property receiving current use assessment and subject to a conservation use covenant is transferred to an estate or heirs by virtue of the death of a covenant owner, and the estate or heirs fail to apply for a continuation of the current use assessment on or before the deadline for filing tax returns in the year following the year in which the death occurred, such failure may be taken by the board of tax assessors as evidence that a breach of the covenant has occurred. In such event in which case the board of tax assessors shall send to any remaining parties to the covenant, whether the estate or the heirs a notice entitled "Notice of Intent to Terminate a Conservation Use Covenant."



# Georgia Department of Revenue

## Notice of Intent to Terminate a Conservation Use Covenant Con't

- The notice shall set forth the following:
- (a) the requirement of the estate or heirs to the property currently receiving current use assessment to apply for a continuation of the current use assessment within thirty (30) days of the date of postmark of the notice;
- (b) the requirement of the estate or heirs to the property currently receiving current use assessment to continuously devote the property to an applicable bona fide qualifying use for the duration of the covenant; and
- (c) the change to the assessment if the covenant is breached.
- (10) In the event the estate or heirs fail to apply during the period provided for in paragraph (9) of this regulation, such failure may be taken by the board of tax assessors as further evidence the covenant has been breached due to the estate or heirs' lack of qualification or intent not to continuously devote the property to an applicable bona fide qualifying use. In such event the board of tax assessors shall be authorized to declare the covenant in breach without penalty.





## Georgia Department of Revenue

### 560-11-6-.05 Change of Qualifying Use

- The taxpayer must notify the Board of Assessors if they change their property from one type of qualifying use to another type. Example: After clear-cutting the timber, rather than replanting or allowing natural regeneration, they decide to clear stumps and create a pasture.



## Georgia Department of Revenue

### Breach Penalties 560-11-6-.06

Penalty prorated and distributed to each taxing jurisdiction

Interest prorated and disbursed to each taxing jurisdiction

If a breach occurs during a tax year but before the tax rate is established for that year, the penalty for that partially completed year shall be calculated based upon the tax rate in effect for the immediately preceding tax year. However, the tax due for the partially completed year shall be the same as would have been due absent the breach[560-11-6-.06(1)]

If a breach occurs on all or part of the property that was subject to the original covenant, then the breach shall be deemed to have occurred on all the property and the penalty shall be pro rata assessed against each of the parties....in proportion to the tax benefit enjoyed by each during the life of the original covenant. [560-11-6-.06(2)]



## Georgia Department of Revenue

### Breach Penalties 560-11-6-.06 Con't

The breach shall be deemed to occur upon the occasion of any event which would otherwise disqualify the property from receiving the benefit of current use valuation and the lien against the property for penalties and interest shall attach as of the date of that qualifying event. [560-11-6-.06(3)]

If a covenant is breached by the original covenantor or a transferee who is related to the original covenantor by the fourth degree of civil reckoning, and where such breach occurs during the sixth through tenth years of a renewal covenant, the penalty imposed shall be only the amount by which current use assessment has reduced taxes otherwise due for each year in which such renewal was in effect, plus interest at the rate specified in O.C.G.A. Section 48-2-40 from the date the covenant was breached. [560-11-6-.06(4)]



## Georgia Department of Revenue

560-11-6-.07

- Valuation of Qualified Property
- Value is limited to 3% increase per year for a total of 34.29% for the life of the covenant.
- 65% of CUV value derived using income approach
- 35% of CUV value derived from sales market



## Georgia Department of Revenue

### Taxpayer to receive notice during first year of Covenant

560-11-6-.08(2) For the first year of the covenant period the taxpayer shall be notified by the board of assessors of the current use valuation placed on the property for that year. Appeals shall be made and decided in the same manner as other ad valorem tax assessment appeals are made and decided pursuant to O.C.G.A. 48-5-311.



## Georgia Department of Revenue

### Conservation Use

(B) Such property excludes the entire value of any residence located on the and its underlying property; as used in this subparagraph, the term 'underlying property' means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying property of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to a covenant or is subject to the renewal of a previous covenant on or after the effective date of this subparagraph;



# Georgia Department of Revenue

## Conservation Use

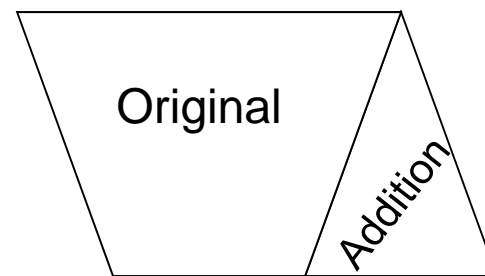
(2) The owner of a tract, lot, or parcel of land totaling less than ten 10 acres shall be required by the tax assessor to submit additional relevant records regarding proof of bona fide conservation use for qualified property that on or after the effective date of this paragraph is either first made subject to a covenant or is subject to a renewal of a previous covenant. If the owner of the subject property provides proof that such owner has filed with the Internal Revenue Service a Schedule E, reporting farm related income or loss, or a Schedule F, with Form 1040, or, if applicable, a Form 4835, pertaining to such property, the provisions of this paragraph, requiring additional relevant records regarding proof of bona fide conservation use, shall not apply to such property. Prior to a denial of eligibility under this paragraph, the tax assessor shall conduct and provide proof of a visual on-site inspection of the property;



# Georgia Department of Revenue

## Conservation Use

- \*New\* language added in 2012 from HB916 which allows for contiguous acres to be added to the original covenant for the remainder of the covenant life 48-5-7.4(i)(2)(A)
  - Acquire the property after entering into the original covenant
  - Property added must be less than 50 acres







