LAND TRUST ACTIVITY WITHIN THE CONTEXT OF PROPERTY TAX

ASSESSMENT IN GEORGIA, U.S.A.

by

COLUMBIA LEIGHELEN MECHAM

Under the Direction of David H. Newman

ABSTRACT

Land trusts work at the grassroots level to conserve land and natural resources. Questions regarding the perceptions of land trust activity among local government officials and the subsequent property tax assessments of protected land have gone unexplored, due in part to a lack of comprehensive statewide information on individual properties. I analyzed data from a statewide land trust census, conducted a qualitative analysis of conservation easements, and carried out a qualitative study using in-depth interviews with county tax assessors. Within the last ten years, land trust activity has grown rapidly in the state, bringing changes in the nature of land protected. With the growth of land trust activity and the development of differential taxation programs for the protection of farm and forestry land, county tax assessors must now measure the public benefit provided by land protection and balance it with the traditional objective of conducting equitable and uniform assessments.

INDEX WORDS: Land trust, Conservation easement, Property tax, Differential taxation, Qualitative research, County government

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DEDICATION

For my Mother, Denny Mecham, and Grandmother, Elsie Hubbard.

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CHAPTER I

LAND TRUST ACTIVITY WITHIN THE CONTEXT OF PROPERTY TAX ASSESSMENT IN GEORGIA—AN INTRODUCTION

Overview

Protection of undeveloped or minimally developed lands, whether they are forestland, farmland, watersheds, or open and recreational space, is of growing concern in Georgia and the Southeast. It is particularly relevant in Georgia, where approximately 65 percent of the land base is in forestland and nearly 30 percent is in agriculture, but where only 9 percent of the forestland is owned by a government entity (Boatright and Bachtel, 2001).

Protection would not be an issue if there were no perceived threats to these resources. However, Georgia's population has grown by 26.4 percent between 1990 and 2000, approximately twice the national average for population growth. This ranks Georgia as having the sixth highest growth rate in the nation during that time. In addition, Georgia is home to Atlanta, the ninth largest metropolitan area in the country (Gaquin and DeBrandt, 2002).

With this growth, people have simultaneously placed more stress on natural resources through increased automobile use, water use, infrastructure development and natural habitat consumption while demanding more protection for them as well. Over the past 40 years, the number of environmental advocacy groups in Georgia has grown from one to over 100 in 2001, with about a fourth of those having full-time, paid staff (Georgia

Department of Natural Resources, 2002). A 1986 survey in Georgia demonstrated that residents from both rural and urban counties supported strong environmental protection. While residents of more urban counties had a stronger perception of environmental degradation than residents of rural counties, residents from all the counties showed strong support for environmental protection including more government intervention and land use control (Kundell *et al*., 1989).

Georgia's legislators have implemented several policies to aid land conservation. Legislation enacted in the last decade includes the Georgia Greenspace Program that supports land acquisition and protection, the Conservation Use Program that discourages development of farm and forestland through property tax relief, and the Uniform Conservation Easement Act that demonstrates support for private-sector land conservation. Land conservation is an issue that concerns communities and policy-makers across the state.

Land ownership. Property rights ownership is the bottom line of any land or natural resource protection effort. There are numerous categories of ownership for open lands, including land owned by federal, state and local government, industry, individual citizens, Native Americans, and non-governmental organizations (NGO's) (National Research Council, 1998). Forestland, which comprises approximately two-thirds of Georgia's land base (approximately 24 million acres), serves as an example of this diverse ownership that is dominated by private, individual landowners. Figure 1-1 shows the distribution of forestland ownership in Georgia.

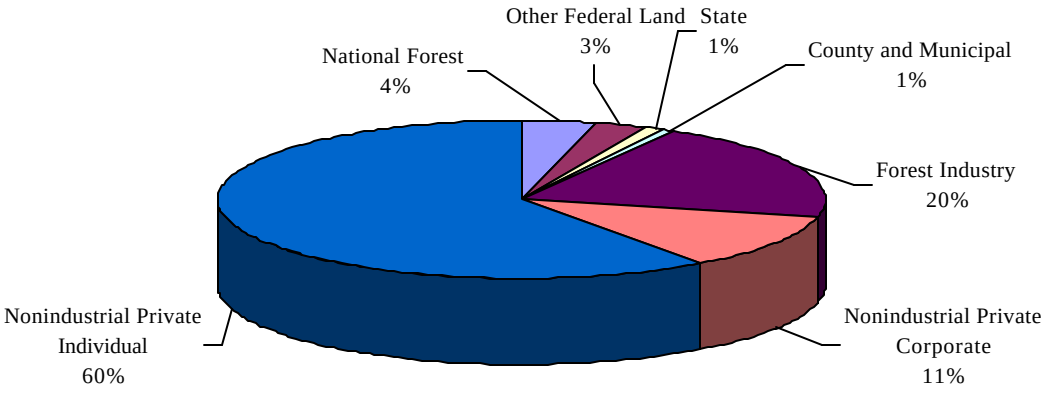


Figure 1-1: Percent forestland ownership in Georgia (out of 23.8 million acres) (Boatright and Bachtel, 2001)

For the purposes of this research, a distinction is made among conservation programs and tools based on the ownership of the land targeted for conservation and the managing entity of the conservation effort. This research examines property tax issues related to private, voluntary land conservation. Therefore, the focus is primarily on the conservation of land within the private sector where property taxes are relevant, including property owned by individual citizens, NGO's, and to a limited extent private industry and managed either by private-sector organizations commonly labeled as land trusts, or by a government entity. These efforts fall under the broad heading of private land protection and, as seen in Figure 1-1, target a significant proportion of land in Georgia.

Posing the Research Questions

The first and most basic problem addressed by this thesis is to determine the nature and extent of land trust activity in Georgia, specifically the use of conservation easements and fee simple acquisition. Some of the desired information includes the number, location, and size of properties protected, the methods of protection, and the

resources protected. This descriptive study is intended to provide answers to basic questions about land trust activity in the state, and to provide the researcher with the information necessary to address the other research problems.

The second problem addressed in this research is to determine the impacts that conservation easements in Georgia have on the allowable uses of the encumbered properties. Designed as a descriptive study, this research is intended to provide a concrete picture of the remaining functions of easement-burdened properties.

The final problem that is examined in this thesis is the way in which tax assessors approach the assessment of privately protected properties. For the quantitative aspect of the study, I hypothesize that the majority of grantors of conservation easements in Georgia have obtained property tax reassessments on the encumbered property that reflect the encumbrance. The qualitative aspect of the study examines the attitudes expressed by tax assessors and the factors that influence them.

Land trusts. Land trusts are local, regional, national, and international organizations that aim to protect land and/or natural, cultural, or historic resources through education, property rights acquisition, and cooperation with the government. There are approximately 1,200 land trusts nationwide and around 40 in Georgia (Land Trust Alliance [LTA], 2001; Georgia Land Trust Service Center, 2002).

There are regional differences in land trust activity within the U.S. The Southeast has seen the amount of acreage protected by land trusts increase by 268 percent since 1990, but currently has the third lowest amount of protected acreage among all regions. The Northeast has the largest amount of protected acreage, over four times the amount protected in the Southeast (LTA, 2001).

Land trust activity can be analyzed at various geographic levels, but it lends itself to analysis at the state level for several reasons. First, certain laws relevant to land trust activity, such as the Uniform Conservation Easement Act, are state-enacted laws. Second, most land trusts identify themselves with a state, county (sub-unit of the state), or watershed (often falling within a state). Also, umbrella organizations for land trusts often exist at the state level (in this instance, the Georgia Land Trust Service Center). Finally, with regard to property taxes, state law is the relevant law.

The Land Trust Alliance[1] conducts a 10-year census of local and regional land trust activity around the country. They collect and summarize data from individual land trusts on the extent of their land-protection activity (LTA, 2001). These data are specific to land trust organizations, and does not provide information on individual properties. Information about individual properties is important, at least at the state level, to understand not just the extent of land trust activity but also the nature of the activity.

Conservation easements. Conservation easements are the tool most widely used by land trusts in Georgia and around the country (LTA, 2001). Their popularity arises in part from the substantial federal income and estate tax benefits that are provided to a landowner when she donates an easement. Land trusts encourage their use because they are an inexpensive means of achieving land protection goals; governments are encouraging their use as well through recently initiated programs such as the Georgia Greenspace Program, the Forest Legacy Program (a project of the USDA Forest Service), and conservation subdivision ordinances.

[1] The Land Trust Alliance (LTA) is a national organization that "promotes voluntary land conservation and strengthens the land trust movement by providing the leadership, information, skills and resources land trusts need to conserve land for the benefit of communities and natural systems." It provides grants and training to land trusts, and hosts an annual national conference for land trusts (LTA, 2002b).

Currently, there are debates over the strengths and weaknesses of conservation easements as land protection tools. People argue that their strengths include the flexibility and negotiability of easement terms, the retention of private ownership, and the financial incentives. Weaknesses include the difficulty of balancing flexible terms (allowing adaptation to changed conditions) with protective terms (ensuring strong protection for the property) in the easement, the problem of measuring the ecological/public benefit provided by easements (which can vary significantly from easement to easement), and the unknown long-term costs to the grantees of easements. Given the generalizations that have been made about conservation easements in the past and the uncertainty about their future, we should seek a better understanding of easements based on existing encumbered properties.

The effects of conservation easements on encumbered properties are difficult to generalize because each easement is made up of a unique set of terms. Past studies have separated out easement terms and quantified them based on occurrences in a sample of easements (Bick *et al.*, 1998; Bick and Haney, 1999). However, this approach removes the terms from their original context, making it difficult to grasp the impacts that conservation easements as whole documents have on the encumbered properties. Studies that analyze the current use of conservation easements and their impacts are lacking.

Property tax assessment of private land conservation. Land protected by land trusts either through conservation easements or fee simple ownership must be assessed for property tax purposes. Property taxes can be manipulated to encourage land conservation, such as through differential taxation programs. In that same vein, property

tax policies developed for the assessment of land protected by land trusts can have the effect of either encouraging or discouraging land trust activity.

The accurate assessment of easement-burdened properties for property tax purposes faces several obstacles. First, market data are lacking for sales of easement-burdened properties, making traditional valuation methods obsolete. Second, variations in the assessment of such properties are often attributed to varying attitudes among county tax officials (Diehl and Barrett, 1988; Stockford, 1990; Ceglowski, 1992; Closser, 1994). These attitudes may be negative or positive with respect to conservation easements or land protection in general. Local approaches to the assessment of conservation land held fee simple by land trusts may also vary based on local attitudes.

Property tax assessment of privately conserved land is an issue for landowners and land trusts wishing to participate in private land conservation. The importance of a property tax reassessment to landowners may vary depending on the current level of property taxation and the amount of satisfaction the donor receives from the federal tax incentives (if the easement is donated). A survey of easement donors found that while property tax was not a major motivational factor for landowners who donate conservation easements, it was the issue that caused the most dissatisfaction among the donors (Elconin and Luzadis, 1997). The state has also identified problems with the reassessment of easement-burdened properties as a major hindrance to the use of conservation easements in the implementation of the Greenspace Program (Georgia Community Greenspace Program, 2002).

Land trusts have a particular interest in the property tax assessment of fee simple conservation land. In a survey, land trusts ranked the ongoing cost of ownership, with

property taxes noted in particular, as one of the four most important obstacles to the use of fee simple acquisition (Burkhard, 1994).

From the existing literature, it appears that a lack of market data and varying attitudes among county tax officials are the major factors influencing current property tax assessments for privately protected land. While the lack of data upon which to base assessments is a widespread problem that will only be solved over time, local attitudes towards land trust activity can be addressed now, if they are understood. At this point, however, local government perspectives on land trust activity have not been studied.

Chapter Outline

In Chapter II, the reader is presented with a picture of land trust activity in Georgia. The chapter begins with a discussion of land trusts and their role within the broader context of land conservation. After an explanation of the survey methodology, the chapter presents an analysis of the land trust census data, focusing on changes that have taken place in land trust activity over the past ten years.

The focus of Chapter III is narrower than that of the preceding chapter. This chapter presents a picture of easement-burdened properties in Georgia, focusing on what uses of the properties remain rather than on what uses have been limited. The chapter begins with a primer on conservation easements and a discussion of their particular applications in Georgia. The analysis presents descriptive categories into which each easement falls, and provides a discussion of other easement terms that impact the strength and duration of easements.

Chapter IV presents a qualitative analysis of data from interviews with county tax assessors regarding private land protection. The first half of the chapter provides a

backdrop of information and past research related to county government, property taxation, and the significance of property taxes to land trust activity. In the second half, the analysis is presented as a narrative in which I qualify my analysis with quotes taken from the interviews.

Finally, Chapter V presents a summary of the previous chapters and policy recommendations for Georgia with respect to the property tax assessment of easement-burdened land and land owned fee simple by land trusts. These recommendations should be used as foundations for dialog between the state and the land trust community so that a final agreement on the property taxation of privately conserved land can eventually be reached.

CHAPTER II

FEE SIMPLE CONSERVATION LAND AND CONSERVATION EASEMENTS— THE PRESENCE OF LAND TRUSTS IN GEORGIA

Introduction

Land trusts play a critical role in land conservation around the United States both by assisting governments in protecting land and by taking action where governments cannot or do not. Land trusts can be local, regional, or national in scope, and have discretion in choosing the types of public values they want to protect, such as the protection of wildlife habitat, clean water, or scenic areas. In the year 2000, over 1,200 local and regional land trusts had protected approximately 6.2 million acres of land in the U.S. (Land Trust Alliance, 2001).

There are approximately forty land trusts existing or operating in Georgia (Georgia Land Trust Service Center, 2002). Information on land trust activity has traditionally been collected by the Land Trust Alliance (LTA). LTA conducts a ten-year census of land trust activity, which takes account of the amount of acreage that each land trust has protected through conservation easements, fee simple ownership, or other means and the types of land the land trust aims to protect. The smallest level at which the data can be analyzed is the organizational level.

This study was initiated to obtain more detailed information on land trust activity in Georgia; specifically, it was intended to gather data on each parcel protected by every land trust in the state. The analysis is designed to provide land trusts, policy-makers,

government program administrators, and the research community with a more concrete picture of land trust activity in Georgia and how that activity has changed over decades.

The chapter begins with a discussion of land protection techniques in Georgia to develop a context for land trust activity. It also presents a nationwide picture of land trust activity in order to provide a context for activity in Georgia and the Southeast. The results section presents data from a statewide land trust survey conducted by the researcher in conjunction with the Georgia Land Trust Service Center. The survey data answer many questions regarding the nature, location, and extent of land trust activity in the state, and addresses issues regarding the rapid growth of land trusts and the explosive use of conservation easements. The survey upon is the first of its kind in Georgia, but hopefully not the last.

Methods of Land Protection

Involuntary protection. Land protection can be implemented through voluntary or involuntary measures. Involuntary measures include planning and zoning laws, development regulations and ordinances, environmental controls, and acquisition through eminent domain, and are implemented by state and local governments (Furuseth and Pierce, 1982). In Georgia, planning and zoning decisions are made primarily at the local level and therefore vary from one jurisdiction to another (Kundell *et al*., 1989).

While involuntary measures such as zoning can be clearly defined and enforced, they are often politically unpopular, raise takings issues, and have limited effectiveness when not strictly enforced (Furuseth and Pierce, 1982; Van Patter *et al*., 1990). However, they usually do not require the provision of monetary compensation, and so can be less costly to the government. While government acquisition is a common and

highly effective means of protecting land, it is rarely conducted through condemnation (Wilson, 1991; Press *et al*., 1996). Overall, Georgia's land use policies that would employ these involuntary measures are considered to be poorly defined and created on an ad hoc basis (Kundell *et al.*, 1989).

Voluntary protection. Voluntary land protection exists in Georgia as well and is implemented by federal, state, and local government, land trusts, or through a combination of these entities. A review of conservation techniques suggests that there are four basic tools that are useful: education, verbal/written stewardship agreements, management agreements, and conservation easements or purchase arrangements (Van Patter *et al*., 1990). Among these, management agreements (payment or tax incentive programs) and conservation easements or purchase arrangements can provide financial incentives.

Landowners may be motivated to participate in private land protection for one of many reasons. A sense of stewardship for the land, a desire to know that their land will remain unchanged, a desire to keep land in their family, setting an example for neighbors or a community, and income, estate, and/or property tax benefits are some of the factors that may motivate a landowner.

Because they are voluntary, programs such as these are more politically neutral but provide less assurance of participation. Once implemented, the strength of the tools in protecting land and the costs associated with their success can vary. A model by Van Patter *et al.* (1990) shown in Figure 2-1 demonstrates the relationship between these techniques. As seen in the model, the various techniques offer tradeoffs between cost, effectiveness, commitment and participation.

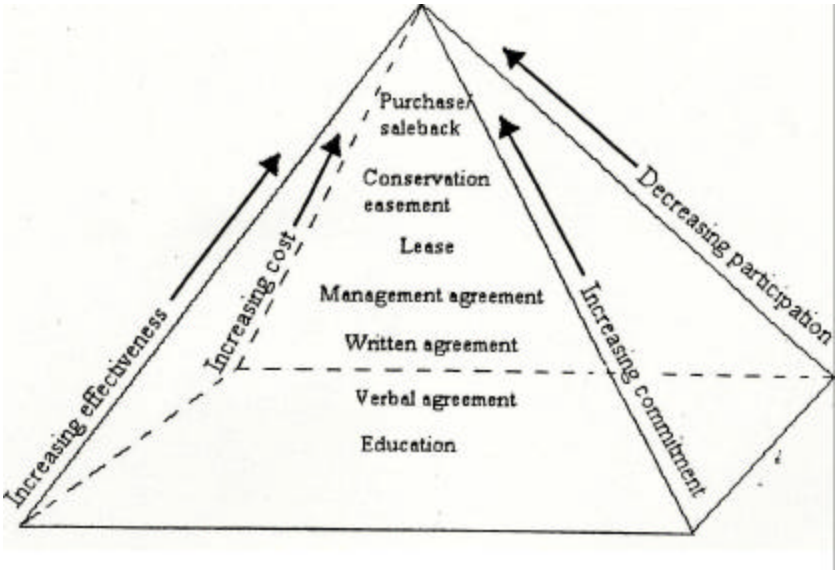


Figure 2-1: Stewardship enhancement model (Van Patter *et al.*, 1990)

No simple formula exists for measuring the effectiveness of a land policy tool, but criteria may include land use performance, political acceptability, and longevity. It has been argued that in land policy analysis, particular weight is given to political acceptability, increasing the possibility of the watering-down of policies based on political interests (Furuseth and Pierce, 1982). Weighing the tradeoffs that come with various tools is difficult; but as Van Patter *et al*. (1990) suggest, a wide range of techniques and incentives should be available to landowners so that they may "become good stewards at whatever level they are most comfortable with."

Tools for protection in Georgia. The Georgia Natural Heritage Program classifies tools available in Georgia by incentive type: those that provide annual rent payments, incentive payments, or cost-share payments, and those that provide tax incentives (Cammack and Van de Genachte, 1999). Tools within the first group are managed primarily by the federal government, with a few managed by state agencies and utility companies. Table 2-1 lists these programs and the managing entities.

By contrast, tools in the second group—those providing tax incentives through a charitable donation and/or reduction of property value—are managed primarily by land trust organizations and local governments. Table 2-2 lists the tools described by the Georgia Natural Heritage Program.

Table 2-1: Payment programs for natural resources protection in Georgia (adapted from Cammack and Van de Genachte, 1999)

Payment Program	**Funding and Administering Entity**	**Technical Assistance**
Conservation Reserve Program	Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS)	Georgia Department of Natural Resources, Wildlife Resources Division (DNR-WRD)
Environmental Quality Incentives Program	NRCS	DNR-WRD
Forestry Incentives Program	NRCS and Georgia Forestry Commission (GFC)	DNR-WRD
Georgia Reforestation to Enhance Environmental Needs	Georgia Power Company and GFC	GFC
Partners for Fish and Wildlife	U.S. Fish and Wildlife Service (USFWS)	USFWS
Stewardship Incentive Program	GFC, NRCS, FSA, and DNR-WRD	
Wetland Reserve Program	NRCS	DNR-WRD
Wildlife Habitat Incentives Program	NRCS	DNR-WRD
Wildlife Incentives for Non-Game and Game Species	Georgia Power Company, Georgia Transmission Company, and Two Rivers RC&D	DNR-WRD and GFC

Table 2-2: Tax incentive programs and tools for natural resources protection in Georgia (adapted from Cammack and Van de Genachte, 1999)

Tax Incentive Program/Tool	**Managing Entity**
Conservation Easements	Land trust or government agency
Current Use Valuation of Conservation Use Properties	Local government through county tax assessor
Easements with a wetland mitigation bank	Georgia Wetland Trust Fund or other wetland mitigation bank
Preferential Assessment for Agricultural and Forestry Property	Local government through county tax assessor
Bargain sale of property	Land trust or government agency
General property exchanges	Land trust or government agency
Property donation	Land trust or government agency

The management of tools within the second group would be more variable than that for the first group for a simple reason: there is only one of each federal agency in the United States, but there are 159 county governments and approximately 40 land trusts in Georgia alone (Georgia Land Trust Service Center, 2002).

The role of land trusts. Land trusts can play an important role in implementing tax incentive tools, primarily conservation easements and property donation and purchase. As Clendenning and Stier (2000) stated when suggesting that states offer support to land trusts, "these organizations have proven to be effective in the preservation of important natural and managed areas, and they can also reach a class of landowners who are reluctant to work with government programs." Some landowners may make a donation to a land trust that they would never make to a government entity (Georgia Environmental Policy Institute, 1994). A study of non-industrial private forestland owners found that for those willing to participate in an ecosystem-level management project, many would only participate if the federal government was not involved

(Brunson *et al*., 1996). Land trusts can operate where government entities are less successful, or can act as a mediator between government and the public.

Cooperation between land trusts and government agencies can come in a number of forms. Land trusts commonly use preacquisition as a tool for cooperation by buying a piece of property that they then intend to sell later to the government. They may also act as a broker between landowners and the government for targeted properties, or use option sales to sell to the government. Land trusts could, to a limited extent, negotiate land trades between private landowners and the government, and there is also the potential for land trusts to be contracted by the government to do land-related work paid for by government grants (Rubenstein, 1982). Some government programs may also allow land protection activity by land trusts to substitute for work that otherwise must be completed by the government entity (USDA Forest Service, 2000).

The land trust community also has voluntary tools to use "independent of" the government, including conservation easements and fee simple acquisition. The Georgia State Legislature passed the Uniform Conservation Easement Act in 1992 which defines the major tool of land trusts, the conservation easement, as

> A nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property (Official Code of Georgia [O.C.G.A.], SEC. 44-10-1).

Fee simple land acquisition from willing sellers is also used by land trusts to protect land. In some cases, it is the best way to ensure protection because ownership is not divided (Main, 1999). However, fee simple acquisition as a land protection tool is

not legally binding for a land trust. It rests on the assumption that the land trust will, through ownership of the land or through conditions on the sale of the land, keep that land in a protected state.

Land Trust Activity

The land trust movement has been classified as the most active facet of the national movement for environmental preservation (Cheever, 1996). It should be noted, however, that land trust activity also involves conservation (as opposed to preservation). Nationwide, the three most common tools used by land trusts to protect land are land donation (fee simple ownership), land purchase (also fee simple ownership), and conservation easement donation (partial interest). Combined with partial purchase of conservation easements, these techniques make up approximately 75 percent of all land trust land protection activity (Gustanski, 2000).[2]

The first land trust in the United States was established 110 years ago in Massachusetts. For the first half of the 20th century, land trust activity was concentrated in New England. In the 1980s, however, the number of land trusts began to grow rapidly as development pressures began to spread to new regions of the country. The development of significant federal tax incentives for land donations also contributed to the land trust boom. In 2000, there were over 1,200 land trusts in operation, and at least one could be found in every state (Wright, 1993; LTA, 2001).

Also in 2000, land trusts had protected approximately 6.2 million acres of land through conservation easements (2.6 million acres), fee simple ownership (1.2 million acres), and transfers to other entities (2.4 million acres). The amount of land under

[2] The remaining 25 percent consists of various other lease, exchange, purchase, and management arrangements that aim to conserve land.

private protection varies widely from region to region. Figure 2-2 shows acres of land protected by land trusts by region in 1990 and 2000. While the Southeast has the third-lowest acreage in private protection, it had the third-highest rate of increase in acreage during that decade (LTA, 2001).

The South has lagged behind some other regions in accepting conservation easements. Wright (1994) attributes the lack of acceptance, particularly in the Deep South, to poverty and a lack of trained land trust staff. Also, populations with relatively high income and secure employment are arguably more receptive to the protection of "post-materialist" goods; land as an environmental amenity is one such good (Inglehart and Abramson, 1994). As of 2000, land trusts in the southeastern states (AL, FL, GA, KY, MS, NC, SC, and TN) had protected approximately 397,000 acres. Out of the eight southeastern states, Georgia had the fourth largest number of land trusts and the fifth largest amount of protected acreage (LTA, 2001). Part of this study addresses the changing use of conservation easements and fee simple ownership by land trusts in Georgia, particularly over the past 10 years.

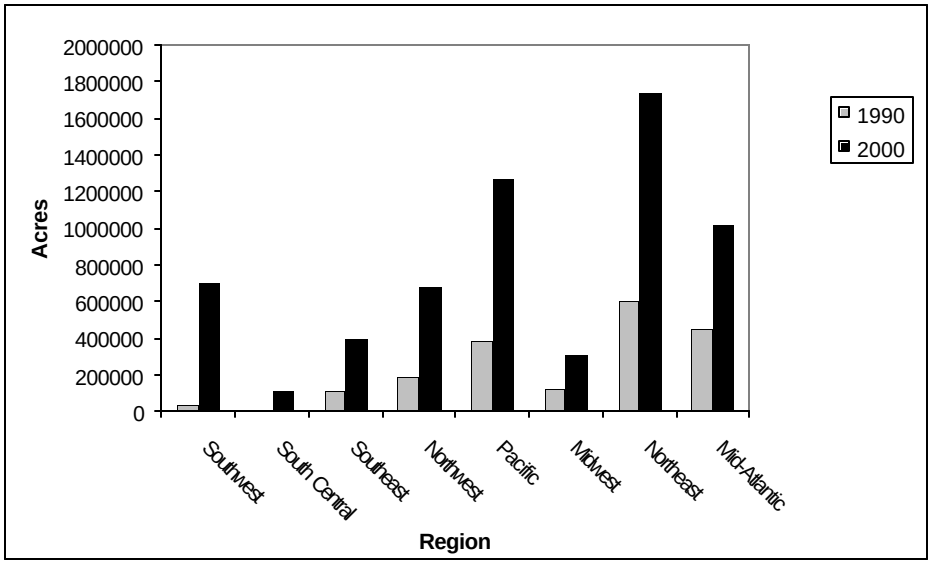


Figure 2-2: Acreage of land protected by land trusts, by region (LTA, 2001)

Georgia had 36,864 acres in private protection through local and regional land trusts in 2000; 76 percent of that acreage was protected by conservation easement (LTA, 2001). The Georgia Land Trust Service Center (GLTSC), a project of the Georgia Environmental Policy Institute, has maintained a list of land trusts existing and operating in Georgia. This list essentially contains contact information for each land trust. GLTSC also has maintained information on the organizational structure and size of each land trust. However, at the time that this research was initiated, the GLTSC did not have any information regarding specific land protection activity, including number and size of land parcels protected, methods of protection, location of protected areas, and resources protected. Because of this lack of data, the GLTSC was interested in collaborating on a land trust census project.

Methods

Land trust survey. The goal was to conduct a census of conservation lands existing in Georgia held among land trusts. Using their list of land trusts, the GLTSC sent surveys to all the land trusts on the list for a total of 38 survey recipients (see Appendix A for the survey instrument). Table 2-3 lists the survey recipients. Non-respondents first received a follow-up postcard and next received one or more telephone calls, based on survey methods described by Dillman (2000).

The surveys were designed to determine the current use of fee simple ownership and conservation easements as land conservation tools among land trusts operating in Georgia. LTA listed these two tools as the most commonly used land protection tools among local and regional land trusts in Georgia, with 27,996 acres under conservation easement and 4,844 acres in fee simple ownership in 2000 (LTA, 2001). Acres

transferred to another entity (non-profit or governmental) or protected by other means (holding deed restrictions, acquiring mineral rights or negotiating for acquisition by other organizations or agencies) made up only 769 acres in 2000, and so were not addressed in the survey. The survey asked for responses from both active (land trusts protecting land) and inactive (land trusts not protecting any land) organizations.

Table 2-3: List of land trusts that received the land trust survey

Survey Recipients			
1	American Farmland Trust	20	Lula Lake Land Trust
2	Appalachian Trail Conferences Land Trust	21	Madison-Morgan Conservancy
3	Athens Land Trust	22	Mountain Conservation Trust of Georgia
4	Atlanta Audubon Society	23	Newton County Land Trust Alliance
5	Broad River Watershed Association	24	North American Land Trust
6	Brown's Mount Association	25	Oconee River Land Trust
7	Camden County Land Trust	26	Red Hills Conservation Program
8	Central Savannah River Land Trust	27	S.P.A.C.E.
9	Chattahoochee Valley Land Trust	28	Sapelo Island Cultural and Revitalization Society
10	Chattahoochee/Flint River Land Trust	29	Southeast Land Preservation Trust
11	Chattooga Land Trust	30	Southeastern Cave Conservancy
12	Coastal Georgia Land Trust	31	Southern Conservation Trust
13	Ducks Unlimited	32	St. Simons Island Land Trust
14	Georgia Land Trust	33	The Archaeological Conservancy
15	Georgia Wildlife Federation	34	The Cobb Land Trust, Inc.
16	Greener Atlanta	35	The Conservation Fund
17	Gwinnett Open Land Trust	36	The Nature Conservancy
18	Land Trust for the Little Tennessee	37	The Trust for Public Land
19	Lookout Mountain Land Trust	38	Wildlife Land Trust

Although some of the survey recipients operate in other states besides Georgia, the survey only asked for information on their properties in Georgia. The survey was not sent to government entities that could be holders of conservation easements.[3]

[3] Some government agencies, such as the U.S. Fish and Wildlife Service and the Natural Resources Conservation Service, are holders of conservation easements in Georgia. However, these easements may vary in duration (from 10 years to perpetuity) and may be received under non-voluntary circumstances (required as part of defaulting on a loan, for example). Because of these variables, government-held easements were not included in this analysis. Nonetheless, based on data from two agencies, there are or were at one time at least 9,000 acres in government-held conservation easements in Georgia (NRCS, 2002; Underwood, 2001, per comm.; Department of Agriculture, 2001).

Land trust mission statements. Obtaining land trusts' mission statements was not part of the GLTSC survey. Mission statements tend to be constructed broadly rather than narrowly to avoid limiting the land trust's legal scope, so they do not always provide specific information as to what a land trust does. However, they can be used to compare how land trusts are unique from one another. I decided to obtain all the mission statements for active land trusts in the state that were available from the organizations' websites via the Internet and analyze them as an auxiliary to the survey data.

Results and Discussion

We received responses from 92 percent of the land trusts contacted, plus a response from one land trust unknown to us at the time of the mailing, for a total of 36 responses. Twenty-five (68 percent) of the land trusts that responded currently protect land through fee simple ownership or conservation easement. These results provide the first basic analysis of private land conservation activity in Georgia. While the analysis is coarse-grained, it serves as a backdrop for the finer-grained analysis that takes place in other sections of this paper and that will inevitably occur in future research. The current state of private land conservation in Georgia is summarized in Table 2-4.

Table 2-4: The use of conservation easements and fee simple acquisition for land protection in Georgia, 2002

Tool	Number of land trusts using tool	Number of counties With protected land	Number of acres	Number of parcels
Conservation easement	23	42	45,352	141
Fee simple acquisition	14	34	19,358	84
Total	25	57	64,710	225

Almost every active land trust uses conservation easements as a conservation tool, and just over half use fee simple ownership. About one-third of the counties in the state have land trust activity. The first direct land protection activity by land trusts in Georgia occurred in 1964 with a 72-acre fee simple acquisition by the Nature Conservancy. As shown in Figure 2-3, only two land trusts (the Nature Conservancy and the Red Hills Conservation Program) were active in Georgia for the 26 years that followed the first acquisition. Between 1990 and 2002, however, the number of active land trusts grew from 2 to 25. Despite this rapid increase in the number of active land trusts, in 2002 nearly 75 percent of the total privately conserved acreage was protected by only two land trusts. Seventy-eight percent of the fee simple land is owned by the Nature Conservancy alone.

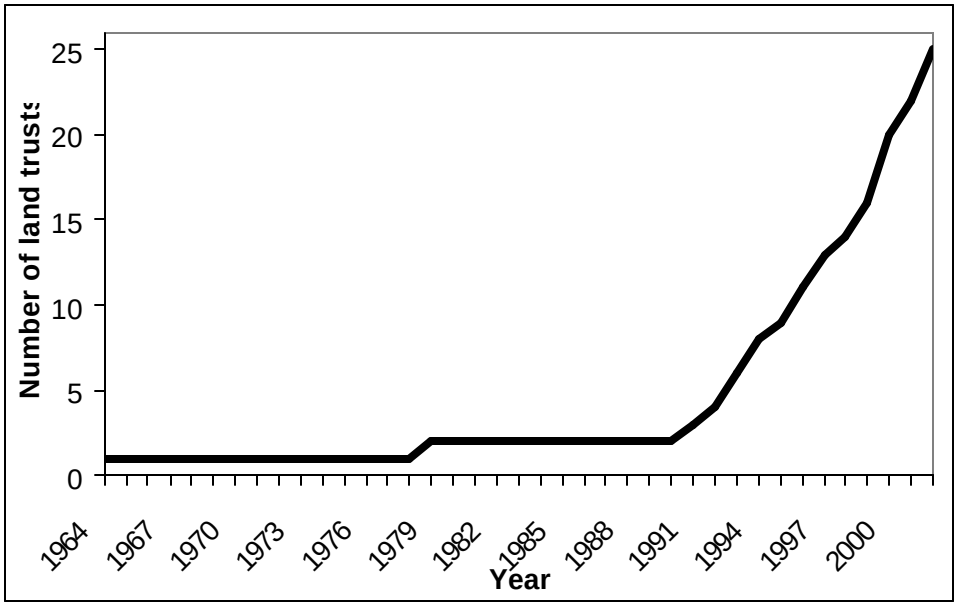


Figure 2-3: Cumulative number of active land trusts in Georgia, 1964-2002

It is worth noting that approximately one-third of the land trusts that responded to the survey are not active; they protect no land through conservation easement or fee simple

ownership. These land trusts may exist for other purposes, such as to protect land through other means or transfers, to provide public education, or to act as a temporary holder in a land exchange. They may also be working towards protecting land in the future.

While fee simple acquisition was the first tool used by land trusts for land protection in Georgia, the use of conservation easements eventually surpassed it. Land trusts did not begin using conservation easements until 1979 with a 203-acre donation to the Red Hills Conservation Program. Figures 2-4(a) and (b) show the rise in acreage and number of parcels in fee simple ownership and conservation easement, respectively. By 2002, conservation easements comprised 63 percent of the total number of parcels of conservation lands and 70 percent of the total acreage of conservation lands.

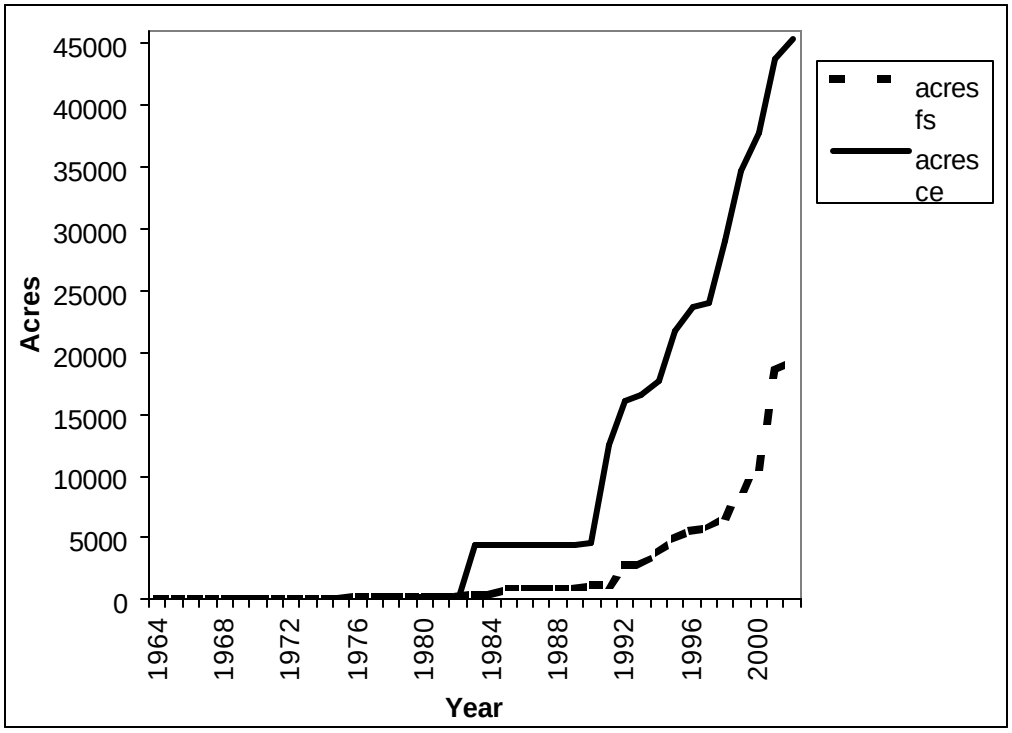


Figure 2-4(a): Cumulative acres of fee simple conservation parcels (fs) and conservation easements (ce) in Georgia, 1964-2002

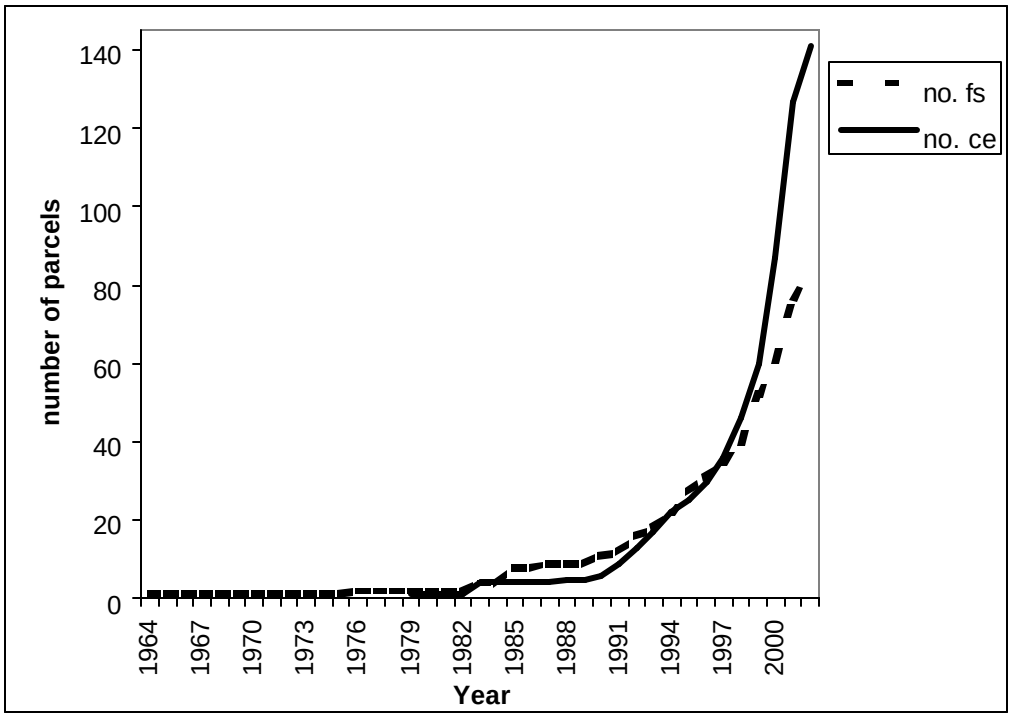


Figure 2-4(b): Cumulative number of fee simple conservation parcels (fs) and conservation easements (ce) in Georgia, 1964-2002

Private land conservation through the use of conservation easements and fee simple acquisition has grown rapidly in the past decade. The number of acres in private land conservation increased by 240 percent between 1992 and 2002, and the number of parcels conveyed in the same time span increased by 675 percent. With increasing development pressure and the advent of such programs as the Georgia Greenspace Program, activity is likely to continue to grow at a rapid rate.

There are several factors that may explain why activity in Georgia began to grow so rapidly in the early 1990s. First, the state passed the Uniform Conservation Easement Act in 1992, which officially recognized conservation easements as a legitimate tool. Second, Georgia saw a major increase in its population growth rate beginning in the 1990s. Georgia's population growth from 1990 to 2000 was 26.4 percent, compared with only 9.8 percent during the 1980s and 11.5 percent during the 1970s (Forstall, 1995).

While federal tax legislation that encouraged the donation of conservation easements was formed in the mid-1980s, resources and incentives for taking advantage of the tax benefits may have not come into existence in Georgia until the 1990s.

As land conservation through fee simple ownership and conservation easements has increased over the past 40 years, the nature of the parcels has changed in some respects. Figure 2-5 shows the change in average parcel size over time. While the average size of fee simple parcels has remained about the same, the average size of conservation easement parcels has decreased by approximately 75 percent since its highest point in 1991. In 2002, the mean size of an easement-burdened property was 338 acres; the median was 60 acres. The mean size of a fee simple parcel was 230 acres and the median was 48 acres.