## Georgia Department of Revenue

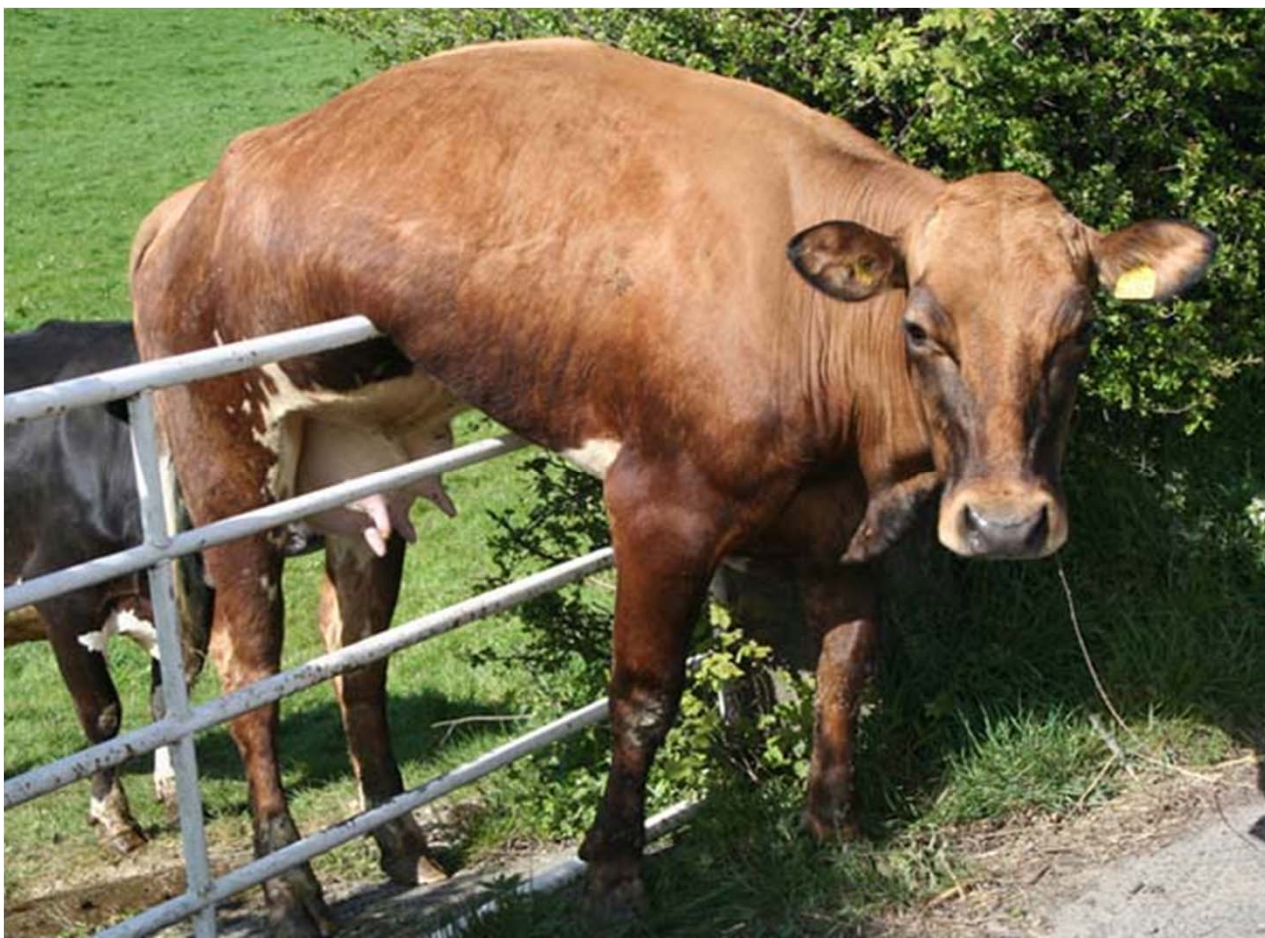
560-11-6-.08

- During the covenant period the taxpayer shall be given notification of any change in the current use valuation made by the board of tax assessors for the then current tax year. Appeals shall be made and decided in the same manner as other ad valorem tax assessment appeals are made and decided pursuant to O.C.G.A. Section 48-5-311.



## Georgia Department of Revenue

Does CUVA have you on the Fence?





# Georgia Department of Revenue

## Covenant Registry

- Full Version (confidential)
  - <http://www.wingap.net/>
  - Links Page
  - Password protection

### Links

#### Related Links

- <http://www.gscca.org>  
Georgia Superior Court Clerks' Cooperative Authority
- <http://www.dor.ga.gov>  
Georgia Department of Revenue
- [GAP Group Bulk License Winzip](#) (password required)
- PT61 Raw Data Layout: [PDF](#)
- [TeamViewer](#)
- [COVREG](#) (password required)



## Georgia Department of Revenue

### Covenant Registry

- Some of the multiple owner columns appear to be pulled from CAMA comment fields, some include DOB and SSN information – therefore data should remain ***strictly confidential***





# Georgia Department of Revenue

## Covenant Registry

D	E	F
totalacres	covacres	lastname
210.65	210.65	LINDSEY FARMS LLLP
197	197	BALCOM RALPH JR
209	209	CATHRALL YATES GEORGE JR
10	10	WATTS CAROL ELIZABETH
297.75	297.75	CATHRALL YATES GEORGE JR
144.7	144.7	CATHRALL YATES GEORGE JR
85	79	LINDSEY FARMS LLLP
62.4	62.4	THORNTON FAMILY FARMS LLC
195.41	195.41	PARHAM SALLIE EST
46	46	J & J ADVENTURES LLC
69.53	69.53	LITTLETON JAMES ALVIN