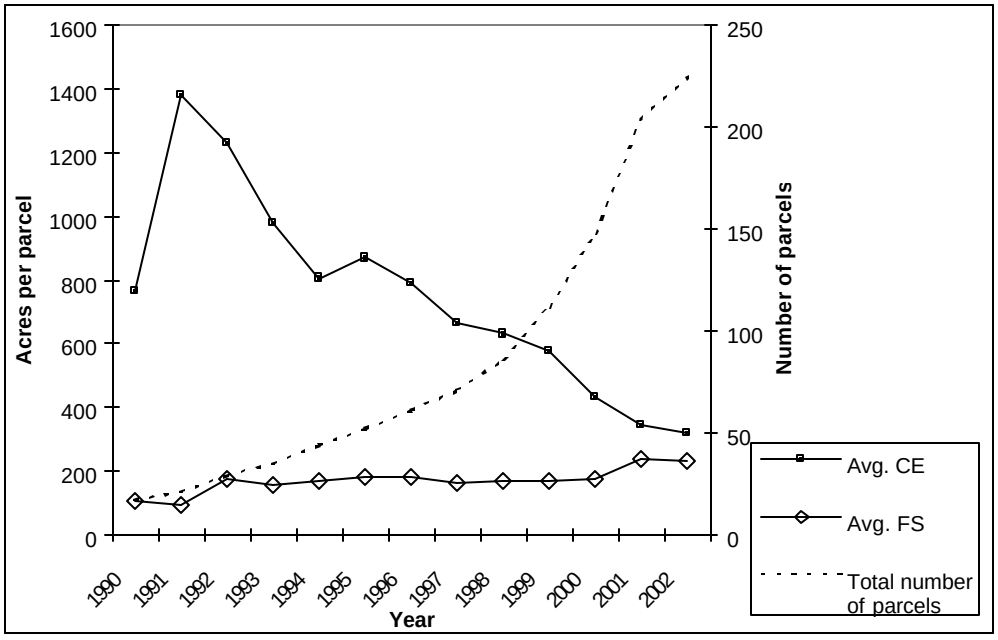


Figure 2-5: Average parcel size and cumulative number of parcels for fee simple conservation lands (FS) and conservation easements (CE) in Georgia[4]

[4] The graph starts at year 1990 because prior to that, very few easements existed. Also, the number of easements did not begin to increase steadily until 1990.

Research by Bick *et al. (*1998), which examined forestland easements around the country, found the nationwide trend to be opposite of what is seen here. They found that between 1992 and 1997, the average parcel size of a forestland easement had grown. This may be attributed to the conveyance of easements on large industrial timberland tracts.

There is a relationship between the number of parcels that fall into various land size classes and the number of acres that are derived from those land size classes. Figures 2-6(a) and (b) show these relationships for both conservation easements and fee simple parcels in Georgia. The tract size classes are the same classes used by Birch (1997) in his analysis of private forest landownership. The mid-point, 100 acres, is the minimum acreage that supports effective timber management (Birch, 1997).

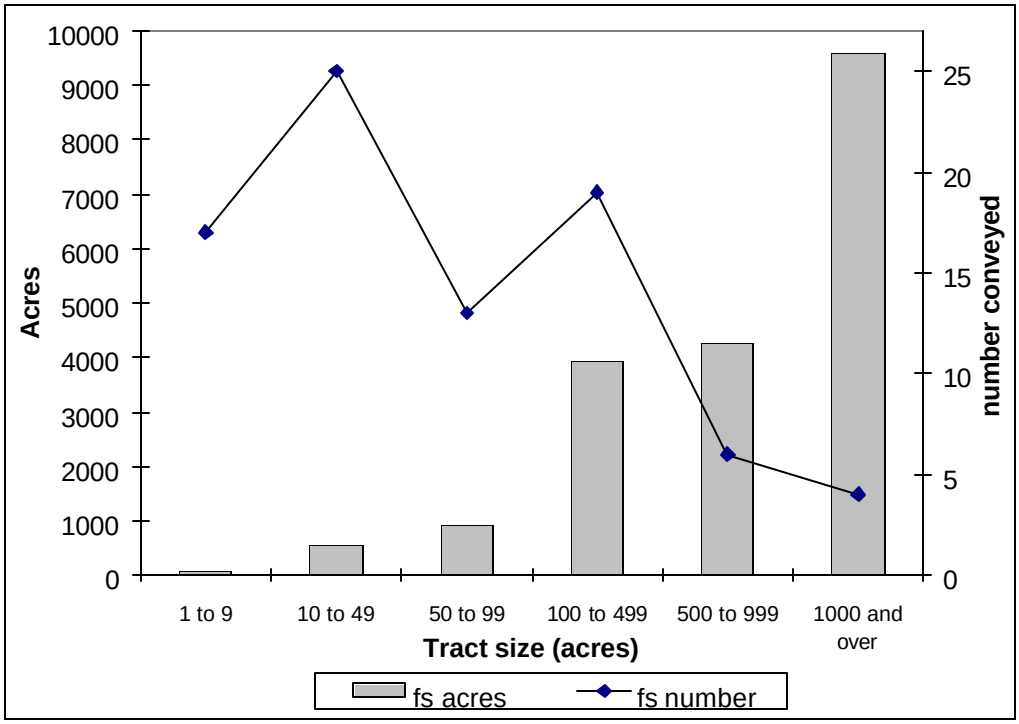


Figure 2-6(a): Acres and number of parcels of fee simple conservation land (fs) by tract size class

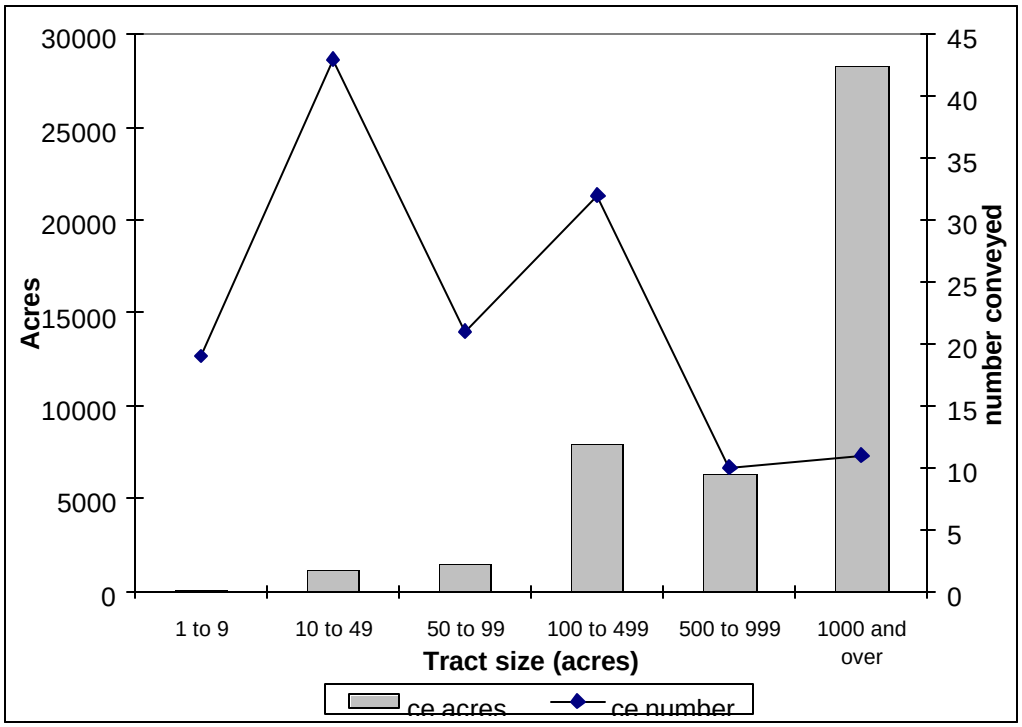


Figure 2-6(b): Acres and number of conservation easements (ce) by tract size class

From the graphs, we see that small parcels comprise the most number of parcels, while large-acre parcels comprise the most acreage. In both cases, the tract size class of 10 to 49 acres has the largest number of parcels. More than half of all the parcels fall into the tract size classes of 10 to 49 acres and 100 to 499 acres. Approximately two-thirds of the acreage in conservation easement and approximately half of the acreage in fee simple conservation land come from the largest tract size class.

Table 2-5 shows the percentage of acreage and parcels of both conservation easements and fee simple properties in each region. The Agricultural Statistics Districts of Georgia were used to define the regions (National Agricultural Statistics Service, 2002).

Table 2-5: Distribution of land trusts and acreage and parcels of private conservation land across Georgia, 2002

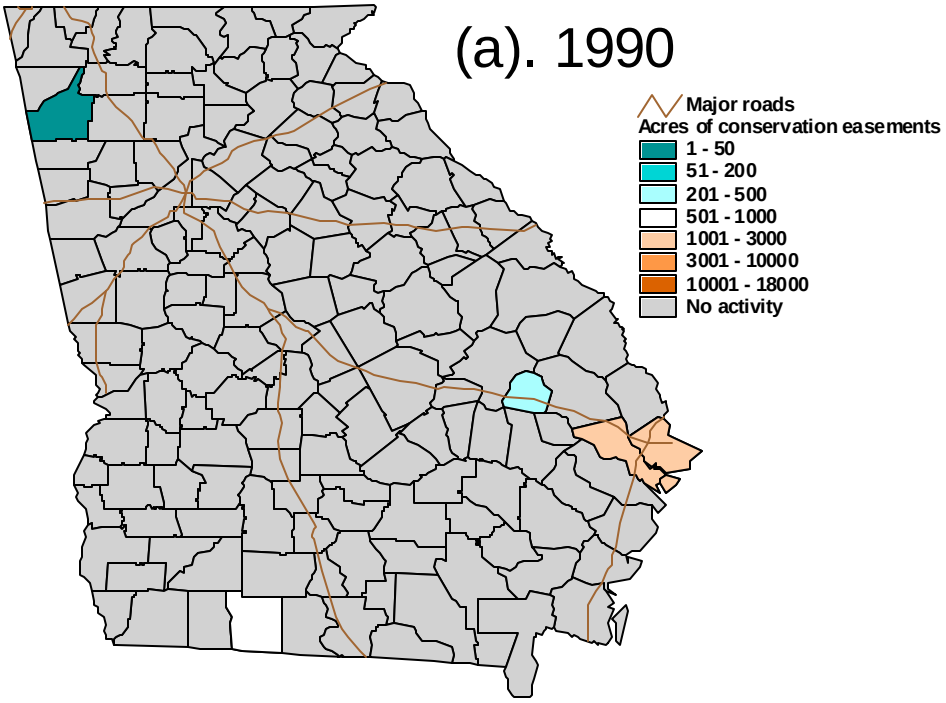
	Percent of total CEs		Percent of total FS property		Number of active land trusts*
Region	**Acreage**	**Number of parcels**	**Acreage**	**Number of parcels**	
Northwest	15%	32%	19%	34%	6
North-Central	5%	25%	7%	23%	12
Northeast	2%	9%	1%	2%	4
Total North	**22%**	**66%**	**26%**	**59%**	**16**
West-Central	3%	4%	1%	4%	6
Central	2%	3%	3%	7%	5
East-Central	1%	5%	5%	8%	3
Total Central	**5%**	**12%**	**9%**	**19%**	**11**
Southwest	43%	12%	39%	5%	2
South-Central	1%	1%	10%	6%	2
Southeast	28%	9%	17%	11%	3
Total South	**72%**	**23%**	**65%**	**22%**	**4**

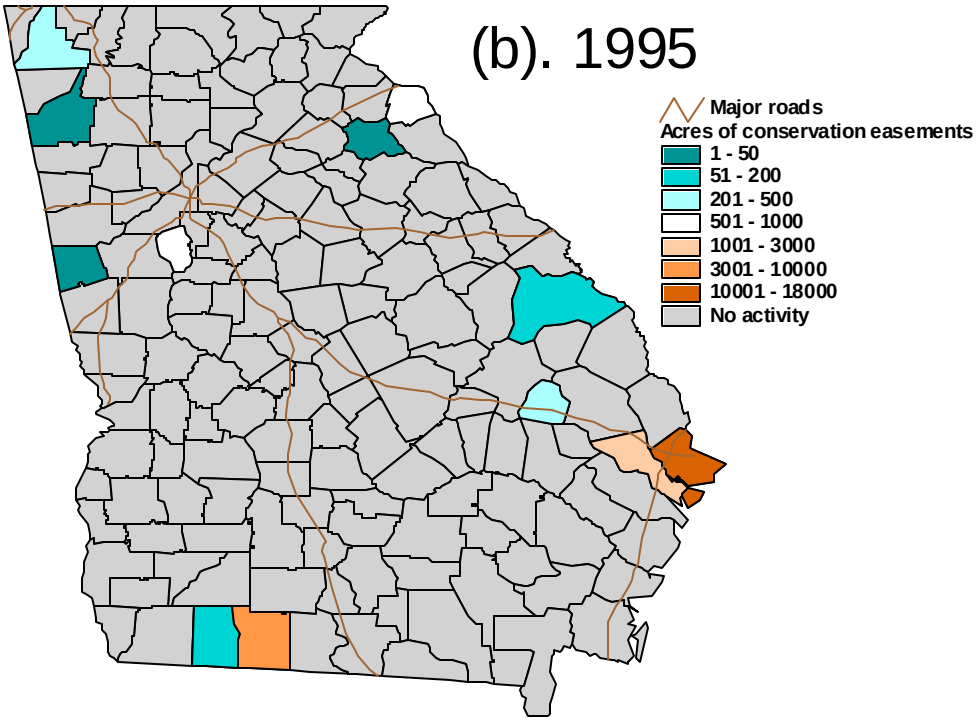
* The totals for number of land trusts do not add up because some land trusts occur in multiple regions

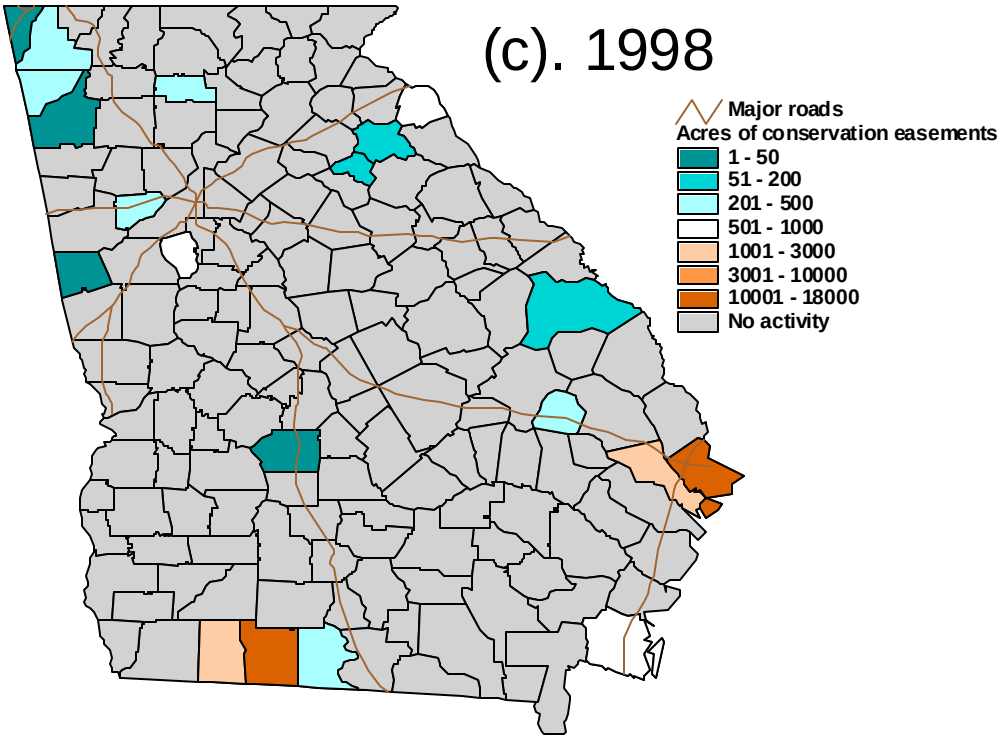
While the South has the most acreage for both tools, the North has the most number of parcels. There are more active land trusts in the North—four times as many as in the South.

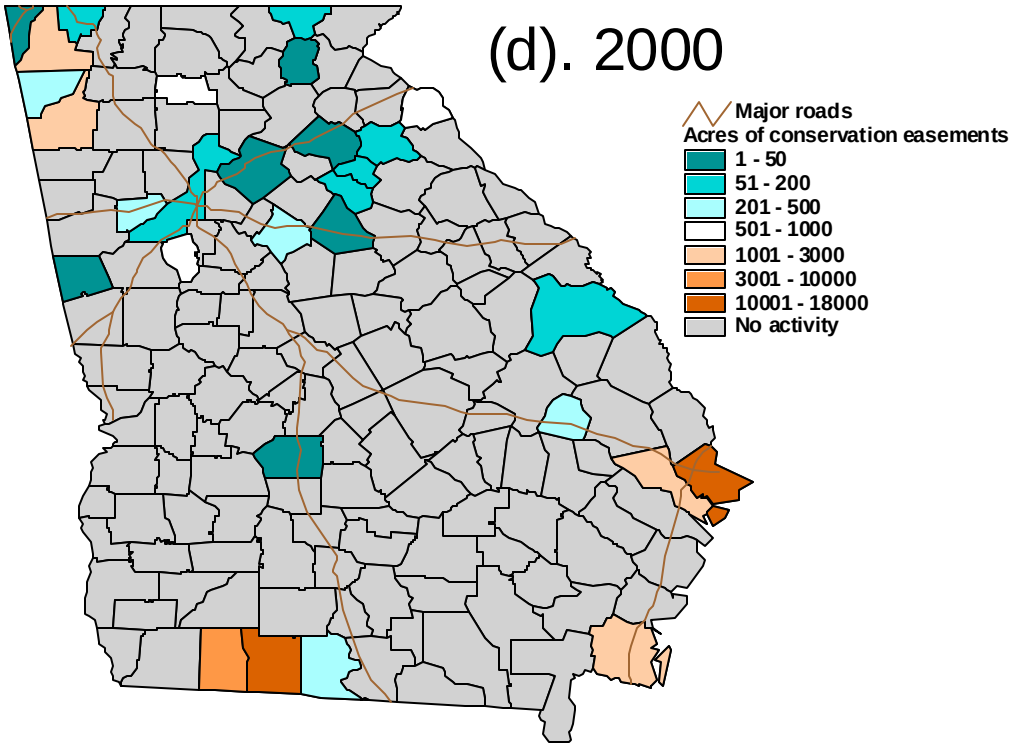
Conservation easements. Figures 2-7(a)-(e) and 2-8(a)-(e) show the progression of the use of conservation easements in Georgia. Each map includes data through the listed year (e.g. the 1995 map includes all protected land up to 1996). Although counties are a rather blunt geographic unit, they are useful in this context for several reasons. First, because this study focuses on property taxes, county boundaries are the relevant political boundaries. Second, land trusts often define their areas of operation by county. Finally, in regard to the survey, the county was the simplest unit with which to identify the locations of conservation parcels. Currently, the Georgia Department of Natural Resources is collecting and digitizing plat maps of private conservation lands from participating land trusts. The digitized information will provide the true location, size and shape of each parcel within its county.