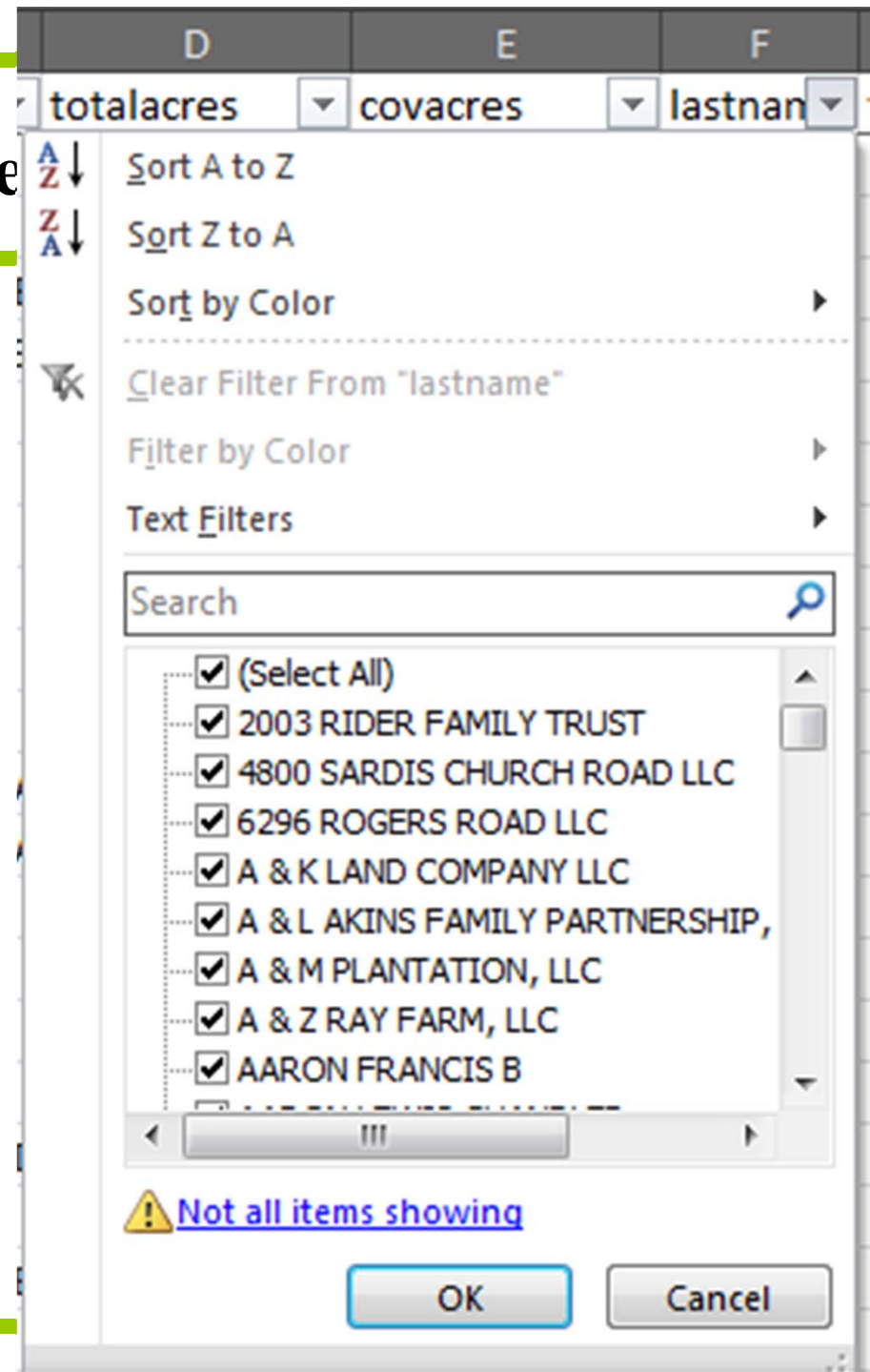




Georgia Department

## Searching and Filters

- Click the Arrow beside a column name to reveal filter options
- Sample is LASTNAME

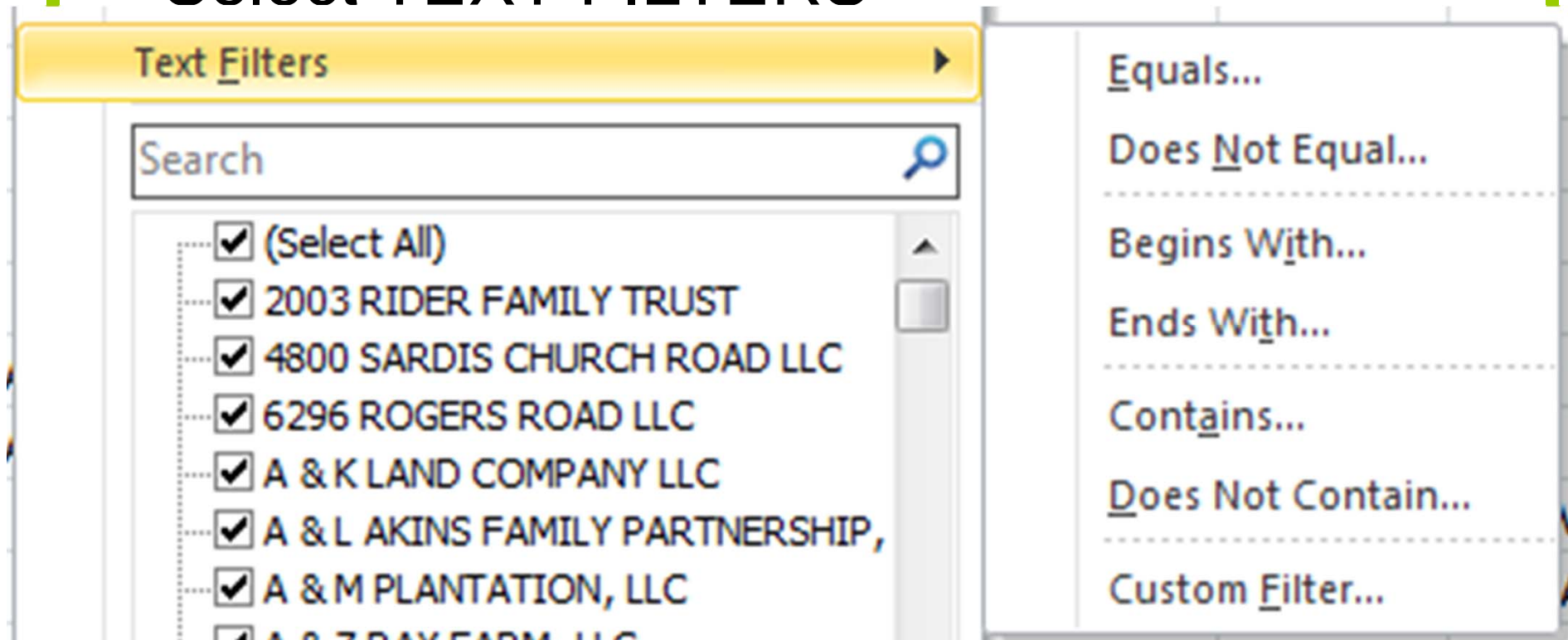




# Georgia Department of Revenue

## Searching and Filters

- Select TEXT FILTERS





# Georgia Department of Revenue

## Searching and Filters

- Select CONTAINS
- Enter desired text: SAYER

Custom AutoFilter

Show rows where:

lastname

contains

☒ And ☐ Or

Use ? to represent any single character  
Use \* to represent any series of characters