Figures 2-7(a)-(e): Acres of conservation easements by county, 1990-2002


(a). 1990
Major roads
Acres of conservation easements
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 10000
10001 - 18000
No activity


(b). 1995
Major roads
Acres of conservation easements
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 10000
10001 - 18000
No activity


(c). 1998
Major roads
Acres of conservation easements
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 10000
10001 - 18000
No activity


(d). 2000
Major roads
Acres of conservation easements
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 10000
10001 - 18000
No activity

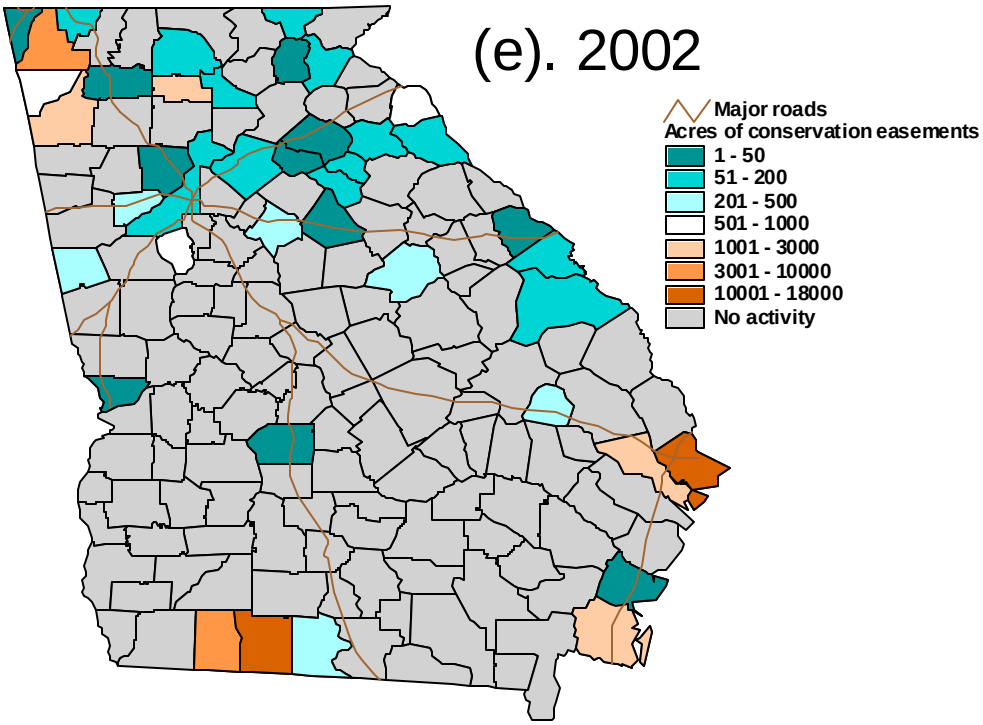
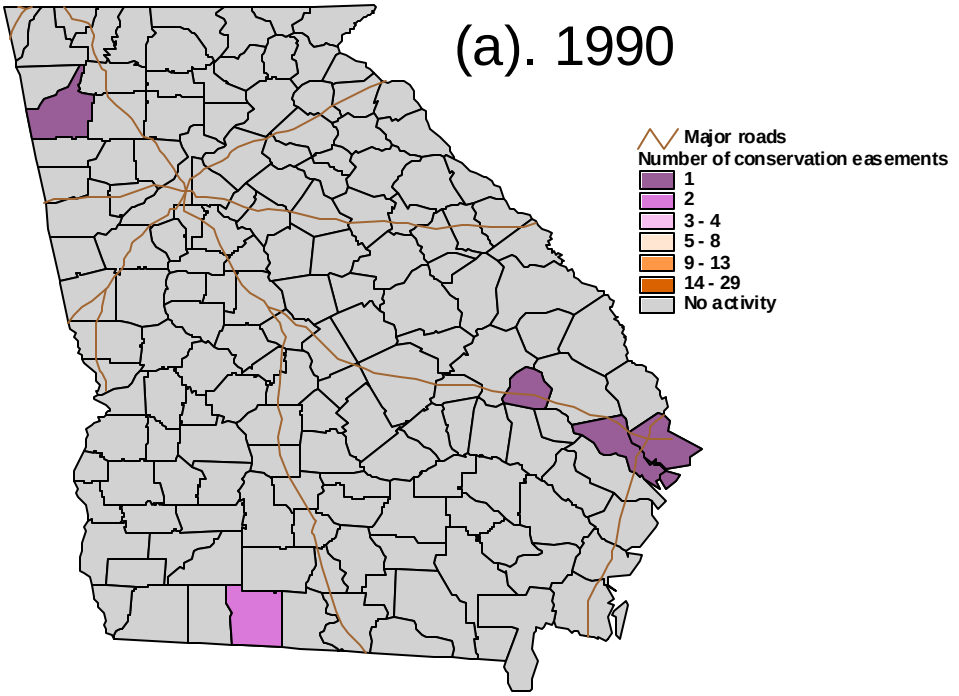
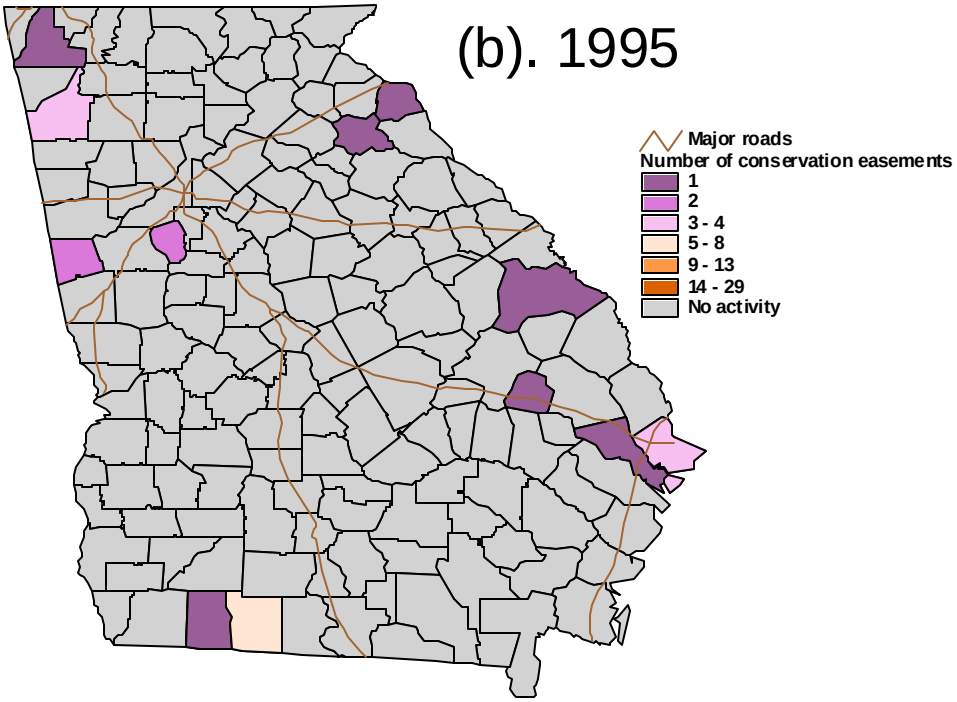
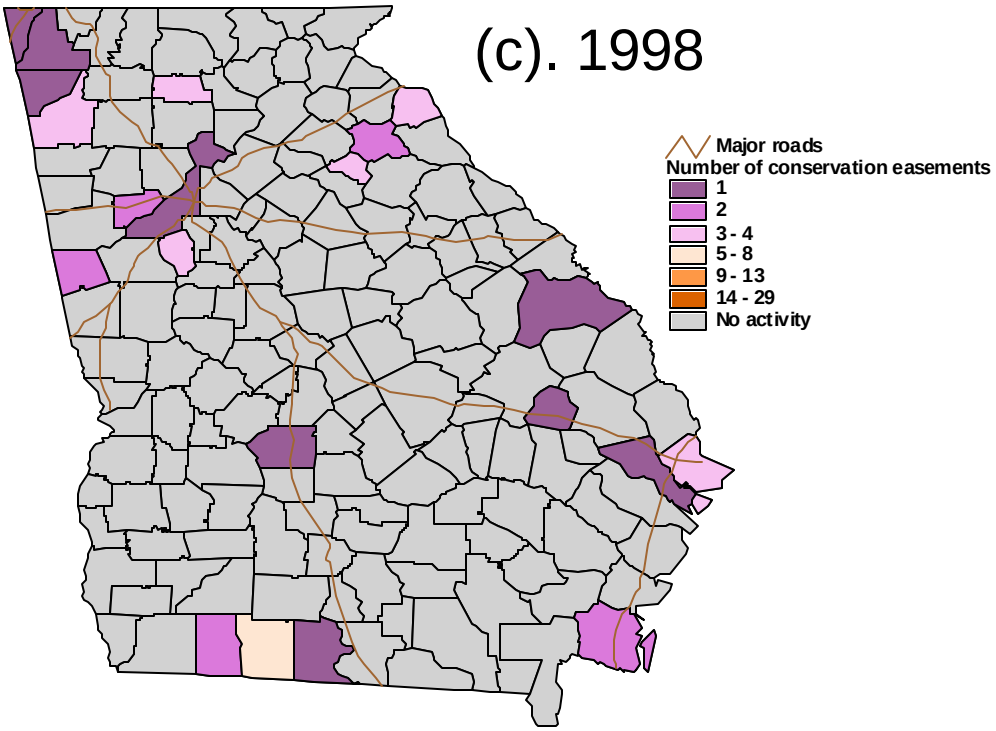
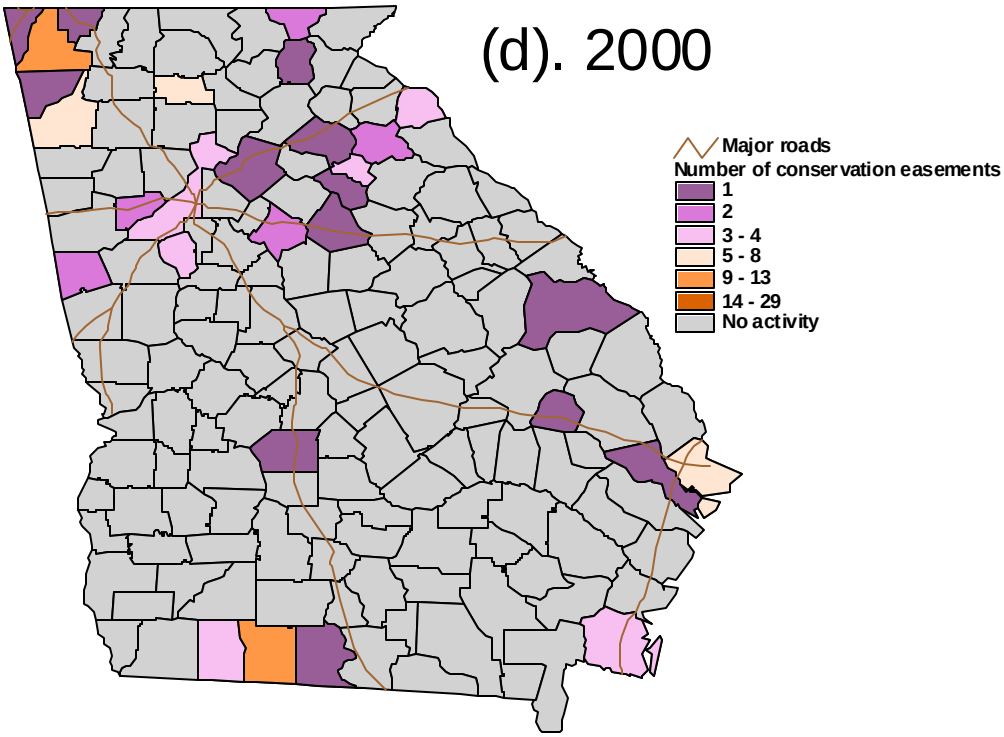

(e). 2002
Major roads
Acres of conservation easements
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 10000
10001 - 18000
No activity

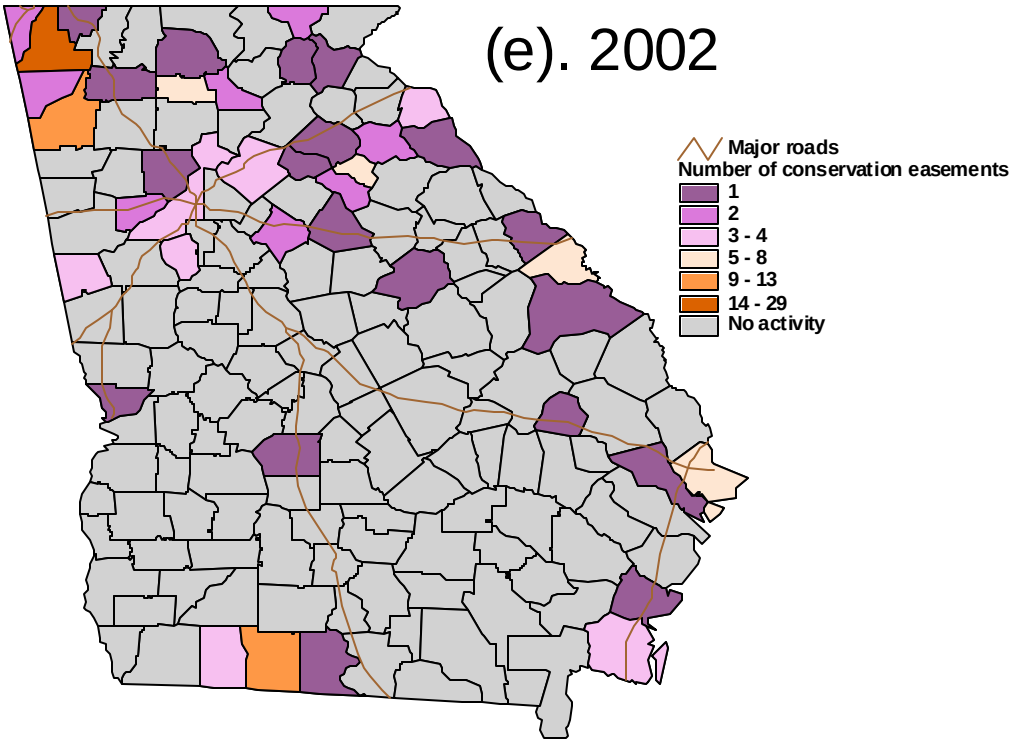
Figure 2-8(a)-(e): Number of conservation easements by county, 1990-2002


(a). 1990
Major roads
Number of conservation easements
1
2
3 - 4
5 - 8
9 - 13
14 - 29
No activity


(b). 1995
Major roads
Number of conservation easements
1
2
3 - 4
5 - 8
9 - 13
14 - 29
No activity


(c). 1998
Major roads
Number of conservation easements
1
2
3 - 4
5 - 8
9 - 13
14 - 29
No activity


(d). 2000
Major roads
Number of conservation easements
1
2
3 - 4
5 - 8
9 - 13
14 - 29
No activity


(e). 2002
Major roads
Number of conservation easements
1
2
3 - 4
5 - 8
9 - 13
14 - 29
No activity

Land trust activity is distributed around the state, occurring in every region. Also, there are some distinct patterns in this distribution. As seen in the maps above, the use of conservation easements began in the Cumberland Plateau/Valley and Ridge region, the coast, and the Red Hills region of Southwest Georgia characterized by longleaf pine. Along with the Appalachian region, these regions contain the better-known distinct natural features of the state. Towards the end of the decade, however, the use of conservation easements began to appear in many North Georgia counties, particularly in rapidly developing areas. While the actual number of acres under conservation easement in this area remains low compared to the Northwest, Southwest, and coastal areas, many counties saw activity where there had been none before. As seen in the maps and in Table 2-5, in terms of simple occurrence, there is now more activity in North Georgia. In terms of acreage, though, the southern regions of the Red Hills and the coast contain the majority of the acreage under easement. Central and South-central Georgia have seen very few easements.

These data suggest a pattern of use that has developed in the last 10 years. Protected parcels have on average become smaller, and rapidly developing areas, in addition to distinct natural features, are attracting their use. There may be a trend towards an increase in their use in urban and suburban contexts. The data suggest that development pressure and popular conservation values (mountains, coastline, endangered species) may result in easement use.

Two other factors may also contribute to the patterns of easement use. First, it is commonly recognized that easement donations tend to be made by wealthier landowners. Wealthy landowners have the ability to not only sacrifice the value of their land, but to

pay for lawyers and appraisers to complete the process. They also receive more benefits from the federal income tax deductions provided for charitable contributions than would a land-rich, cash-poor landowner (Daniels, 2000). It is assumed in this analysis that most, if not all, easement donors seek an income tax deduction. A t-test for presence and absence of conservation easements by county had the following results:

Table 2-6: Significance test results for demographic data and presence/absence of conservation easements

	Counties with conservation easements	Counties without conservation easements	P-value
Average population change, 1990-2000	28.3%	20.7%	0.05
Average total population, 2000	114,498	30,307	0.01
Average per capita income, 2000	23,585	20,425	0.0025

This suggests that the patterns that we see in the use of easements relate to population size and growth rate and wealth of the population; more specifically, counties with conservation easements in 2000 tended to have higher populations, higher population growth, and higher per capita income than counties with no conservation easements.

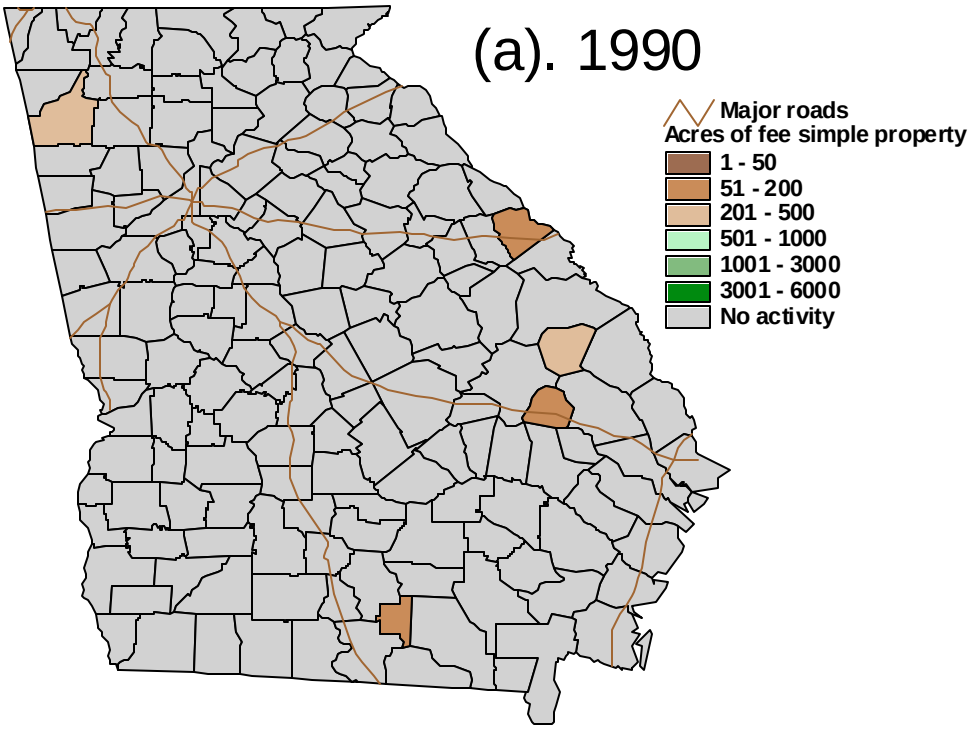
The second factor is that due to the structure of the tax benefits received for the donation of a conservation easement (value of unencumbered property – value of encumbered property = value of donation), there is more incentive for a donor to wait until his or her property values are high as a result of development pressure before he or she donates an easement. If this is the case, then the efficiency with which property is protected (at least from a federal standpoint) decreases. Also, such a problem could slow proactive land-planning efforts by private or public entities.

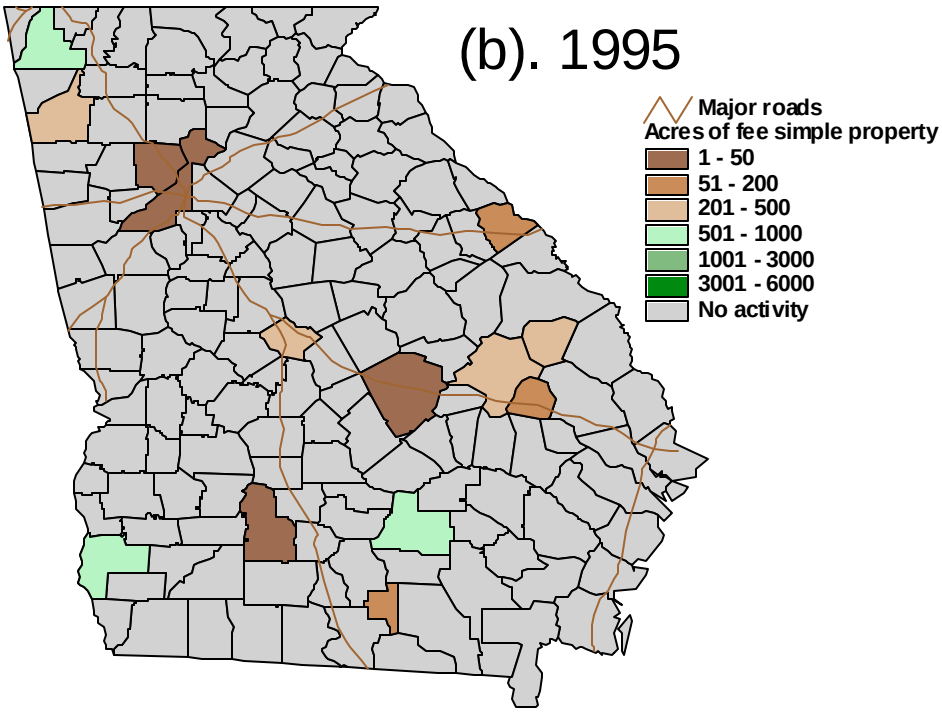
It is important to consider how influential the income tax deduction laws really are on the use of conservation easements. There are conflicting messages from the land trust grantor/grantee community regarding donor motivations. On the one hand, surveys suggest that easement donors make donations not for financial benefit but out of stewardship (Elconin and Luzadis, 1997). On the other hand, the land trust community is regularly advocating for more extensive income tax benefits for donations. Questions regarding the effectiveness of current tax incentives and the need for tax incentives that benefit targeted populations of landowners, such as those with low incomes, should be addressed.

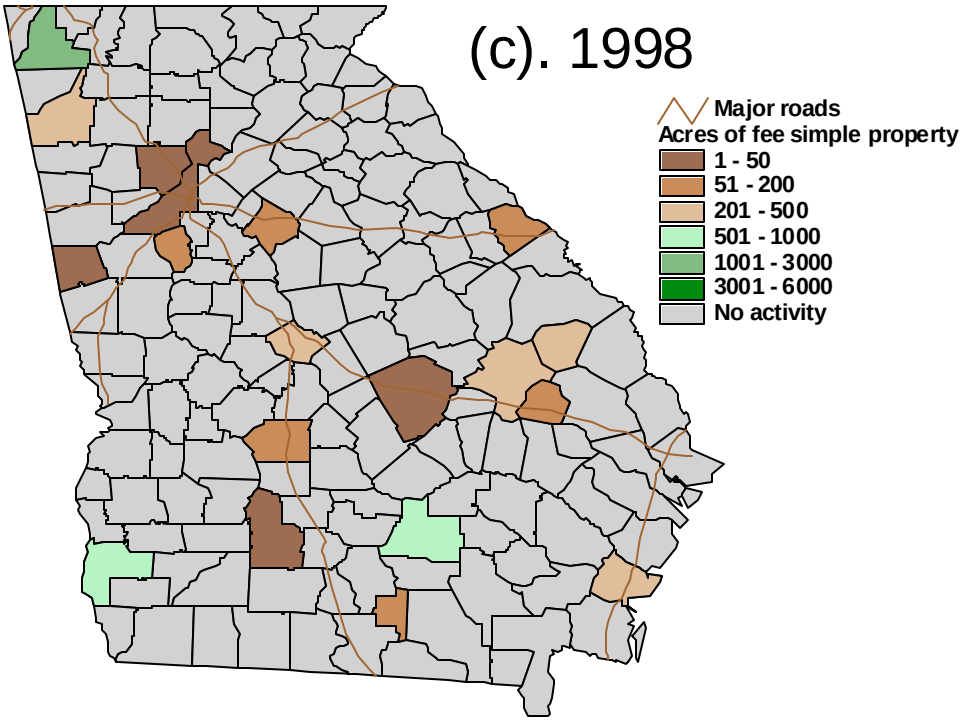
There is no guaranteed means of ensuring that only conservation easements of worthy conservation value receive income tax benefits. The discretion of land trusts in choosing a mission and accepting donations of easements is a critical component. As Brenneman states, "the integrity of the land-saving movement rests upon its ability to understand and convey its charitable purpose" (1982). The IRS provides regulations that suggest types of conservation easements that would be suitable as a charitable donation (IRS Treasury Regulations, Sec. 1.170A-14). Ultimately, however, it is up to the individual land trusts to truly act in the interest of the public good.