OK Cancel



	F
▼	lastname
10	SAYER MITCHELL & DOROTHY
71.5	SAYER WAYNE
2.46	SAYER WAYNE
7.32	SAYER WAYNE
5.85	SAYER WAYNE
3.35	SAYER JIMMY
4.04	SAYER JIMMY
3.33	SAYER CHARLOTTE DAY
87	SAYER WAYNE & WILLENE W
05.6	SAYER WAYNE
4.91	SAYER WAYNE
9.6	SAYER WAYNE
3.63	SAYER WAYNE



## Georgia Department of Revenue

### Details

- 181,341 total rows
- Covenants represent 18,230,897.14 acres
- The registry still contains data current through 2013 digests.



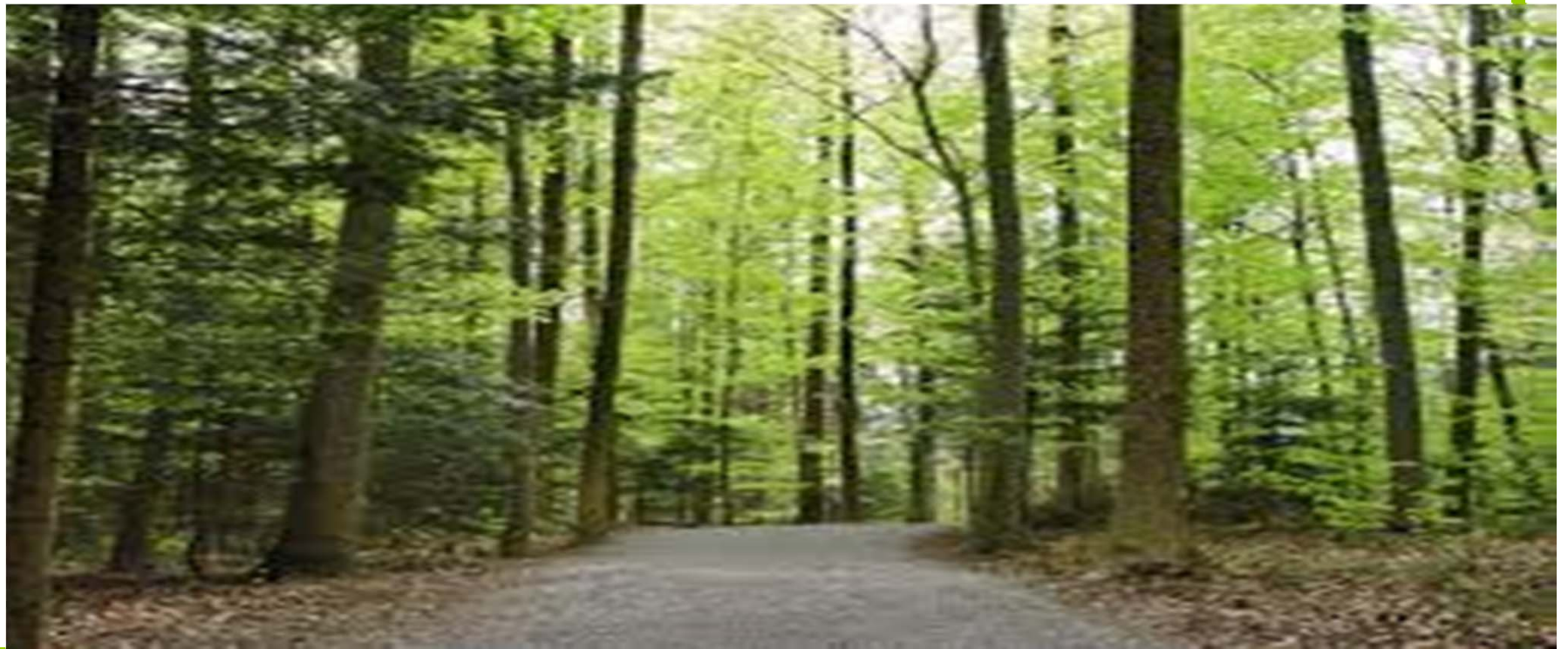
# Georgia Department of Revenue

QUESTIONS??????



Georgia Department of Revenue

# Forest Land Protection Act of 2008







## Georgia Department of Revenue

### **Forest Land Protection Act**

- Georgia Forest Land Protection Act of 2008
- HR 1276 provided for a Constitutional Amendment, which was approved by the voters, that created a new class of property known as “Forest Land Conservation Use Property”
- Regs became effective on August 15, 2009.



## Georgia Department of Revenue

### What is Forest Land?

- Forest land means a tract of land covered with trees and one usually of considerable extent.(Black's Law)





## Georgia Department of Revenue

What does 48-5-271 tell us?

- Commissioner has promulgated regs establishing table of values
- Such values shall be the same as provided for **forest land** in 48-5-269
- Table of values limited to 3% change per year



## Georgia Department of Revenue

### Value Examples

- 2015 True FMV ('J') = 200,000
- 2015 FL FMV('F') = 154,770
  - (2008 base \* US index)
- 2015 CU value = 48,500
  - 48-5-271 (limited to 3% annually)
- Penalty calcs between 200,000 vs 48,500
- Grant calcs between 154,770 vs 48,500





## Georgia Department of Revenue

### FL FMV Examples

- Covenant begins in digest year 2015
- FL FMV is 2008 Base FMV

2008 Base Value = 150,000

Year	Index	FLP Value	Formula
2011	N/A	150,000	No adjustment in year 1



## Georgia Department of Revenue

### 48-5-7.7(b)(1)

- ‘Forest land conservation use property’ means forest land each tract of which consists of more than 200 acres of tangible real property of an owner subject to the following qualifications:



## Georgia Department of Revenue

### 48-5-7.7(b)(1) (continued)

- Must be owned by an individual or individuals or by any entity registered to do business in this state;
- Property excludes the entire value of any residence located on the property
- Excludes the value of any improvement located on property



## Georgia Department of Revenue

### 48-5-7.7(b)(1) (continued)

- Such property has as its primary use the good faith subsistence or commercial production of trees, timber, or other wood and wood fiber products from or on the land.
- Such property may, in addition, have one or more of the following secondary uses:



## Georgia Department of Revenue

### 48-5-7.7(b)(1) (continued)

- Promotion, preservation, or management of wildlife habitat
- Carbon sequestration in accordance with the Georgia Carbon Sequestration Registry
- [www.gacarbon.org/](http://www.gacarbon.org/)





Georgia Department of Revenue

# Forest Land Protection Act





## Georgia Department of Revenue

### 48-5-7.7(b)(1) (continued)

- Mitigation and conservation banking that results in restoration or conservation of wetlands and other natural resources; or
- The production and maintenance of ecosystem products and services such as, but not limited to, clean air and water



## Georgia Department of Revenue

### 48-5-7.7(b)(1) (continued)

- 'Forest land conservation use property' may include, but not be limited to, land that has been certified as environmentally sensitive property by DNR; or
- Which is managed in accordance with a recognized sustainable forestry certification program such as
  - Sustainable Forestry Initiative, Forest Stewardship Council, American Tree Farm Program, or an equivalent program approved by GFC.



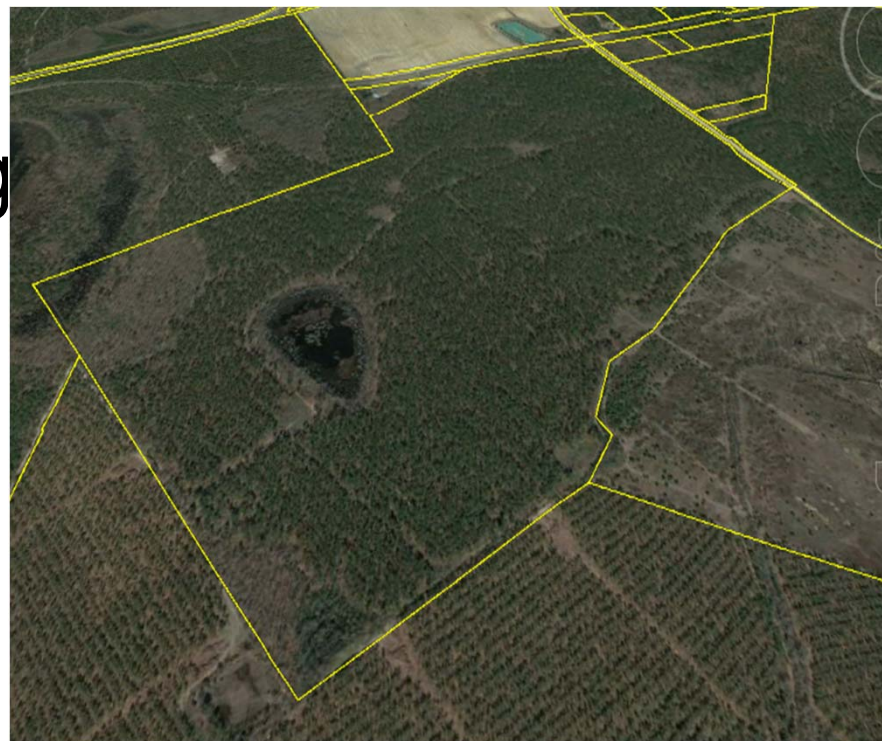


## Georgia Department of Revenue

Summary thus far :

**Must be more than 200 acres**

- Contiguous tracts of forest land exceeding 200 acres
- Single tract of more than 200 acres





## Georgia Department of Revenue

### Summary thus far (continued)

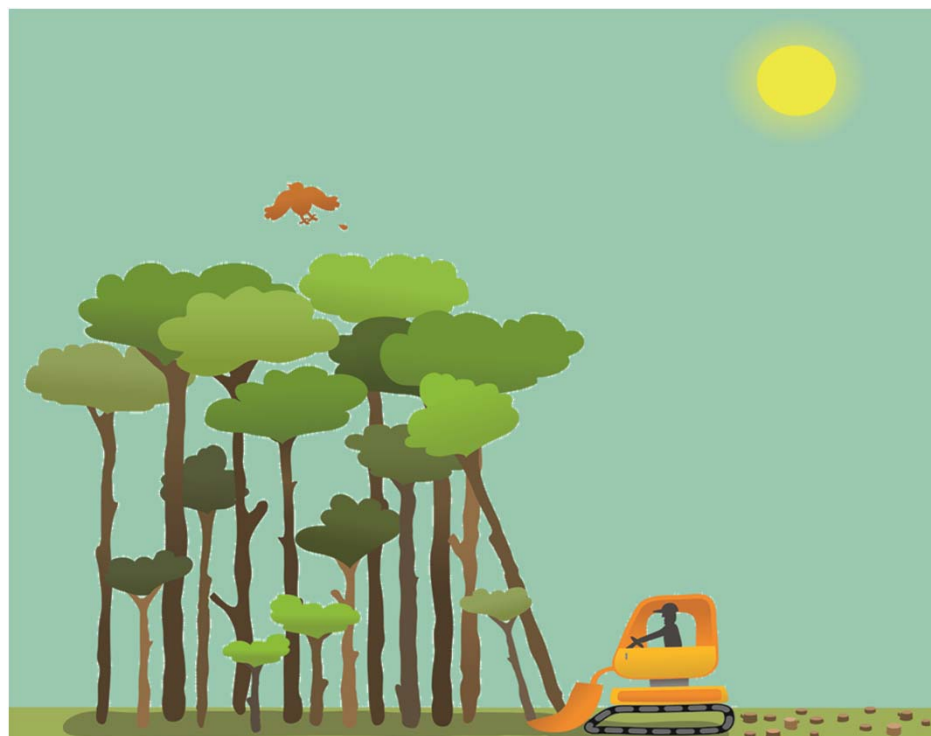
- (b)(1) “Forest land ***conservation use*** property” means forest land ...
  - Excludes any residence located on property
  - Excludes the value of any improvement located on property
  - Includes ONLY LAND
  - All land will be categorized as woodland