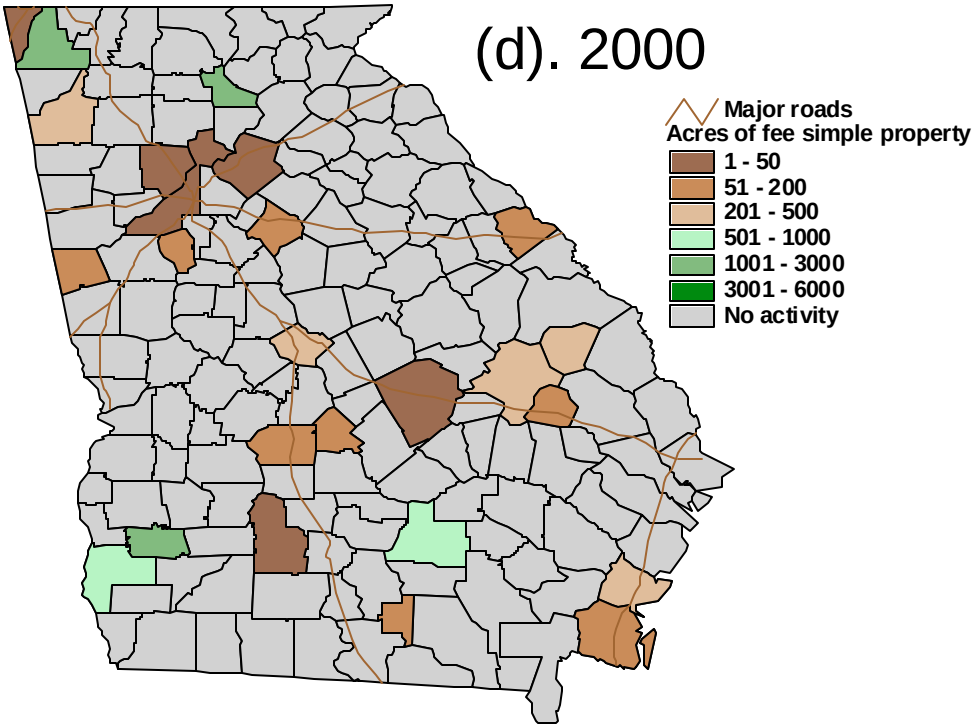
Fee simple acquisition. Figures 2-9(a)-(e) and 2-10(a)-(e) show the progression of the use of fee simple acquisition for private land protection in Georgia. Fee simple acquisition of conservation land protects about half as much acreage as do conservation easements. The regional distributions of the two tools share some common overall patterns. As Table 2-5 shows, both tools have the largest proportion of protected acreage in South Georgia, the next largest in North Georgia, and the smallest in central Georgia.

Figure 2-9(a)-(e): Acres of fee simple conservation land by county, 1990-2002


(a). 1990
Major roads
Acres of fee simple property
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 6000
No activity


(b). 1995
Major roads
Acres of fee simple property
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 6000
No activity


(c). 1998
Major roads
Acres of fee simple property
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 6000
No activity


(d). 2000
Major roads
Acres of fee simple property
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 6000
No activity

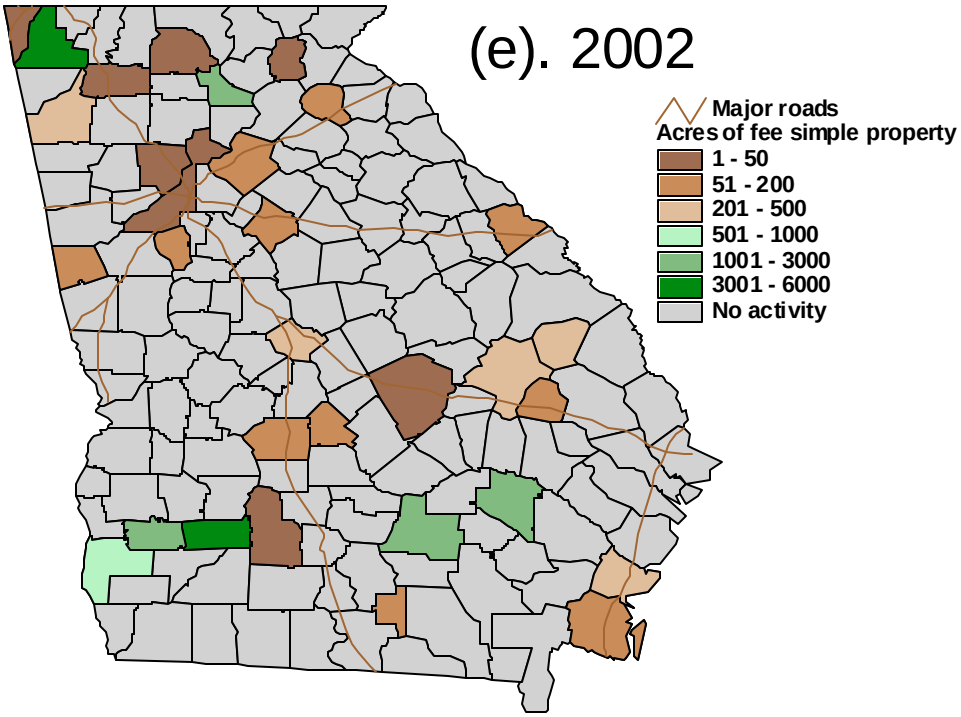
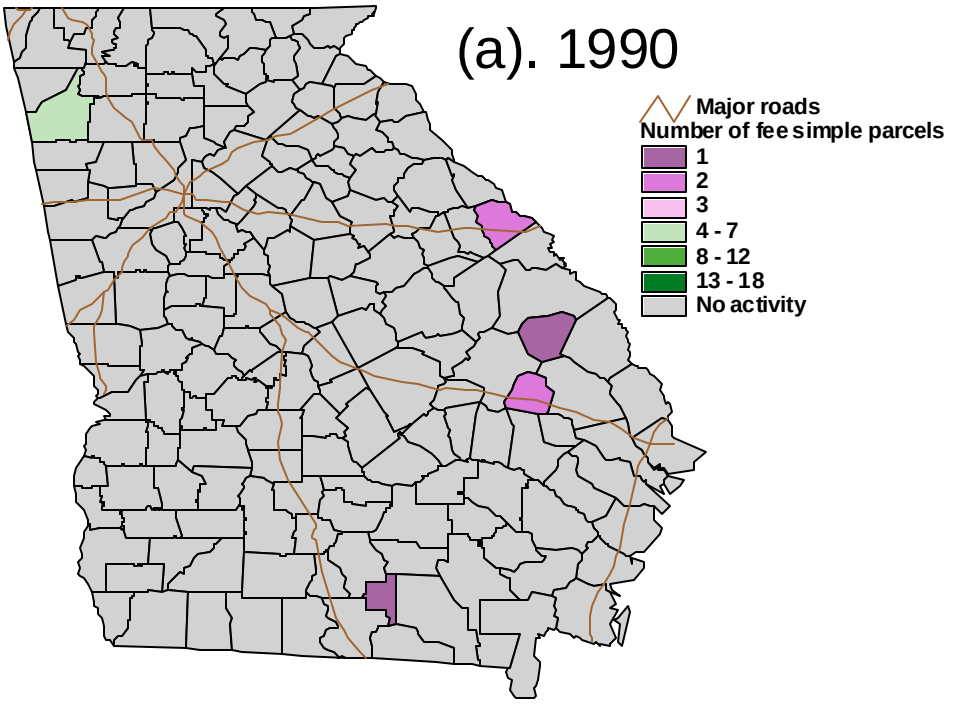
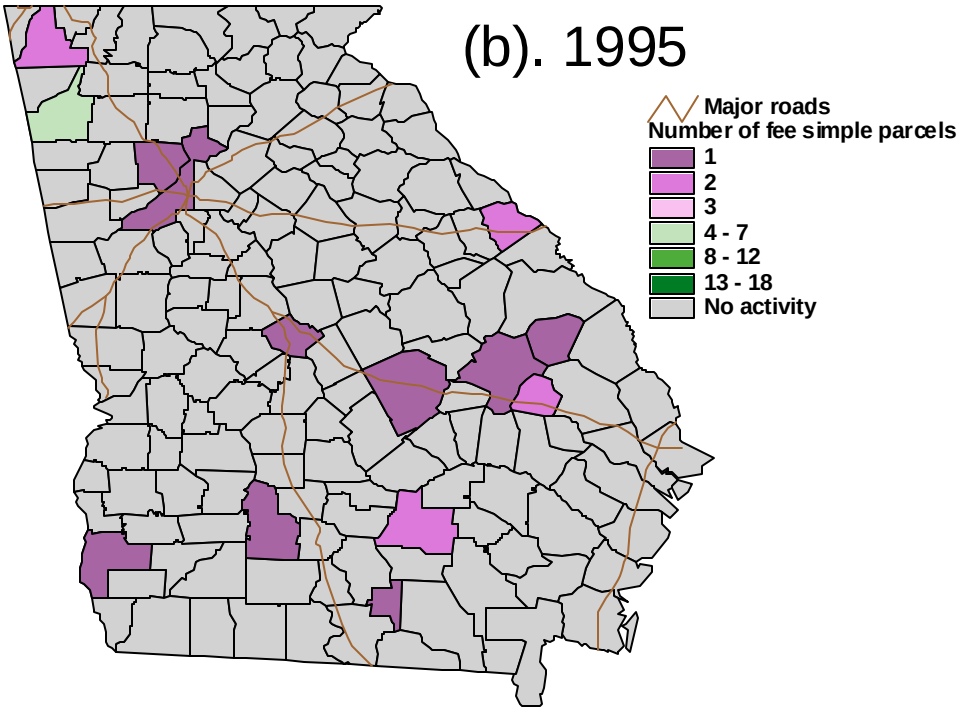
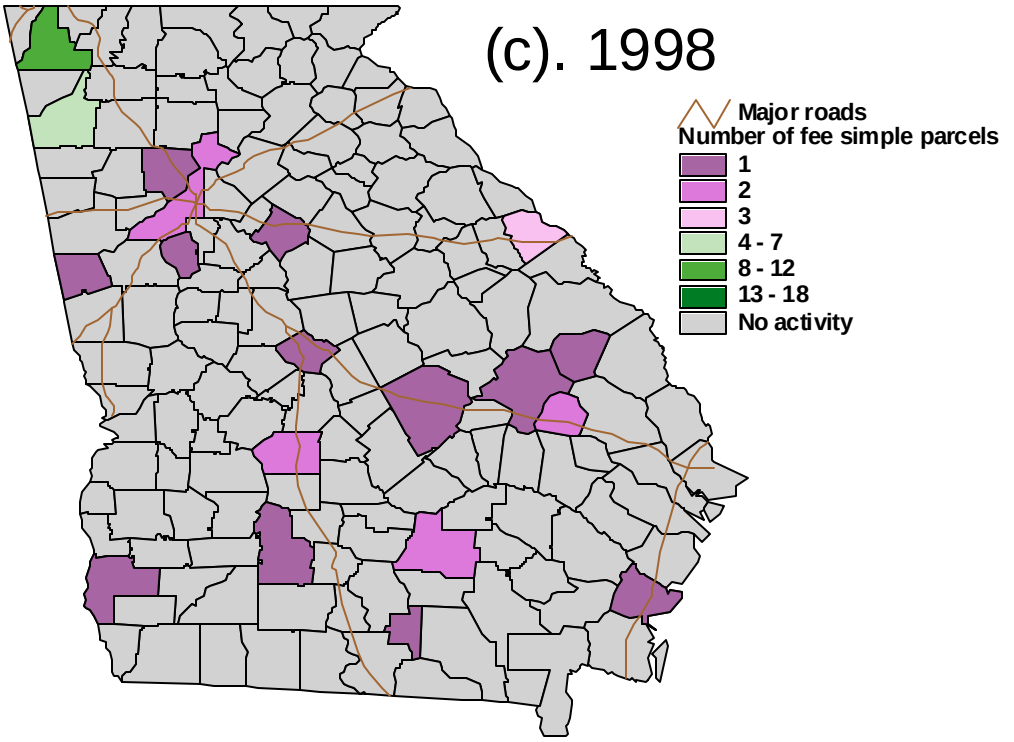
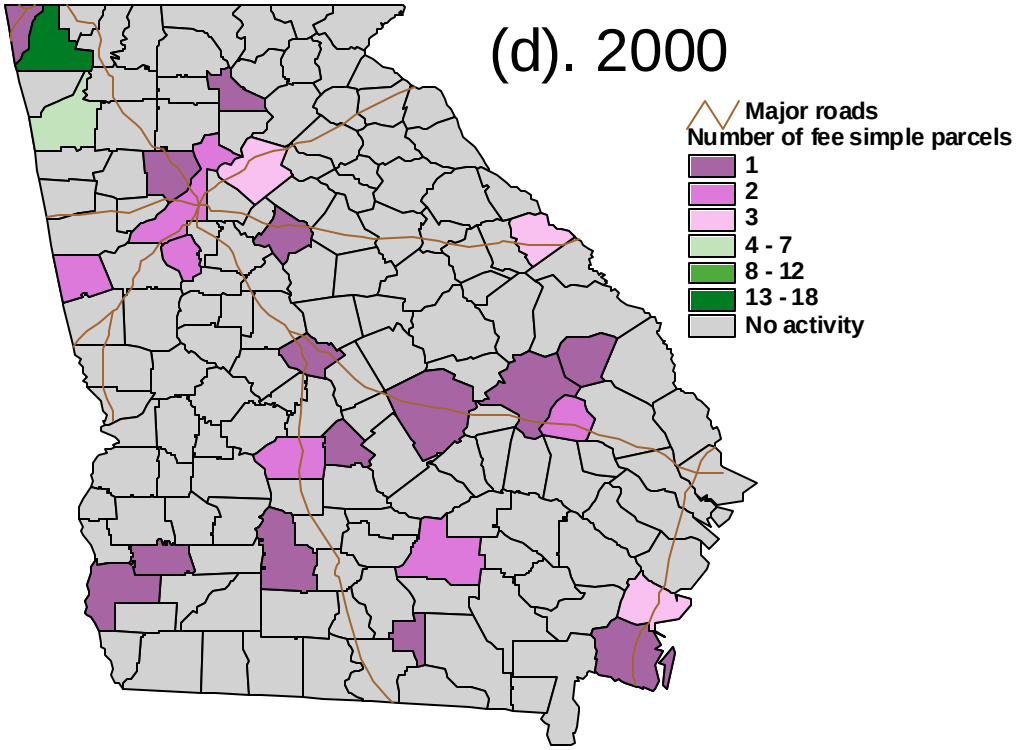

(e). 2002
Major roads
Acres of fee simple property
1 - 50
51 - 200
201 - 500
501 - 1000
1001 - 3000
3001 - 6000
No activity

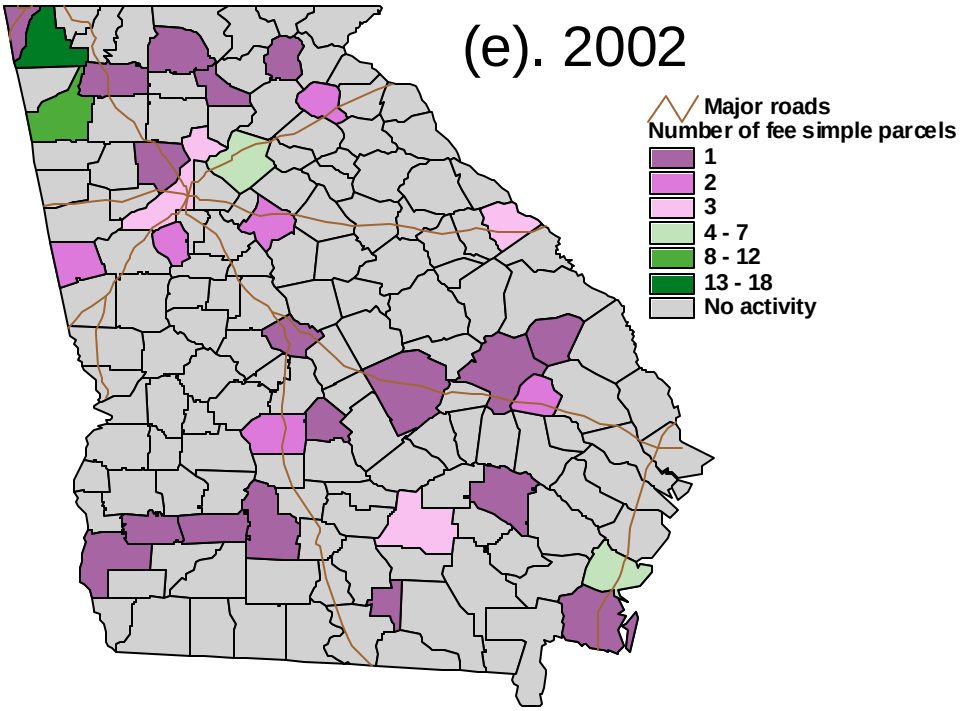
Figure 2-10(a)-(e): Number of fee simple conservation parcels by county, 1990-2002


(a). 1990
Major roads
Number of fee simple parcels
1
2
3
4 - 7
8 - 12
13 - 18
No activity


(b). 1995
Major roads
Number of fee simple parcels
1
2
3
4 - 7
8 - 12
13 - 18
No activity


(c). 1998
Major roads
Number of fee simple parcels
1
2
3
4 - 7
8 - 12
13 - 18
No activity


(d). 2000
Major roads
Number of fee simple parcels
1
2
3
4 - 7
8 - 12
13 - 18
No activity


(e). 2002
Major roads
Number of fee simple parcels
1
2
3
4 - 7
8 - 12
13 - 18
No activity

The largest proportion of the number of parcels for both tools is reversed, with the largest percentage being in the North, the next largest in the South, and the smallest in central Georgia.

Fee simple conservation lands may be acquired through donation or purchase, and their value may be based on many of the same factors used to value conservation easements, including unique natural features or threat of development. The Georgia Greenspace Program is certainly an example of this in the governmental context. However, the same t-tests that were conducted for presence and absence of conservation easements were conducted for the presence and absence of fee simple land, and no statistically significant differences were found for the factors of population growth, total population, and per capita income for counties with and without fee simple land (Table 2-7). It appears that fee simple acquisition may not respond as well to development pressure as do conservation easements.

Table 2-7: Significance test results for demographic data and presence/absence of fee simple conservation lands

	Counties with fee simple conservation land	Counties without fee simple conservation land	P-value
Average population change, 1990-2000	26.3%	21.7%	0.10 (not statistically significant)
Average total population, 2000	99,550	39,377	0.10 (not statistically significant)
Average per capita income, 2000	22,777	20,828	0.10 (not statistically significant)

In certain situations, fee simple acquisition is considered a stronger tool than conservation easements in terms of protecting the land (Van Patter *et al.*, 1990; Press *et al.*, 1996). That improvement comes at a greater price (at least in the short term). These immediate, short-term costs may influence the distribution and use of fee simple acquisition and affect its overall popularity as compared to conservation easements.

This first survey did not obtain data on whether each property was a donation or purchase. This information would help indicate whether one tool is used in a more proactive way than another; that is, do land trusts own these properties or partial interests because they actively sought them out, or because they were approached by the landowner with a donation? Knowledge of this would indicate to what extent private land protection efforts are planned or conducted on an ad hoc basis.

Other trends in land trust activity. The nature of land trust activity varies widely. Most land trusts currently do not have a wide geographic scope of operation in Georgia—44 percent are active in only one county (Figure 2-11). However, active land trusts cannot be categorized on this factor alone.