## Georgia Department of Revenue

### Summary thus far: Primary Uses

- Good faith subsistence or commercial production from or on the land of
  - Trees
  - Timber
  - Other wood and wood fiber products





## Georgia Department of Revenue

### Summary thus far: Secondary Uses

- May include one or more:
  - Wildlife habitat
  - Carbon sequestration
  - Mitigation and conservation banking
  - Ecosystem products and services







## Georgia Department of Revenue

### Summary thus far: Other Primary Uses

- Certified Environmentally Sensitive
- May be managed in accordance with a sustainable forestry certification program



SUSTAINABLE  
FORESTRY  
INITIATIVE





## Georgia Department of Revenue

### FLPA – Additional Rules

#### ***560-11-11-.01 Definitions***

- *(1) As used in this Regulatory Chapter, the term:*
- *(b) “Contiguous” (SEE NEXT SLIDE)*



# Georgia Department of Revenue

## FLPA – Additional Rules

### ***560-11-11-.01 Definitions***

*(b)* 'Contiguous' means real property within a county that abuts, joins, or touches and has the same undivided common ownership. If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track.

- This change will make more tracts of land eligible
- This change may make it easier to enter smaller tracts of land



## Georgia Department of Revenue

### FLPA – Additional Rules 48-5-7.7(m)(4)

[Line 119]

- All or part of the property may be transferred to a new owner *qualified to enter into an original forest land conservation use covenant*
  - ~~— Transfers out of an existing covenant must be at least 200 acres. A transfer of less than 200 acres will be considered a breach of entire covenant~~
  - If the transfer or transfers leave the original tract with less than 200 acres, the tract can continue until the end of the original covenant period but cannot be renewed unless additional acreage is added to increase the tract size to 200+ acres





## Georgia Department of Revenue

### FLPA – Additional Rules

- All or part of the property may be transferred to a new owner *qualified to enter into an original forest land conservation use covenant*
  - ~~— Transfers out of an existing covenant must be at least 200 acres. A transfer of less than 200 acres will be considered a breach~~
  - If the transfer or transfers leave the original tract with less than 200 acres, the tract can continue until the end of the original covenant period but cannot be renewed unless additional acreage is added to increase the tract size to 200+ acres



# Georgia Department of Revenue

## FLPA – Additional Rules



- (2) If, following such transfer, a breach of the covenant occurs by the acquiring owner, the penalty and interest shall apply to the entire transferred tract and shall be paid by the acquiring owner who breached the covenant. In such case, the covenant shall terminate on such entire transferred tract but shall continue on such entire remaining tract from which the transfer was made and on which the breach did not occur for the remainder of the original covenant. (line 134)
  - Owner A transfers 250 acres of a 1000 tract to Taxpayer B, and Taxpayer B continues the covenant until he receives an offer he “can’t refuse” and sells his 250 acres for a subdivision – *breaching and terminating* his covenant on this transferred portion.
  - Taxpayer B is now responsible for paying the breach penalty and interest on the 250 acres.
  - The covenant on the 750 acres belonging to Owner A continues until the end of the 15-year period



# Georgia Department of Revenue



## FLPA – Additional Rules

- (3) If, following such transfer, a breach of the covenant occurs by the transferring owner, the penalty and interest shall apply to the entire remaining tract from which the transfer was made and shall be paid by the transferring owner who breached the covenant. In such case, the covenant shall terminate on such entire remaining tract from which the transfer was made but shall continue on such entire transferred tract and on which the breach did not occur for the remainder of the original covenant. (line 135)
  - Owner A transfers 250 acres of a 1000 tract to Taxpayer B, and Taxpayer B continues the covenant. Owner A sells his remaining 750 acres for purposes of developing an industrial park – *breaching and terminating* the covenant on the 750 acres.
  - Owner A owes the breach penalty and interest on the 750 acres not transferred to Taxpayer B.
  - The covenant on the 250 acres transferred to Taxpayer B continues until the end of the 15-year period.



# Georgia Department of Revenue

## FLPA – Additional Rules



- Any forest land covenant agreement required under this Code section shall be filed on or before the last day for filing ad valorem tax appeals of the annual notice of assessment except that in the case of property which is the subject of a tax appeal of the annual notice of assessment under Code Section 48-5-311, an application for forest land conservation use assessment may be filed at any time while such appeal is pending.





# Georgia Department of Revenue

## FLPA – Additional Rules

- (2) Except as provided in subsection (i) of this Code section and paragraph (4) of this subsection, the penalty shall be applicable to the entire tract which is the subject of the covenant: (line 194)
- (4) If ownership of a portion of the land subject to the original covenant ~~constituting at least 200 acres~~ is transferred to another owner qualified to enter into an original forest land conservation use covenant in a bona fide arm's length transaction and breach subsequently occurs, then the penalty shall either be assessed against the entire remaining tract from which the transfer was made or the entire transferred tract, on whichever the breach occurred. The calculation of penalties in paragraph (2) of this subsection shall be used except that the penalty amount resulting from such calculation shall be multiplied by the percentage which represents the acreage of such tract on which the breach occurs to the original covenant acreage. The resulting amount shall be the penalty amount owed by the owner of such tract of land on which the breach occurred. (line 219)
  - Penalty will be calculated by the ratio of the acreage of the “breached” tract to the total of the original covenant



# Georgia Department of Revenue

## FLPA – Additional Rules

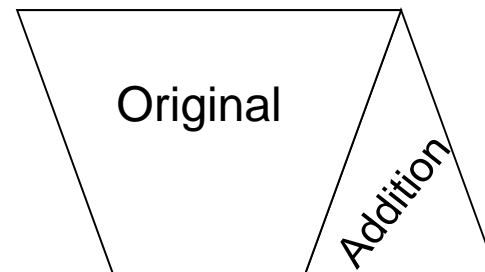
- Example
  - Owner A originally put 1000 in covenant
  - Sold 250 acres to Taxpayer B who breaches the covenant
  - Calculate the penalty that would be the result of a breach on the entire tract
  - Calculate the ratio of breaching tract acreage to acreage in original tract
    - $\text{Breach} / 25\% = \text{penalty due}$