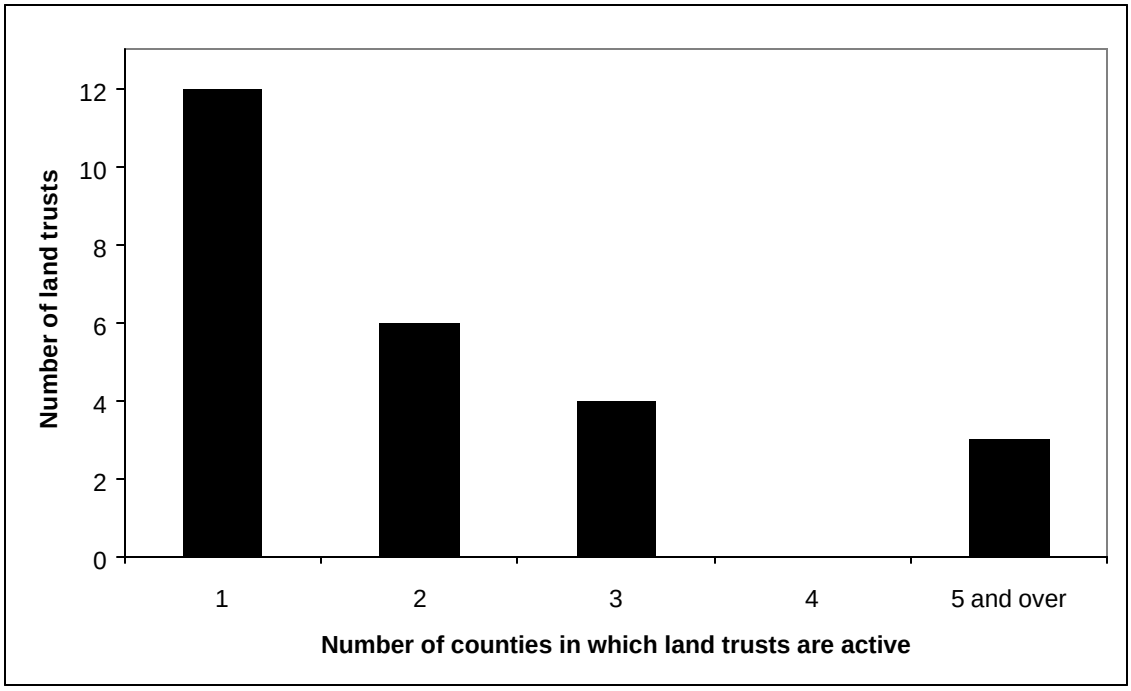


Figure 2-11: Total number of counties in which individual land trusts operate in Georgia

Figure 2-12 shows the types of land trusts operating in Georgia based on membership and/or overall geographic scope, and their relative activity based on acres

protected. The majority of land trusts are local or regional entities, focusing on a particular community, habitat, viewshed, watershed, or other human/land characteristic that may be limited geographically. The majority of the acreage, however, has been protected by national and southeast regional organizations.

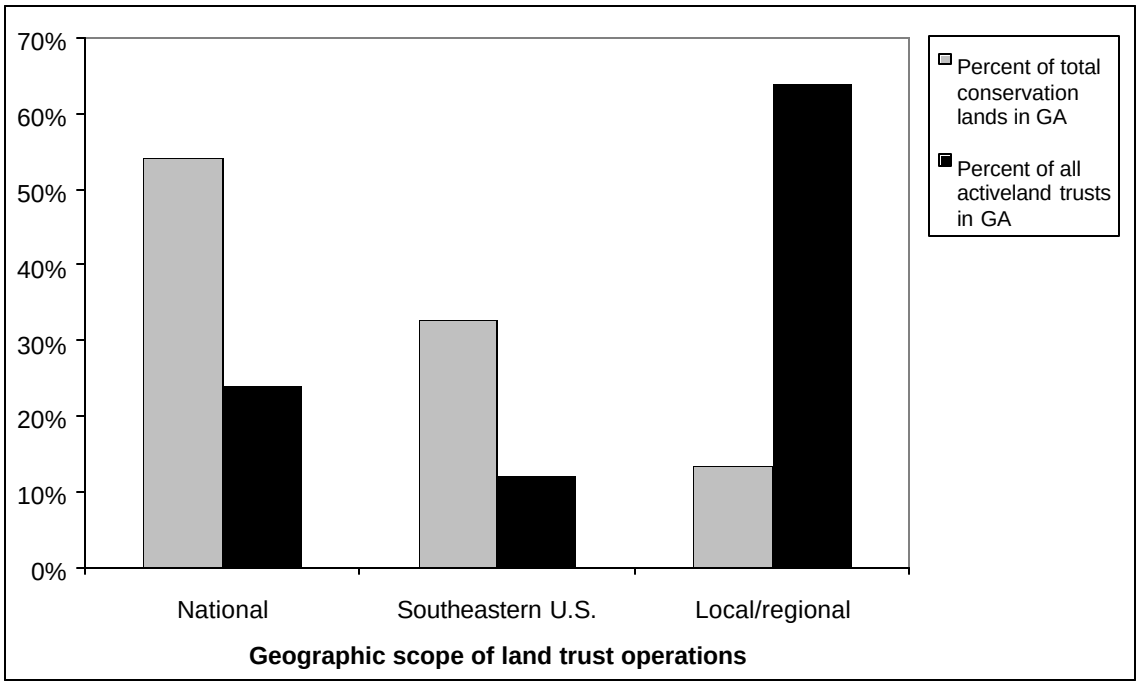


Figure 2-12: Geographic scope of active land trusts and land conservation activity in Georgia.

The data in figures 2-11 and 2-12 raise questions about the goals of land trusts and whether their success is defined by protecting land within a region or community, by protecting land with particular conservation values (e.g., endangered species habitat), or by the protection of some combination of the two (e.g., watershed protection). The resulting geographic scope of a land trust can impact its financial support base and the nature of its political support. It may also influence the way in which land trusts coordinate land protection efforts with each other and with local, state, and federal government.

Why are there so many local and regional land trusts protecting such a small percentage of the total protected acreage in Georgia? One factor is time. Local and regional land trusts have only been active in Georgia since 1991, and half of the active local and regional land trusts have only become active in the last four years. National and Southeast regional groups have been active in the state for much longer. The Nature Conservancy has been active in the state since 1964, and the Red Hills Conservation Program became active in 1979.

As mentioned above, a land trust with a small geographic scope is going to have a smaller potential land base from which to acquire land and a smaller financial base as well. However, the growth of land trust activity in Georgia appears to be moving behind but parallel to the growth that has occurred in many other parts of the country. If Georgia follows suit, then the local and regional land trusts here may continue to acquire acreage at a rapid rate. In addition to increasing protected acreage among existing land trusts in the future, new land trusts may form as well. It is unclear at this time the extent to which land trusts compete with or complement one another in their land protection efforts; as new land trusts form, this issue will become difficult to ignore.

Land trusts protect a wide array of conservation values. The survey data provide some rudimental information on the types of resources protected by private land conservation efforts. In the survey, we asked for the dominant or notable land use type for each parcel.

In summarizing this type of data, the site-specific values of conservation properties are being neglected for the sake of simplification. Tables 2-8(a) and (b) illustrate the broad types of conservation values protected by private land conservation.

Table 2-8(a): Conservation purposes of private conservation lands—major categories

Conservation category	Percent out of total private conservation acreage
Longleaf pine/quail plantations	26
Forest unspecified	18
Coastal/barrier island habitat	13
Wetlands	13
No data	12
Minor categories (see table 2-8(b))	5
Forest/creek/wetland	5
Old-growth forest	3
Forest/rare species	3
Forest/agriculture combined	2

Table 2-8(b): Conservation purposes of private conservation lands—minor categories

Conservation category	Percent out of minor category (3,113 acres)
Wildlife habitat/recreation	28
Public forest/greenspace	28
Agriculture	24
Archaeological	12
Environmental education	4
Geology	4
Urban open space	<1

Over half of the total acreage is based in a forest habitat, though varying elements of that habitat are the target for conservation. This is similar to findings by Bick *et al.* (1998), which showed that in a national sample of conservation easements, forestland was the most commonly protected land use type. Of the acreage under conservation easement in their sample, 64 percent was forestland.

A surprising finding is that agriculture is the primary conservation value for less than 3 percent of the total acreage.[5] Conservation easements are often touted as

[5] This is not to say that only 3 percent of the protected properties have agricultural activity on them. For example, many of the longleaf pine/quail plantation lands have portions of the property in agriculture. This data simply indicates that agriculture is not commonly cited as the primary or notable land use.

protecting traditional ways of life or the "family farm." Here it is evident, however, that agriculture is not by itself a primary land use among easement properties. It should also be noted that public access ("public forest/greenspace") is not a commonly cited land use. Figure 2-13 shows the national data for local and regional land trusts in 2000. The national data indicates the specific types of land that the responding land trusts indicated they are primarily involved in protecting (LTA, 2001). Though it is significantly different from the parcel-specific information that we collected, it can provide a frame of reference of land trust activity elsewhere in the county.

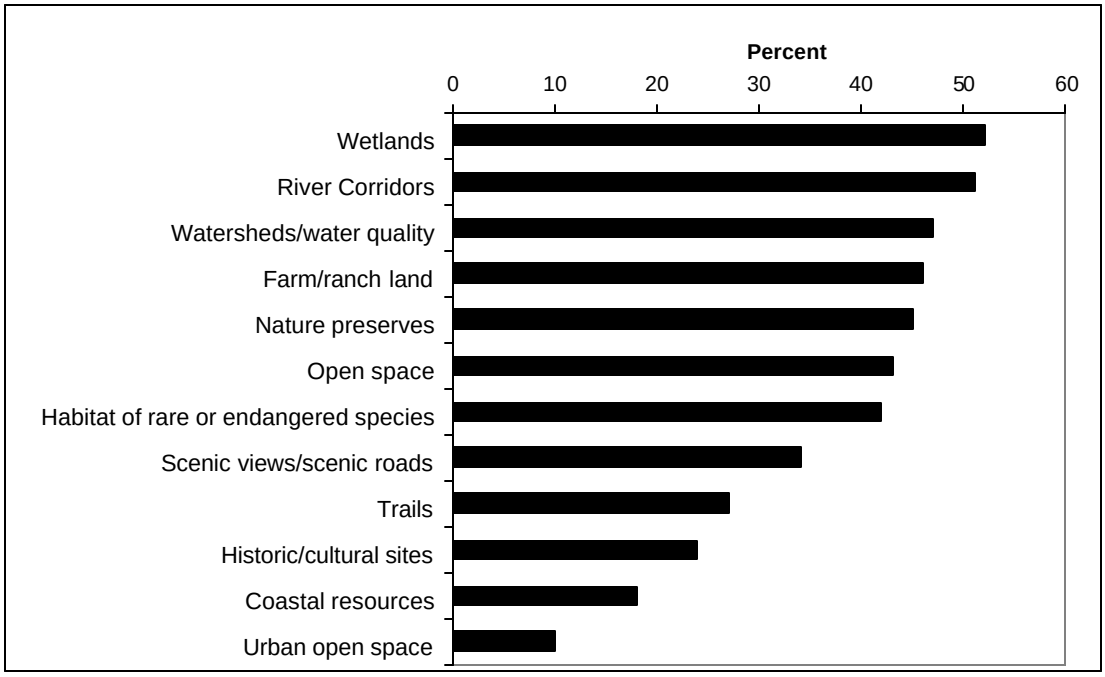


Figure 2-13: Types of land protected by local/regional land trusts nationwide, 2000 (LTA, 2001)

Transfers and other land protection methods.[6] The survey did not obtain data on acres transferred to another entity (non-profit or governmental) or protected by other

[6] There was a discrepancy in the data reported in the LTA 2000 Land Trust Census. At the time that we were developing our survey, the LTA Census data reported 769 acres transferred or protected by other means in Georgia. However, when writing the conclusions for this research, I found that the Census listed 4,024 acres transferred or protected by other means in Georgia. Assuming the most recent data is correct (the state totals add up correctly with the new figures), the acreage in this category is almost equal to that protected through fee simple ownership, making it a significant category that should be included in the next

means (holding deed restrictions, acquiring mineral rights or negotiating for acquisition by other organizations or agencies). At the time the survey was designed, these land-protection methods comprised only 2 percent of the total protected acreage in Georgia (LTA, 2001). For that reason, and for reasons of simplicity (given that this survey was a first attempt by the GLTSC and that my research objectives focused on property tax issues), we did not include it as a category in the survey. However, nationwide, 2.4 million acres have been transferred to another entity or protected by other means by local and regional land trusts; that is double the acreage owned by land trusts fee simple, and is almost equal to the acreage protected by conservation easement.

This information raises two issues. First, it is not clear why, according to LTA's 2000 Land Trust Census, Georgia's percent of transferred acreage and acreage protected by other means is relatively small compared to the nationwide percentage (11 percent versus 39 percent, respectively). Second, the next GLTSC land trust survey should account for acres transferred or protected by other means by Georgia land trusts.

Land trust mission statements. I obtained the mission statements for 17 of the 25 active land trusts identified in the survey. Twelve of the mission statements were from local and regional land trusts, one was from a southeastern land trust, and four were from national land trusts. There are two facets to the mission statements: the conservation values and the geographic scope. Based on the mission statements, land trusts aim to protect one or more conservation values generally or one or more public values that are associated with a geographic area or physical entity.

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census. The numbers used in the Methods section refer to the initial numbers used; the numbers used in the discussion here refer to the most updated figures.

Geographic scope. Except for the national land trusts (the Nature Conservancy, Ducks Unlimited, the Archaeological Conservancy, and the Wildlife Land Trust), all the land trusts' mission statements identify a geographic region in which they operate. Table 2-9 summarizes the geographic areas or entities defined and targeted by the local and regional land trusts in the sample.

Table 2-9: Geographic scope of local and regional land trusts in Georgia as defined in mission statements

Geographic terms defining scope of operation	Number of land trusts
Physiographic region	2
State	2
Watershed/river	4
County/city	3
Island	1
Total in sample	12

While governments are often limited by political boundaries that have been created without regard landscape-level environmental questions, land trusts have the flexibility to define their scope of operation with more environmentally relevant boundaries (such as a watershed). The land trusts that do define their operations by political boundaries (county or city) are operating in areas of particularly dense population and/or rapid population growth relative to most of the state.

Targeted conservation values. Most of the mission statements I obtained have generic objectives; that is, they do not identify a specific conservation value that is their focus. Rather, they include several specific values or no specific values, such as "open and greenspace…with environmental, historical, and archaeological value" or "preservation of the natural resources and scenic beauty." Table 2-10 summarizes the

overall conservation values identified in the mission statements of all the land trusts in the sample.

Table 2-10: Conservation values of land trusts in Georgia as defined in mission statements

Conservation values defined	Local/regional land trusts	Southeastern land trusts	National land trusts
Generic (various and/or non-specific)	10	1	
Wildlife and habitat			3
Archaeological			1
Affordable housing/ neighborhood revitalization	1		
Open space	1		
Total	12	1	4

It appears to be common for local and regional land trusts to maintain generic conservation values in their mission statements. This may be due to the fact that they are otherwise limited by their geographic scope. National land trusts, on the other hand, tend to limit their scope by defining specific conservation values that they target. Table 2-11 summarizes the types and frequency of terms that appear in the generic statements found among the 11 land trust mission statements with generic terms (comprised of one southeastern and 10 local/regional land trusts).

Over half of the land trusts with generic terms identify scenic, natural, and historic values as conservation values that they protect as part of their mission. The term "natural" can have broad application, which may be one reason why it is used so commonly. Its meaning may be interchangeable with the meanings for "natural resources" and "environmental" values. Also, as seen in the table, scenic and historic values are important to many of Georgia's land trusts. These types of values tend to have more social meaning or implications for "quality of life" than they do "ecological" value.

Table 2-11: Conservation values found among generic mission statements of 11 land trusts in Georgia

Conservation value	Number of occurrences
Scenic	7
Natural	6
Historic	6
Water quality	3
Wildlife habitat	3
Recreational	2
Educational	2
Cultural	2
Natural resources	2
Open/green space	2
Environmental	1
Archaeological	1

Overall, land trusts can be distinguished from one another by the conservation values they aim to protect, by their specific geographic scope, or by a combination of the two. Most local and regional land trusts share similar and multiple conservation values that they aim to protect, but target these values within confined geographic areas. National land trusts tend to name a specific conservation value, but they are not limited to where they may operate. It is worth noting that in terms of conservation values, local/regional and national land trusts do not appear to compete. Local interests (represented by local and regional land trusts) appear to invest more in values related to quality of life, while national interests tend to focus on wildlife habitat. The protection of biological diversity may more commonly be expressed as a national concern (See Table 2-10). However, given the small sample size on which this discussion is based, these are merely suggestions of possible patterns.

Final Recommendations

Implications for the land trust community. The results presented here, if used by land trusts, should help direct their formation of goals and geographic scope. It may

also be useful as a starting point for determining criteria for and assessing the success of private land conservation to date. Three questions that may be asked in order to evaluate success are: 1) whether land trusts are doing what government does not traditionally do, 2) whether they are doing what government traditionally does, only better, and 3) whether they're doing what government used to do but can no longer do (Rubenstein, 1982a). The survey results presented here at least introduce what is being done by land trusts.

It is not clear to what extent active land trusts in Georgia share information inter-organizationally. However, there is an assumption that communication between land trusts is low (Neuhauser, 2002, per. comm.). While many of the small local and regional land trusts do not face competition with other land trusts, there are some areas of overlapping activity between organizations. If existing or potential land trust organizations want to be successful, they should maximize their resources by avoiding competition with one another over common land protection goals.

Many factors can influence where a land trust will or will not be successful. In his concluding remarks on his study of land trusts in Colorado and Utah, Wright (1993) suggested that in addition to cultural beliefs, economic conditions, race, and political values are just a few factors that can make or break the success of private land conservation efforts. He urges that "before [land trusts] can assume a more widespread and meaningful role, far greater attention must be paid to the various factors that influence their acceptance by the public." This advice can be applied at a local, state, or regional geographic level.

Finally, conservation easements have grown rapidly in use and distribution in Georgia. This makes it all the more important that land trusts plan financially for their enforcement, defense, and management. As discussed in the next chapter, conservation easements have both positive and negative attributes, and their long-term costs are unknown. Their widespread popularity makes education regarding their pitfalls more important than ever before if rational land protection decisions are to be made.

Implications for state and local government. State and local governments in Georgia and nationwide have seen growth in the number of land trusts and number of privately protected properties within their jurisdictions. They have also seen increasing public interest in land and resource protection. Governments should consider the land trust activity around them and determine what aspects of it do or do not substitute for government action, recalling the questions posed above but from a government's perspective. Defining areas of potential public-private collaboration will be important to any governments and land trusts that aim to be successful in land protection.

This information can also help governments address policy questions regarding private-sector land conservation activity. The state income tax credit for conservation easement donations is one current policy topic in debate. The reduction or shifting of the property tax base in a county with easements is another example, and is addressed in Chapter IV.

Finally, these data can assist in the implementation of land protection programs, including the Georgia Greenspace Program (state-local government) and the Forest Legacy Program (federal-state government), where some land trust properties may meet program requirements or count towards protected-land totals. Administrators of these

programs need to know who is active in the land trust community and where they are active. These programs are discussed in more detail in the next chapter.

Federal tax policies for private land protection. Federal tax incentives for land conservation are popular among policy-makers. The U.S. Senate Finance Committee approved the most recent set of proposed changes in June of 2002. The proposals included increasing the deductions allowed for the donation of a conservation easement from 30 percent of adjusted gross income over 5 years to 50 percent of adjusted gross income over 15 years, and allowing taxpayers with income primarily from farming or ranching to deduct up to 100 percent of income. They also included omission from taxation 25 percent of the gain on sales of land to a conservation organization or government agency and approval of the use of tax-exempt bonds for the purchase of land that are repaid with timber revenues from that land (LTA, 2002a). If these proposed changes pass with the tax bill, they may make conservation easements more appealing to land-rich, cash-poor landowners and provide more incentive to landowners to sell land to a land trust. It is difficult to know in what way the changes will be influential, though, given the many factors affecting land trust success described by Wright (1993).

Recommendations for further research. I recommend that the GLTSC perform a similar survey of land trusts once every 5 years. I have included an updated survey that I recommend for use in the future as Appendix B. Additional questions for land trusts addressed in the updated survey include the legal status of the land trust (non-profit or private foundation), the status of staff at the land trust (volunteer or paid, part or full-time, size of staff), amount of acreage transferred or protected by other means, and for each conservation property, if it was a donation or purchase (means of acquisition), and if

the donor or seller was a public, private, or corporate entity. The GLTSC can use this information to advise land trusts, landowners, and governments.

CHAPTER III

ANALYSIS OF A TOOL—CONSERVATION EASEMENTS IN GEORGIA

Introduction

The data from the previous chapter indicates that conservation easements are the most widespread land conservation tool used by land trusts in Georgia. However, it also indicates that easements have flourished only very recently. This is consistent with national data, which indicates that conservation easements are the most widely used land protection tool used in the private sector (Gustanski, 2000). Their use in Georgia should continue to grow as land trust activity grows and as new government programs that encourage their use are implemented.

A special characteristic of conservation easements is that each one is unique. For that reason, analysis of the terms of individual conservation easements is necessary before their true impact or conservation value can be understood. A few studies have categorized easement content for easements nationwide and in the Northeast (Bick *et al.*, 1998; Bick and Haney, 1999; Bick *et al.*, 1999). Generally, these studies quantify the occurrence of terms among a sample of easements by separating out individual terms from each of the easements and recombining them by type.

The study of conservation easement terms described in this chapter is the first for a state in the Southeast, and takes a somewhat different analytical approach than those used in previous studies. The results in this chapter provide the reader with a descriptive analysis of the range of impacts of a sample of conservation easements on the highest and

best use of the encumbered properties. They also provide an analysis of the variation in affirmative rights and selected other terms among the easements. The results address questions regarding the effects that conservation easements have on potential land uses and the extent to which the easement terms are perpetual and enforceable.

The chapter begins with a review of the topics surrounding conservation easements, including a critique of their strengths and weaknesses and relevant state and federal laws. The results section then describes the effects of easement terms on potential uses of encumbered properties in Georgia, and discusses other relevant terms that appeared among the easements in the sample, including affirmative rights, amendment and assignment terms. It ends with a discussion of the implications of the findings and needs for future research.

Elements of Conservation Easements

A closer definition. A conservation easement can usually be described as a perpetual negative easement in gross. Perpetuity in the case of conservation easements means an "interest of indefinite duration" and does not necessarily mean forever (Tiedt, 1982). Easement in gross means that a landowner's easement applies to the property that she owns and does not directly benefit another property, as opposed to an easement appurtenant which applies to property adjacent to her property and from which she benefits; it is negative in that it primarily exists to prevent certain activities rather than to permit certain activities (Tiedt, 1982; Morrisette, 2001).

Classifying easements. The elements of a conservation easement that help define the holder's interest can be placed into one of five categories: conservation value and purpose, affirmative rights (rights of the grantee, such as the right of entry to inspect for

compliance), prohibited activities (rights given up by the grantor), reserved rights (rights retained by the grantor), and terms and conditions (Bick *et al*., 1997). Prohibited activities are usually written as broad, all encompassing prohibitions (e.g., no commercial, residential, or industrial activity). Reserved rights are usually written as specific exceptions to the broad prohibitions (e.g., one house of no more than 2000 square feet may be constructed within building envelope A of the property).

Conservation easements can be classified by the land use type that they encumber and the variables that fall into the five categories. No previous research has classified the contents of conservation easements in Georgia, but nationwide, forestland is the single largest land use type among conservation easements (48% of total) (Bick *et* al., 1998). Although this study is not restricted to forestland easements, private forest landowners are particularly important to private sector land conservation efforts in Georgia.

Critiquing easements

The literature approaches conservation easements from four major perspectives: conservation easement law, conservation easement appraisal, conservation biology and land use policy, and natural resource management. According to Bick *et* al. (1997), "most of the literature currently available promotes the use of conservation easements," and critical analyses are much less accessible.

Strengths. A review of the literature reveals three major points on which conservation easements are praised. First, it is emphasized that they are highly negotiable and can be catered to individual landowners (Roush, 1982). The tool has been contrasted with government regulation on this point, where easements prevail next to an inefficient "one-size-fits-all" government approach (Best and Wayburn, 1996). However,

it is not evident that conservation easements are actually used as a substitute for government regulations. The support of conservation easements should not be seen as a suggestion that land protection efforts currently spearheaded by government entities should be transferred to private entities (Morrisette, 2001).

Second, the fact that conservation easements maintain private ownership is often highlighted. Grantors can enjoy the benefits of the donation during their lifetime and continue to use the property, and initial transaction costs remain lower than those for full fee simple acquisition (Roush, 1982). In this case also, concerns over governmental efficiency and ability to manage land are considered the less desirable alternative. Government land purchases may be viewed as intrusive by locals and do not guarantee proper land management (Van Patter *et al.*, 1990).

Finally, conservation easement donations may provide substantial financial incentives through income, estate, and property tax incentives, making them a more marketable tool. The section that follows explores the financial incentives in detail.

Financial incentives. The passage of section 170(h) of the Federal Tax Code in 1980, which clearly defined a qualified conservation contribution (a conservation easement) as a charitable deduction from federal income tax helped spark the "land trust boom" of the 1980s (Internal Revenue Service, 1980; Small, 2000).

The law defining the qualified conservation contribution rests on the following conditions: the donation must be a qualified property interest given in perpetuity to a qualified organization for conservation purposes. A qualified property interest can be the entire interest of the donor (other than qualified mineral interests, as long as those interests were separated before 1976 and the probability that surface mining will occur is

"so remote as to be negligible"), a remainder interest, or a perpetual restriction on the use of the property. The grantee must be a public charity or government entity, and the property must fit one of the four following conservation purposes: 1) protect land for public access for recreation or education; 2) protect "relatively natural habitat;" 3) protect open space that provides public scenic enjoyment or public benefit under a clearly defined governmental policy, and; 4) protect historically important resources (Internal Revenue Code, 2002b).

If the grantor of a conservation easement meets all of these conditions, they can then deduct the value of the contribution (the appraised value of the easement) within 30 percent of their adjusted gross income over a period of up to 6 years (Internal Revenue Service, 2002a). Given the nature of this tax incentive, easement donors in the highest income tax brackets or donors with estates worth over $2 million benefit the most from easement donations. Landowners with small adjusted gross incomes and high easement values, often retirees or farmers, have trouble realizing the full benefits of the income tax incentive (Daniels, 2000).

Estate tax burdens are reduced by conservation easement encumbrances if the encumbrance in fact reduces the appraised value of the affected property. Unlike the income tax incentive, this benefits any owner of a property encumbered by a conservation easement, whether or not her or she was the original donor.

Additional estate tax benefits are provided to the families of easement donors by changes made to qualified conservation contributions in 1997 under the American Farm and Ranch Protection Act. Under certain conditions, up to 40 percent of the land value of an encumbered property can be excluded from the estate value for federal estate tax. This

benefit reaches only those properties that are near metropolitan areas or federally protected land, that have been kept in the original donor's family, and that have highly restrictive easements that prohibit all but "minimal commercial recreational use" of the land. Additionally, family members can meet the necessary requirements for the benefits *after* the estate owner's death by donating or altering a conservation easement (Small, 2000).

In most cases, the conveyance of a conservation easement on a parcel of land reduces the fair market value (FMV) of the property (Closser, 1994). If this value reduction is translated into a property tax assessment reduction, then the grantor of the easement benefits financially from the donation through a reduction in property taxes. The certainty with which property tax assessment reductions occur is variable, and is a subject of this research. Property taxes are discussed in detail in Chapter IV.

Weaknesses. As the use of conservation easements has been marketed more heavily in recent years, their weaknesses have been probed as well. The two major problems with easements to date have been identified as flexibility and, therefore, unreliability of the legal document and high long-term costs (Roush, 1982; Sayen, 1996).

The same flexibility that makes conservation easements so appealing to potential donors also raises concerns over the future strength and effectiveness of the legal document. Creating a document that clearly defines and allows for the enforcement of the prohibited uses but also allows for amendment under changing circumstances is a challenge that has not yet been tested rigorously in the courts. Easements run the risk of limiting opportunities for adaptive management in a changing landscape (Roush, 1982).

Additionally for researchers and planners, the variability of conservation easements can make it difficult to gauge the extent of land protection without examining the terms of every easement as they are created and amended (Sayen, 1996). Variation can occur in the existing condition of the property, the limits to development imposed by the easement, and the resources protected. All easement-burdened land will not have the same ecological and/or public value.

Conservation easements are usually considered inexpensive in comparison to fee simple acquisition. Costs become questionable, however, when one considers monitoring costs over time and the threat of legal challenges. Because easements involve partial interests and can involve numerous landowners over time, the risk of conflict or infringement on easement terms are higher. In a conflict, legal fees could be substantial (Roush, 1982). Additionally, if land values are high and easement purchases are being considered, the price of the easement may not be significantly less than the price of full ownership (Sayen, 1996). The true long-term costs of monitoring and enforcement will only become apparent as conservation easements mature (Wiebe *et al.*, 1997).

Given the strengths and weaknesses of conservation easements, land trusts and governments should consider them as one of many land protection tools. As Roush (1982) warns, "relying on any one tool to the exclusion of others will inevitably lead us to protect places that do not really deserve it and pass up places that do." The appropriateness of each tool should be considered and financial resources be secured before any land protection decision is made.

Conservation Easements in Georgia

Nationwide and in Georgia, conservation easements are the most widely used conservation tool of the private sector to protect land (Gustanski, 2000; Georgia Land Trust Service Center, 2002). They are used on public and private land by land trusts and government entities to protect a variety of resources and landscapes. While conservation easements currently impact a relatively small portion of the South, their use is becoming increasingly common throughout the region (Granskog *et al.*, 2002).

The progress of the land protection movement utilizing conservation easements depends on legislation at the state and federal level. State enabling legislation and tax policies and federal tax policies have essentially defined the conservation easement as it is known today. The Uniform Conservation Easement Act (UCEA) was approved in 1981 and has since been adopted with or without modification by 21 states, including Georgia. Another 25 states have enacted legislation of similar intent (Gustanski, 2000).

Georgia adopted the UCEA in 1992 with four modifications described here. First, the Georgia act treats conservation easements the same as other easements except that they may not be created or expanded through eminent domain. Second, the act frees the holder of the easement from any liability associated with the encumbered property. This facilitates the creation of conservation easements by encouraging the participation of grantees. The act also favors easement holders by requiring that they be present during any licensing procedure for construction activities on the property. This ensures the holder's participation in decisions that may impact the land (Davis *et al.*, 2000). Finally, the act includes a provision which entitles a grantor of an easement to a "revaluation of the encumbered real property so as to reflect the existence of the encumbrance on the

next succeeding tax digest of the county," which allows for recognition of a conservation easement's effect on property value for property tax purposes (O.C.G.A., SEC. 44-10-1).

Holders of conservation easements. Georgia law recognizes two types of conservation easement holders in the Georgia Uniform Conservation Easement Act. These are defined as

> (a) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or
> (b) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property (O.C.G.A., SEC. 44-10-1).

In this context, the term "land trust" is used to describe any organization falling under (b).

Chapter II provided an analysis of land trust activity and their use of conservation easements in Georgia. While land trusts have initiated and received most conservation easements in Georgia, there are some recently initiated federal, state, and local programs that will begin using conservation easements. These are outlined briefly here.

Forest Legacy Program. A program that has been recently initiated but is not yet in use in Georgia is the Forest Legacy Program (FLP), a project of the USDA Forest Service. In the FLP, the Forest Service would partner with the Georgia Forestry Commission (GFC) to use conservation easement purchase and fee simple purchase to "conserve resource values of forest land, emphasizing lands of regional and national significance that are threatened with conversion to nonforest uses" (USDA Forest Service, 2000). The GFC is currently in the process of writing an Assessment of Needs,

which will define the program eligibility criteria and define the boundaries of the Forest Legacy Areas (Georgia Forestry Comm., 2001).

Values that the FLP targets are the following:

1. Scenic resources;
2. Public recreation opportunities;
3. Riparian areas;
4. Fish and wildlife habitat;
5. Known threatened and endangered species;
6. Known cultural resources;
7. Other ecological values; and/or

land that "provides opportunities for the continuation of traditional forest uses, such as forest management, timber harvesting, other commodity use, and outdoor recreation" (USDA Forest Service, 2000).

Within the FLP, lands protected by land trusts may count towards the non-Federal cost-share contribution to the program, as long as the protected lands contribute to program goals. Though the FLP has not protected any land yet in Georgia, it protected 111,290 acres in 11 states between 1993 and 1999. Since 2000, another 1.04 million acres have been identified as prospective projects (USDA Forest Service, 2000). This program will provide an additional medium for the use of conservation easements in Georgia both in conjunction with and in addition to private land trusts.

Greenspace Program. Georgia's Greenspace Program (GGP), enacted by the Georgia Legislature in 2000, promotes the adoption of county plans for protecting at least 20 percent of county land area in developed and rapidly developing counties. Eligible counties can apply for and receive funds to assist in the purchase of land or conservation easements to meet the 20-percent goal. Since the GGP began, the Georgia General Assembly has appropriated $30 million annually to the program. The financial

investment in the GGP will likely turn out to be higher because the program encourages local governments to seek out additional funding sources such as federal grants (Georgia Department of Natural Resources, 2001).

In FY-02, the Georgia Greenspace Commission approved grants for 55 counties—35 percent of all the counties in Georgia—and 59 cities. In FY-03, 58 counties should be eligible for participation in the GGP. In addition to its widespread use, the GGP impacts a disproportionately large segment of Georgia's population because it is available specifically to counties with large populations and/or rapid population growth (Georgia Department of Natural Resources, 2001).

The GGP statute defines greenspace as

1. Permanently protected land and water
2. Including agricultural and forestry land
3. That is in its undeveloped, natural state or
4. That has been developed only to the extent consistent with, or is restored to meet one of the following goals:
    a. Water quality protection for rivers, streams, and lakes;
    b. flood protection;
    c. wetlands protection;
    d. reduction of erosion through protection of steep slopes, areas with erodible soils, and stream banks;
    e. protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species;
    f. scenic protection;
    g. protection of archaeological and historic resources;
    h. provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities; and
    i. Connection of existing or planned areas contributing to these goals (O.C.G.A., SEC. 36-22-1).

Counties may use conservation easements in two ways within the context of the GGP. They may purchase land fee simple and grant a conservation easement on the property to a land trust, or they may simply purchase a conservation easement from a

landowner and act as holder. The Greenspace Advisory Committee, which advised the state on adopting the law, included in its recommendations the improvement of certain existing land protection programs, including conservation easements and their valuation and enforcement (University of Georgia, 2000). Because funding will be insufficient for counties to purchase their greenspace land on a fee simple basis, conservation easements will be a useful tool for meeting land protection goals (Nelson and Fowler, 2002).

Conservation subdivisions. Some counties are creating zoning for and seeing an increase in the development of conservation subdivisions. In conservation subdivision zonings, counties may hold constant the total number of homes allowed in a development while permitting increased density of those homes. The resulting undeveloped land within the subdivision becomes "conservation" land. The conservation land may be owned by homeowners associations, municipalities, land trusts or individual owners (Arendt, 1999).

It is unclear at this time how many counties have conservation subdivision zoning. At least one county, however, requires a conservation easement to encumber the conservation land within the subdivision before the development is approved (Paschal, 2002, personal communication).

The Forest Legacy Program, Georgia Greenspace Program, and zoning for conservation subdivisions have been established only within the last few years, so their impact on the use of conservation easements is small but growing. By their initiation, though, they increase the public's and the government's awareness of conservation easements as a conservation tool, and will likely increase cooperative efforts between governments and land trusts.

While the survey data discussed in Chapter II provides general information about the use of conservation easements in Georgia, much more can be extracted from the easement documents themselves. Due to the lack of specific knowledge regarding the use of conservation easements in Georgia, and to determine the potential impacts on potential land uses based on the terms of easements, this study analyzes the content of a sample of conservation easements in Georgia.

Methods

This research revolves around property taxation and, therefore, local government. The basic sample unit for the collection of conservation easements was the county. I selected counties in Georgia from which to take easements on an individual basis using the availability of the tax assessor for an interview (to maximize efficiency of data collection) along with the following variables: geographic location of the county, average price per acre of timberland in that county (to represent development pressure), and number of easements in a county. If timberland data were not available for a county, estimates were made based on values in surrounding counties.

Depending on how many easements were in a particular county, I selected a sample of easements out of the total number of easements in that county. In this process, I obtained every easement document in the county and compared the variables of grantee, conservation values, types of prohibited uses and reserved rights, and size. I then selected easements that represented the diversity of the easements within the county. I did not select any easements that were donated by a public entity, such as a county, because property tax assessments are not an issue for those properties.

This sampling scheme was not designed to be representative of frequency; rather, it was selected so that the diversity of easement terms could be extracted from the data. It was based on the assumption that by representing the variability within each of the listed variables, the resulting sample would represent the diversity within the easement population. Also, I did not predetermine a sample size, although I estimated that I would collect approximately 50 documents. The resulting sample size was incidental to representing the diversity of each factor.

Conservation easement terms are difficult to quantify in a meaningful way due to the variation of terms within each category (affirmative rights, prohibited uses, reserved rights).[7] The distinct combinations of terms in each easement are what make each document unique. Past studies of easement content have presented the data in various ways, including a narrative description of variation among easements (Bick *et al.*, 1999), a listing of each term that appears in the easements (Bick and Haney, 1999), and the percent of easements that contain specific terms (Bick *et al.*, 1998). However, Bick *et al.* state that in their analysis approach, "individual variables…are separated from the deeds in which they appear, making it more difficult to understand the grantor's and grantee's intentions for specific variables" (Bick *et al.*, 1999). Bick and his co-authors have focused on forestland easements and how the easement terms relate to forestry practices in their analyses.

[7] There are many other elements of conservation easements, including but not limited to terms for extinguishment, baseline documentation, and purpose. Variation of these terms can occur among easements, but the variation is either not significant (generic or template terms are used in most easements) or their variance does not have an impact (real or perceived) on property value. For these reasons, this analysis of terms focuses on affirmative rights, prohibited uses and reserved rights, with short discussions of some other relevant categories.

I described the variability of terms within categories that were significant to property value to remain consistent with the focus on property tax assessment. I also chose to describe elements based on findings from the qualitative research described in Chapter IV.

One major difference in my approach from the approaches used in previous studies is that I combined the effects of the reserved rights (explicit rights kept by the grantor) and prohibited uses within each easement to determine an overall maximum potential use for the encumbered property. This reduces to a certain extent the problems that arise from separating all the variables from the individual documents, and focuses more on the overall impact that the easement has on the income capabilities of the property. The resulting categories of highest and best use arose out of the analysis.

Results

As a result of the easement selection process, I collected 56 of the 127 easements in the state donated by a private entity.[8] I took easements from 22 out of the 43 counties with easements, representing 17 different land trusts out of 21 active land trusts with private donations of conservation easements.[9] The total acreage covered by the easements that I collected was 20,574 acres, or 45 percent of the total acreage under easement. The conveyance dates ranged from 1979 to 2002, and acreages of individual properties ranged from 0.5 acres to 3,865 acres, averaging 367 acres. Figure 3-1 shows the sample distribution.

[8] The survey neglected to ask whether an easement donor was a public or private entity. However, through a variety of methods, including interviews, I was able to determine that 14 easements were in fact donated by a public entity. While it is possible that additional easements were donated by a public rather than private entity, I err on the side of caution by assuming that the remaining 127 are private donations.

[9] Similarly, I found that two land trusts had received donations only from public entities.

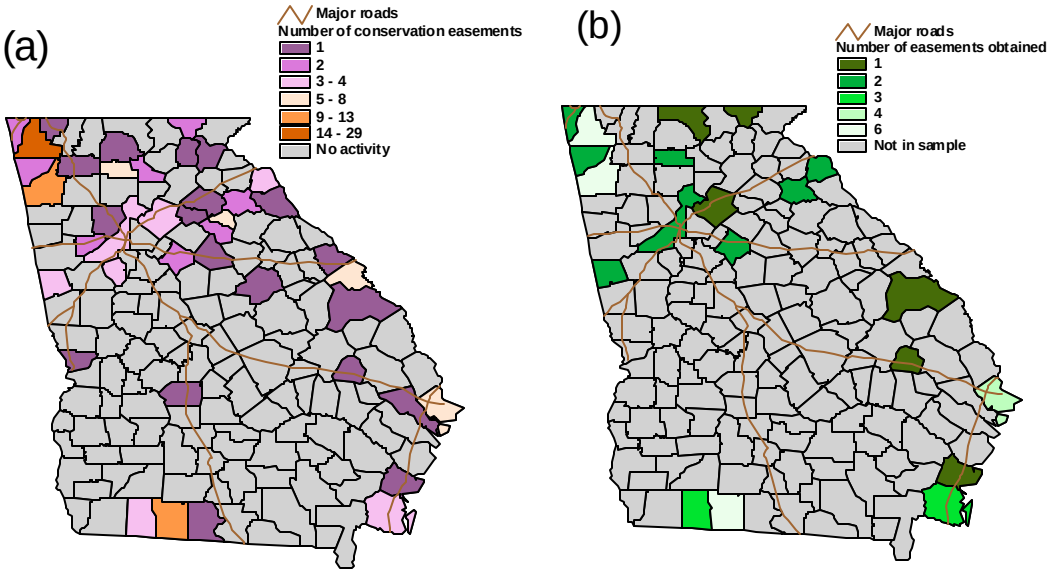

Figure 3-1: (a) total number of conservation easements by county; (b) number of easements taken from each county in sample

Findings of highest and best use. What is the impact of a conservation easement on the potential land uses of a property? While the land trust community may stress what cannot be done on a property encumbered by a conservation easement, a tax assessor must ask what can still be done on that same encumbered property. For this reason, I chose to describe the remaining hypothetical highest and best uses of the encumbered properties in the sample by combining the effects of the reserved rights and prohibited uses. Highest and best use can be defined as the reasonably likely, legally permissible, physically possible, financially feasible use that results in the highest value (American Institute of Real Estate Appraisers, 1983). In this study, I assume that the legal and physical constraints are met. In other words, I derive the hypothetical highest and best use solely from the language of the easement.

While this form of description inherently de-emphasizes the conservation values of the property by focusing on highest and best use, it can demonstrate to local officials the range in the types of impacts that a conservation easement can have on a piece of property. As will be seen in the following chapter, some tax assessors believe that a conservation easement leaves the landowner with no practical use of a property.

Building envelopes. Sixty-eight percent of the deeds held among 70 percent of the land trusts represented in the sample include provisions for existing residences or permission to construct residences. A few easements allow small retail shops on the properties. Approximately one-third of the easements define a building zone or acreage (the "building envelope") for construction or expansion of residences and associated outbuildings and structures. The average building envelope size for envelopes 5 acres or less[10] is 2.8 acres per envelope with a median of 2.5 acres per envelope.

Subdivisions. Thirteen percent of the deeds distributed among four land trusts specify permission for subdivision in conjunction with those residences. Subdivision terms in an easement can have important implications for the grantee of the easement. Subdivision of a property under an easement means that in the future there may be more individual landowners, and therefore more interests, affected by the easement terms. What began as an agreement between one landowner and the land trust becomes an agreement between several landowners and the land trust. This has implications for projected future management, enforcement, and legal costs for that easement.

[10] The average building envelope size for all properties was 4.5 acres; however, a few properties had building envelopes greater than 5 acres. This suggested that the entire envelope area would not be developed, but that any location could be chosen within that larger envelope to construct buildings. In response, I threw out the larger acreage envelopes from the data set and calculated averages for envelopes of 5 acres or less.