# Georgia Department of Revenue

## FLPA

- **\*New\*** language added in 2011 version which allows for contiguous acres to be added to the original covenant for the remainder of the covenant life
  - Acquire the property after entering into the original covenant
  - Property added must be less than 200 acres





## Georgia Department of Revenue

### FLPA Filing Deadline

- **(j)(1) For each taxable year beginning on or after January 1, 2014, all applications for conservation use assessment under this Code section, including any forest land covenant required under this Code section, shall be filed on or before the last day for filing ad valorem tax appeals of the annual notice of assessment except that in the case of property which is the subject of a tax appeal of the annual notice of assessment under Code Section 48-5-311, an application for forest land conservation use assessment may be filed at any time while such appeal is pending.**
- **“After Jan 1” buyers cannot apply during 45 day period**





# Georgia Department of Revenue

## FLPA

- Deadline for filing applications
  - Deadline for filing returns
  - May also be filed in conjunction with or in lieu of an appeal (During the original 45 day period).
  - Or may be filed anytime that an appeal is active
  - “After Jan 1” buyers cannot apply during 45 day period



## Georgia Department of Revenue

### “Primary Use”

- Primary Use means:
  - Good faith subsistence production of trees, timber, or wood/wood-fiber products
  - Commercial production of trees, timber, or wood/wood-fiber products
  - DNR Certified Environmentally Sensitive
  - Managed according to a recognized forestry certification program



## Georgia Department of Revenue

### 48-5-7.7(b)(2)(B)

(B) Such property excludes the entire value of any residence located on the and its underlying property; as used in this subparagraph, the term 'underlying property' means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying property of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to a covenant or is subject to the renewal of a previous covenant on or after January 1, 2014.



## Georgia Department of Revenue

**FLPA –The following shall not constitute another type of business**

- The granting of easements for ingress and egress
- Any type of business devoted to secondary uses listed under subparagraph (b)(2)(C) of this code section



## Georgia Department of Revenue

### 48-5-7.7(b)(2)(C)

Such primary use includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain.



## Georgia Department of Revenue

### FLPA – Additional Rules

- When one-half or more of the area of a single tract is used for the qualifying purpose, then the entirety of such tract shall be considered as qualified –  
**UNLESS** – some other type of business is operated on the tract ... and provided the rest of the tract is managed to avoid erosion



## Georgia Department of Revenue

### FLPA – Additional Rules

- The lease of hunting rights or the use of property for hunting purposes shall not constitute another type of business





## Georgia Department of Revenue

### FLPA – Additional Rules

- The charging of admission for use of property for fishing purposes shall not constitute another type of business.







## Georgia Department of Revenue

### FLPA – Additional Rules

- The production of pine straw shall not constitute another type of business.





## Georgia Department of Revenue

### FLPA – Additional Rules

- (e) Subject to the limitations of paragraph (1) of subsection (c) of this Code section, a qualified owner shall be authorized to enter into more than one covenant under this Code section for forest land conservation use property. Any such qualified property may include a tract or tracts of land which are located in more than one county in which event the owner shall enter into a covenant with each county.



## Georgia Department of Revenue

### FLPA – Additional Rules

- 15 Year Covenants
- Owners allowed a one-time opportunity to change property from a preferential or conservation use covenants

*“One time – Any Time”*





## Georgia Department of Revenue

### FLPA – Additional Rules

- Any property that is subject to a covenant and subsequently fails to adhere to the qualifying purpose, as defined in paragraph (5) of subsection (b) of this code section, may be changed from the covenant and placed under a covenant provided for in 48-5-7.4. If such case, the existing covenant shall be terminated, and the change shall not constitute a breach thereof. No property may be changed more than once under this paragraph.



## Georgia Department of Revenue

### All or None

- Original CUVA Covenant = 500 acres
- Year 3, 230 acres sold and continued
- New Owner wants to roll to FLPA
- Both 230 acre & 270 acre tract must both go or none go







# Georgia Department of Revenue

## FLPA – Additional Rules



- (2) If, following such transfer, a breach of the covenant occurs by the acquiring owner, the penalty and interest shall apply to the entire transferred tract and shall be paid by the acquiring owner who breached the covenant. In such case, the covenant shall terminate on such entire transferred tract but shall continue on such entire remaining tract from which the transfer was made and on which the breach did not occur for the remainder of the original covenant. (line 134)
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  - The covenant on the 750 acres belonging to Owner A continues until the end of the 15-year period



# Georgia Department of Revenue



## FLPA – Additional Rules

- (3) If, following such transfer, a breach of the covenant occurs by the transferring owner, the penalty and interest shall apply to the entire remaining tract from which the transfer was made and shall be paid by the transferring owner who breached the covenant. In such case, the covenant shall terminate on such entire remaining tract from which the transfer was made but shall continue on such entire transferred tract and on which the breach did not occur for the remainder of the original covenant. (line 135)
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  - The covenant on the 250 acres transferred to Taxpayer B continues until the end of the 15-year period.



# Georgia Department of Revenue

## FLPA – Additional Rules



- Any forest land covenant agreement required under this Code section, shall be filed on or before the last day for filing ad valorem tax returns in the county each county in which the property is located for the tax year for which such forest land conservation use assessment is sought, except that in the case of property which is the subject of a reassessment by the board of tax assessors an application for forest land conservation use assessment may be filed in conjunction with or in lieu of an appeal of the reassessment. (line 148)
  - April 1 or the last date to file an appeal is deadline for filing covenant applications
    - All owners of real property will receive an assessment change notice so will have the option to file in conjunction with or in lieu of an appeal







# Georgia Department of Revenue

## FLPA – Additional Rules

- (2) Except as provided in subsection (i) of this Code section and paragraph (4) of this subsection, the penalty shall be applicable to the entire tract which is the subject of the covenant:
- (4) If ownership of a portion of the land subject to the original covenant constituting at least 200 acres is transferred to another owner qualified to enter into an original forest land conservation use covenant in a bona fide arm's length transaction and breach subsequently occurs, then the penalty shall either be assessed against the entire remaining tract from which the transfer was made or the entire transferred tract, on whichever the breach occurred. The calculation of penalties in paragraph (2) of this subsection shall be used except that the penalty amount resulting from such calculation shall be multiplied by the percentage which represents the acreage of such tract on which the breach occurs to the original covenant acreage. The resulting amount shall be the penalty amount owed by the owner of such tract of land on which the breach occurred.
  - Penalty will be calculated by the ratio of the acreage of the “breached” tract to the total of the original covenant



# Georgia Department of Revenue

## FLPA – Additional Rules

- Example
  - Owner A originally put 1000 in covenant
  - Sold 250 acres to Taxpayer B who breaches the covenant
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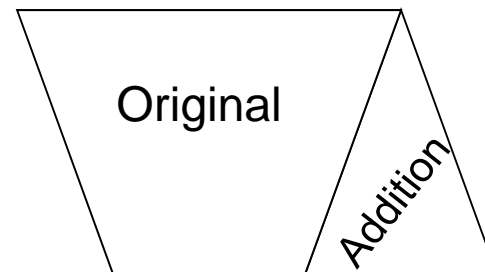




# Georgia Department of Revenue

## FLPA

- **\*New\*** language added in 2011 version which allows for contiguous acres to be added to the original covenant for the remainder of the covenant life
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# Georgia Department of Revenue

## FLPA

- Deadline for filing applications
  - Deadline for filing returns
  - May also be filed in conjunction with or in lieu of an appeal (During the original 45 day period).
  - OR anytime the appeal is active





# Georgia Department of Revenue

## FLPA

- Denial of applications require notice per 48-5-306
- Owners may file Appeals per 48-5-311





## Georgia Department of Revenue

### FLPA Approvals

- Annual Notification of any change in forest land fair market value or True-Blue FMV (48-5-306)
- Appeals of changes pursuant to 48-5-311





## Georgia Department of Revenue

### **Forest Land Protection Act**

- **Penalty for Breach of Covenant**
  - Savings x factor
  - Savings = difference between [true blue] FMV taxes and FL CUV taxes
- 30 days to 'cure'
- Penalty paid by party causing the breach



## Georgia Department of Revenue

### Forest Land Protection Act

- Penalty for Breach of Covenant
  - ~~— Year 1 — 5~~
    - ~~• 3 x total savings (True FMV vs CUV)~~
  - ~~— Year 6 — 10~~
    - ~~• 2.5 x total savings (True FMV vs CUV)~~
  - Year 1 — 15
    - 2 x total savings (True FMV vs CUV)
- Interest of 1% per month accrues from the date of the breach





## Georgia Department of Revenue

### FLPA – Allowed w/o Breach

- Up to 25 acres sold or given to Church or Charitable entity under 48-5-41
  - Property must be used for church or charitable purpose
  - Entity cannot transfer until end of covenant period





## Georgia Department of Revenue

### FLPA – Allowed w/o Breach

- Lease up to 6 acres of every 2,000 acres for a cellular telephone transmission tower
  - Acreage used is removed from covenant and appraised at FMV according to its use.





# Georgia Department of Revenue

## FLPA – Allowed w/o Breach

- Mineral Exploration
- Property lying fallow or idle due to:
  - Conservation programs
  - Federal Ag assistance programs
  - Health / Economic hardships  
(requires owner notice to BOA)
    - *Economic: 2 out of any 5 yrs*





## Georgia Department of Revenue

### FLPA – Breach w/ 1 Year Recapture

- Foreclosure
- Transfer in lieu of foreclosure
- Medically demonstrable illness of owner which renders the qualified owner of the property physically unable to continue the property in the qualifying use
  - BOA Policy advised to define “demonstrable”



## Georgia Department of Revenue

### FLPA – Breach w/ 1 Year Recapture

- Owner is 65 years old or older
- Has completed 3 years of renewal contract



## Georgia Department of Revenue

### FLPA – Breach w/ 1 Year Recapture

- Owner is 67 or older when entered covenant for the first time
- Has completed 3 years of covenant
- Has owned property for 15 years or inherited property



## Georgia Department of Revenue

### FLPA – New Digest Codes

- F – Forest Land Assistance Grant Value
  - 2008 base value + any index adjustments
- J – Forest Land Conservation Use Value
  - BOA Fair Market Value
- SJ – Exemption Amount: difference of the 40% Assessment (J property) and the Current Use Assessment



## Georgia Department of Revenue

### **Forest Land Protection Act**

- Public notice to be posted in prominent location in tax commissioner and board of assessors' offices
- Rules & Regulations will be issued by Revenue Commissioner
- Update Taxpayer Brochure





## Georgia Department of Revenue

### **Forest Land Protection Act**

- New Code Section O.C.G.A. § 48-5-271 provides method for establishing annual table of value
  - Values for forest land conservation use property will be the same values that are applied to conservation use property for timber land
  - Limited to 3% change annually



# Georgia Department of Revenue

## Conservation Use Soil Conversion Table

Soil	Cnty	Soil	Soil	Agric	Wood
TYPE	No	Composition	Description	Prod	Prod
CoB		COWARTS	LOAMY SAND, 2 TO 5	5	2
Cob		CHEWACLA		4	2
CoB	010	CARNEGIE	SANDY LOAM, 2 TO 5	5	2
CoB	023	CONASAUGA	SILT LOAM, 1 TO 6	6	7
CoB	086	CARNEGIE	SANDY LOAM, 2 TO 5	5	2



## Georgia Department of Revenue

- 75 acres open land
  - CoB soils (Cowarts)
- 1000 acres wood land
  - CoB soils (Cowarts)
- What is productivity rating selected for open portion and wooded portion?



## Georgia Department of Revenue

# Conservation Use Soil Conversion Table

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CoB	086	CARNEGIE	SANDY LOAM, 2 TO 5	5	2



# Georgia Department of Revenue

QUESTIONS??????