Outside of reserved space for residential/retail use, I found that maximum allowable uses fall into income-producing uses and non-income producing uses. Table 3-1 lists the categories of uses.

Income-producing uses. There is a great range of maximum permitted uses within this heading. Just over half of all the easements in the sample fell into this heading. The variability found within each use is described here.

Commercial agriculture and/or forestry. This category of uses is the second largest of the sample. The acreages of the properties within this category range from 25 acres to 3,550 acres, averaging 643 acres. Maximum allowable uses within this category range from small gardens or cash crops and limited livestock to full and existing

Table 3-1: Percent of conservation easements in sample falling into the categories of maximum permitted uses under the easement restrictions

Category	Maximum allowable land use (excluding residential subdivision)	Percent out of number of properties in sample*	Percent out of number of land trusts represented in sample**
Income-producing uses	Commercial agriculture and/or forestry	27	24
	Commercial ag/forestry with mineral extraction rights	5	12
	Commercial recreation	13	18
	Wetland mitigation	9	24
	Total for category	**54**	--
Non-income-producing uses	Communal use (multiple homeowners, neighborhood, or public use)	11	24
	Personal recreation/subsistence use	29	41
	Research/education/conservation uses only	2	6
	Total for category	**42**	--
Other	Limited residential use (for properties of 5 acres or less)	5	12

* Percentage total does not add up due to rounding

** Percentage total does not add up because some land trusts have easements falling into more than one category

commercial agricultural activity, which includes irrigation and drilling for wells, pesticide and herbicide use, and clearing forested land for additional agricultural land (although clearing for new agricultural land is permitted in only one instance). In no cases are intensive livestock feedlot operations allowed. Forestry practices range from limited tree harvesting in accordance with a management plan to plantation-style tree farm plantings. Thirteen of the 15 properties have or allow the construction of residences.

Properties within this category allow varying degrees of commercial recreation, but I assume for this analysis that income from recreation is secondary to income from agriculture or forestry. Hunting, either personal or with leases, is usually allowed in conjunction with agricultural/forestry uses. Other permitted recreational uses include equipment rental for on-site recreation, trails, horse stables and a skeet range, and public nature education. It is possible that, given the limits on agriculture and forestry in some of the easements in this category, hunting or other recreation becomes the maximum allowable use.

This is an important category, particularly within the traditional view of conservation easements as safeguards against loss of the "family farm." Some of the properties included in this category may be better characterized as "hobby farms" while others are full-scale agricultural businesses, but the delineation between the two is not always clear from the easement language.

Commercial agriculture and/or forestry with mineral extraction rights. This small category was created because of the unique retention of mineral rights by the easement donor. In the IRS code, a conservation easement qualifies for income tax benefits only if

surface mineral extraction is prohibited (Internal Revenue Code, 2002(a)). This is the only use that the IRS explicitly requires to be prohibited in every case. These easements (three total among two land trusts) provide for *subsurface* extraction of oil, gas and geothermal or oil, gas, and minerals. Two of the three easements are particularly lenient in other respects, allowing the release of non-native game species and a landfill for waste produced on-site.

Commercial recreation. As stated above, I assume for this analysis that income from recreation is less than that for agriculture and forestry, though this may not be the case for every region at all times. Therefore, the easements for these properties do not allow agriculture or forestry activity. The properties range from 3 acres to 795 acres. Maximum allowable uses range from "minimal commercial recreation" (undefined) to commercial sales and rental activity associated with public recreation or nature education, recreation fields, constructed ponds, pavilions, bathrooms, and trails. A delineation can be made between commercial recreation that provides minimal income (the former) and commercial recreation that is part of a business (the latter). In the case of the former, it may be difficult to distinguish between properties that belong in this category and properties that belong in the non-income producing "personal recreation/subsistence use" category. The division is somewhat subjective.

Just over half of the properties in this category allow residences, and a few easements in the category contain provisions for small retail shops.

Wetland mitigation. I assume for this analysis that wetland mitigation banking can provide significant income to the property owner. The five easements for wetland mitigation banking in the sample range from 2.4 to 524 acres and held among four land

trusts. Some of the easements cover wetlands already permitted by the U.S. Army Corps of Engineers (U.S. ACOE) as a wetland mitigation site, while others cover wetlands to be used in the future for mitigation purposes. Remaining allowable uses consist of personal non-consumptive recreation, education and recreation, construction of pedestrian access bridges along dikes, and hunting. In some cases, the restrictive covenant between the U.S. ACOE and the landowner was also in the deed records.

With a perspective from a large geographic scale, it could be argued that conservation easements on wetland mitigation sites do not contribute to overall land conservation, since there is no resulting net gain in protected land. At the local level, though, the protection of that individual property may be significant to adjacent and nearby landowners if it is offsite mitigation. The value of the easement donation for income tax purposes may be small or nonexistent if the restrictive covenant formed with the U.S. ACOE will have already restricted the potential uses of the property, or if the donation was made as part of a business transaction.

Non-income producing uses. There are three categories of non-income producing uses. Just under half of all the easements in the sample fit into one of the three categories.

Communal use. Communal use can have several meanings. It can mean use by a group of homeowners, use by a neighborhood, or use by the public in general. It also does not guarantee unlimited use at all times. In fact, no affirmative rights or rights to public access are granted in any of these communal use easements; they simply imply, by the reserved rights and restricted uses, that the property is intended for communal use.

The acreages of the six communal use properties in the sample are, from lowest to highest, 0.46 ac, 1.5 ac, 1.7 ac, 24 ac, 159 ac, and 350 ac. All but one has uses restricted to non-motorized, non-consumptive recreation. The one that differs allows a community garden, food/crop cultivation, orchard maintenance, or limited cash crops. However, this property is 1.5 acres in the middle of an Atlanta (DeKalb County) neighborhood, so commercial agriculture options are limited. The others allow activities ranging from the development of dirt footpaths only to the development of a park, including a bathroom, gazebo, lighted trails, observation towers, and a playground.

Four of the six properties specify that they are adjacent to and connected with a development, with "development" ranging from condominiums in an urban setting to mountain homes on large tracts abutting the communal area. The other two are suspected to be vacant lots within older neighborhoods.

These types of easements may become more common as the use of conservation subdivision zoning increases. Interestingly, a few conservation easements in other categories include terms that prohibit the use of the easement-burdened property as open space needed to satisfy zoning requirements for development.

Personal recreation/subsistence use. This category has the largest number of properties. Properties in this category range from 0.46 acres to 3,865 acres, with a median of 74 acres. Nine of the 16 properties allow residences.

The maximum allowable uses within this category range from footpath construction to subsistence gardens, game food plots, tree harvesting for firewood, and hunting and fishing. A few of these properties allow hunting and fishing leases, but their use is restricted to the point where it was deemed non-commercial.

While there is no "typical" conservation easement, this category best represents the common definition of conservation easement in that development is limited and the landowner retains private, personal use. This may be due to the fact that the type of land conservation represented by these easements is unique to land trusts, is more typically advertised by land trusts, and is not really implemented by governments. Government programs such as farmland protection programs, the Wetland Reserve Program, and fee simple acquisition for public use or nature preserves tend to overlap at least in concept with land trust activity represented by some of the other categories. The private use, limited development easement is, if not typical of conservation easements, at least symbolic of where private land trust activity departs from government land protection. It should be noted that the properties in this category still vary in use depending upon whether residences are allowed.

Research/education/conservation use. This last category contains only one property. The maximum allowable use of the property is as an ecological preserve with ecological research permitted. According to the tax assessor for the county that contains this easement, the easement donor only has personal use of the property with the permission of the grantee; at most, that personal use would include some non-consumptive, low impact activity such as bird watching or walking. This idea is not immediately evident from the easement document itself, though it is obvious that it is a highly restrictive easement. It is not clear why the landowner did not donate the entire property outright, though it appears that the grantee prefers conservation easements to fee simple ownership. For all practical purposes, however, the grantor donated nearly the entire bundle of rights for the property. This type of easement is thus quite uncommon.

Other—limited residential use. A few properties are so small and so well developed that their acreages are difficult to divide into residential and non-residential uses. The sizes of the three properties in this category are 1.8 ac, 2.7 ac, and 5 ac, and each of them has between one and two residences and associated improvements. As an example, the 5-acre property contains a single-family residence, home office, driveway, guesthouse, garage, tree house, pool, maintenance building, and dock. The construction of a boat landing, additional improvements, and an additional access drive are allowed. Five acres is relatively large for a single-family residence. However, depending on the distribution of the improvements, it may be very difficult to separate the lost property rights from the permitted residential use. As a result, limited residential use would be considered the maximum permitted use for the entire property.

Landowner checklist for simplification of easement property tax reassessment. As this chapter was being written, administrators of the Georgia Greenspace Program were developing guidelines for the property tax reassessment of easement-burdened properties to recommend for adoption by the state. The administrators wished to establish guidelines to propose to the state so that, in the process of implementing the Georgia Greenspace Program, they could inform potential easement donors or sellers of the property tax assessment reduction they may receive on their encumbered property.

The data presented in this section were used to assist in the development of the recommended guidelines and their implementation. In particular, I used the results presented here to develop a checklist for landowners of easement-burdened properties to complete and give to their county tax assessor. The checklist is designed to simplify the reassessment of easement-burdened properties by summarizing the maximum permitted

uses remaining on the property. The building envelope concept is also used to account for residential use. The submission of the checklist could serve a dual function, acting as the official notification to the tax assessor that the easement has been conveyed and simplifying the reassessment process. The checklist and a memo containing the Case Statement are included as Appendix C and D, respectively. The checklist is only the draft that I provided to the program administrators for review and has not been modified or approved yet for use.

Affirmative rights. Affirmative rights are the rights conveyed to the grantee by the easement. The purpose of this analysis is to determine the extent to which affirmative rights vary and the implications of that variation, if any, for property use.

The most common rights conveyed to a land trust are to "preserve and protect" the conservation values of the property, to enter the property (usually with notice), and to prevent "inconsistent activity." In fact, the conveyance of such rights is required in the Internal Revenue Code for an easement to qualify as a charitable deduction (1.170A-14(g)(5)(ii)). Specifically, the regulations state that the terms of the donation "must provide a right of the donee to enter the property at reasonable times for the purpose of inspecting the property to determine…compliance…. Additionally, the terms…must provide a right of the donee to enforce the conservation restrictions by appropriate legal proceedings."

Entry for inspection/enforcement purposes is conveyed in 95 percent of the easements in the sample (three easements do not specify any affirmative rights), but there is variation within that right. While most easements only specify "entry at reasonable times with prior notice," a few specify the minimum number of days before entry that the

notice must be received (from 7 days notice to 1 days notice), require written consent for entry, and/or limit the number of entries per year (maximum of 2 to 3 per year). One property, a wetland mitigation easement, allows entry with no prior notice.

Entry for scientific study, species and habitat monitoring and management, or educational tours ("special entry") is also allowed in some easements. Table 3-2 shows the make-up of the sample with regard to these types of entry. This type of entry usually requires permission of the landowner, and in the case of educational tours, is limited to 2 to 4 times per year.

Table 3-2: Number of conservation easements in sample with special entry included in affirmative rights, and number of land trusts granted special entry

	Purpose of special entry			
	Scientific study	Resource monitoring and management	Educational tours	Total with special entry
Number of conservation Easements (Number of land trusts given permission)*	**12 (3)**	**4 (2)**	**16 (3)**	**19 (4)**

*Numbers do not add up to total because some easements allow more than one type of special entry.

Overall, 34 percent of the total number of properties in the sample allow entry for at least one of the above purposes, and 23 percent of the total land trusts represented in the sample own such rights to at least one property.

A few other rights occur once or twice among the easements in the sample. These include the right of the grantee to place signs on the property borders identifying it as a conservation easement, the right of the grantee to cross the property for access to adjacent land, and the right of the grantee to first refusal upon sale of the property.

Grantee rights are not limited to the language found in the affirmative rights. Grantees may also be stakeholders in other land use decisions related to the encumbered property. The Internal Revenue Code requires that the landowner notify the grantee in writing "before exercising any reserved right which may have an adverse impact on the

conservation interests" (1.170A-14(g)(5)(ii)). Some easements require the development of a forest management plan, for example, that is approved by both the grantor and grantee. In some provisions that allow expansion or construction of new residences or other improvements, prior approval of the planned construction is required from the grantee.

The extent of partial ownership that lies with the grantee varies among easement-burdened properties. In some easements, the grantee truly appears as part owner—they may develop and implement a management plan for the property (with permission), have a say in any plans for improvements, and use the property to educate the public or as a showcase for potential donors to their organization. In other easements, the grantee's rights are clearly subordinated, being restricted to limited entry for inspection only. Their rights are simply to defend the conservation values that they agreed to protect in the donation.

It is not clear how variations in affirmative rights affect the value of the property from the perspective of the easement donor and subsequent owners. Since essentially all easements allow entry for inspection (representing the landowner's loss of the right to exclusive use), and most of the easements that allow special entry do so only with permission, the variations in affirmative rights may not result in significant differences in perceived property value losses. It is also possible that in cases where more extensive affirmative rights are granted, they are never or rarely exercised due to lack of resources. Overall, affirmative rights do represent the loss of some rights of the landowner, which, standing alone, may or may not affect property value.

Permanence and enforcement. This section is designed to address concerns raised by county tax assessors during the interview process described in Chapter IV. Concerns over the strength of the easement (what if someone tries to change it?) or flexibility of the easement (what if surrounding conditions change?), and the future assignment of the easement if the organization holding the easement were to "go under" arose frequently in the interviews. For this reason, I provide a brief description of the variation among amendment, extinguishment, and assignment terms in the easement sample.

Amendment and extinguishment. Conservation easements may include terms that allow amendment of the easement with the consent of both landowner and grantee. Amendment terms can be used to address the possibility of changed circumstances over time and, in most cases, are best when limited to amendments that strengthen the easement or have a "neutral effect"(Diehl and Barrett, 1988).

Just under half of the easements in the sample include terms for amendment. Most of these terms are generic, written as some form of the following:

> If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Grantee are free to jointly amend this Deed; provided that no amendment shall be made that will affect the qualification of this Conservation Easement or the status of Grantee under any applicable laws, and any amendment shall be consistent with the purpose of this Conservation Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of ___ County, Georgia.

A few easements include an additional restriction prohibiting any amendments for additional residences. Strangely, the amendment terms of one easement (a wetland mitigation easement) give the grantor and grantee the "unconditioned, unrestricted right

to alter, change, expand, modify, or restrict any terms." Except for the discretion of the grantee, it is not clear how this easement has any real strength.

Extinguishment terms provide for a greater degree of response to changed conditions than amendment terms. An extinguishment clause is standard for most easements and varies little, but I mention it here as a contrast to amendment terms. Internal Revenue Code 1.70A-14(g)(6)(i) allows extinguishment "if a subsequent unexpected change in the conditions surrounding the property…make impossible or impractical the continued use of the property for conservation purposes." Such extinguishment is valid only if

> the restrictions are extinguished by judicial proceedings and all of the donee's proceeds from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution.

One easement is unique in its conditions for perpetuity. The easement covers property that provides significant American alligator habitat, and the limits on the restrictions are written as follows:

> Grantor and Grantee further agree that any restrictions herein contained relating to protection of alligator habitat and populations shall remain in effect and be enforceable only so long as the American alligator species remains on any Georgia or federal endangered or threatened species list. At such time as the American alligator is removed from both the Georgia and Federal endangered and threatened species lists, all restrictions upon the use and development of the Gill's Canal corridor and all restrictions upon the use and development of those areas south of Interstate 95…will automatically terminate.

The document goes on to explain that the development restrictions along the Ogeechee River that are also included in the easement terms will be retained in perpetuity and will not terminate upon de-listing of the American alligator. This easement demonstrates that not all of the restrictions in an easement must be perpetual or uniformly applied; some of

the restrictions may end at such time that the original conservation purpose no longer exists (in this case, the protection of habitat for a listed species), and may vary spatially within the property (different restrictions apply to the Ogeechee River corridor than to Gill's Canal). It should be noted that this easement was conveyed in 1983, before the advent of many of the IRS regulations that shape the nature of easement documents today.

Assignment. Tax assessors expressed concern over the frailty of a non-profit land trust's existence and the subsequent implications for perpetual conservation easements. Assignment refers to the transfer of the easement from the original grantee to a new holder. At minimum, the Internal Revenue Code requires that the easement document state that easement transfer from the original grantee will only occur if the "transferee" is qualified to hold easements under the relevant laws and agrees to continue to enforce the easement restrictions (1.70(A)-14(c)(2)).

The generic terms contained in most of the easements in the sample read something akin to the following:

> This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code, and authorized to acquire and hold conservation easements under Georgia's Uniform Conservation Easement Act and Section 501(c)(3) and 170(h) of the Internal Revenue Code. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance shall continue to be carried out.

A few easements named a specific transferee or named examples of transferees that would receive the easement if and when reassignment took place. Eight easements contained no assignment terms.

The IRS regulations oversee most aspects of conservation easements to ensure the conservation values are donated in perpetuity. Of the terms discussed in this section, amendment terms may cause the most trouble in relaying an easement's credibility as a perpetual document. Land trusts should establish clear amendment policies and legal language to avoid confusion, and concerned government officials working with easements should check the amendment language themselves for possible problems.

Property tax language. Finally, because this research is intended to be relevant to local governments and property tax issues, a brief mention of the tax language in conservation easements is made here.

A standard taxes clause is included in most conservation easements to protect the grantee from any tax liability on the easement property. A few land trusts take the opportunity to use this clause to also cite O.C.G.A., SEC. 44-10-8, which entitles an easement donor to a reassessment of the encumbered property "to reflect the existence of the encumbrance." Unfortunately, given the difficulty in assessing the value of an easement-burdened property, the implementation of this statute has not been easy. The extent to which this law has been implemented is discussed in Chapter IV.

Conclusions

In order to promote their accomplishments and the public benefits derived from conservation easements, the land trust community often emphasizes the rights that are donated on easement-burdened properties. However, it is both practical and informative to look at easements based on the uses that are left after the encumbrance. The results provide concrete descriptions of what easement-burdened properties are—commercial

farm and forestry operations, commercial recreation areas, wetland mitigation sites, public parks, private residences buffered from development, or ecological preserves.

Combining the analysis of the maximum permitted uses and affirmative rights, it becomes apparent that there is variation in the potential of a conservation easement to maintain or improve the environmental health or natural resource productivity of the property it encumbers and/or provide public benefit. Factors that can be used to measure its overall impact include the pre-existing pressure to develop, the limits imposed on use and development, and the extent of measures that will be taken to improve or maintain the health of the property or the ability of the public to enjoy it.

The impact of conservation easements on adjacent properties is a matter for future study. It is not clear whether easements have a neutral effect on the environmental health or productivity of adjacent properties due to their often low public profile, a positive impact through the encouragement of adjacent landowners to encumber their property, or a negative impact by improving the value of adjacent properties, possibly providing the adjacent landowner (who could be the easement donor) with more financial incentive to sell his or her land for development. Also, there is the case in which an easement-burdened property may be subdivided; will the values of the smaller lots be enhanced because the neighboring property is known to be burdened with a conservation easement? These effects will only be determined over time, but may determine the effectiveness of conservation easements in meeting different objectives.

Conservation easements are the tool most commonly used by land trusts in Georgia and in the nation. To improve their use when it is appropriate and limit their use when it is inappropriate, people inside and outside the land trust community should

understand their impacts, strengths, and weaknesses. This research works towards that objective in Georgia, a state where demand for land protection is growing and where programs that encourage the use of conservation easements are expanding. Chapter IV will explore in depth the understanding, acceptance, and promotion of land trust activity among local governments in Georgia, specifically through interviews with county tax officials with regard to the relationship between land trust activity and property tax assessment efficiency and fairness.

CHAPTER IV

COUNTIES, PROPERTY TAXES, AND LAND TRUST ACTIVITY IN GEORGIA

Introduction

Counties, the primary local government entity in Georgia, are a largely untapped and misunderstood resource for addressing land conservation (Press *et al.*, 1996). As opposed to city governments, county governments are becoming increasingly important in rapidly growing suburbanized communities; counties serve as the primary local political identity for these "non-cities" (Benton and Menzel, 1993). In addition, counties have maintained their traditional role of importance in rural areas. "County government," Cigler (1993) writes, "is the most visible and important type of government for most rural residents."

Most land trusts in Georgia operate on a similar scale as local government. Although not well understood, positive or antagonistic relationships may develop between land trusts and local governments. For example, administrators at a land trust in Maine found that they were able to work effectively with some public officials, while with others they encountered "maddening frustration" (Emory, 1982b).

One issue in which both land trusts and local governments have a stake is the property tax assessment of privately conserved land. According to one land trust professional, "most frequently at the root of opposition to conservation easements has been the fear of erosion of the property tax base" (Emory, 1982a). In many cases, it may be one of the only issues that sparks communication between the two entities, and may

serve as the initial grounds upon which local land trusts form a relationship with local government.

Private land conservation has been studied primarily from the perspective of landowners and land trusts. There have been no studies of which I am aware that have specifically examined private land conservation activity from the perspective of a local government. This research examines land trust activity from the viewpoint of county tax assessors on the premise of property tax assessment issues for privately conserved lands.

This chapter begins with a discussion of county government and its historical and current role in land conservation. It then moves to the topics of property taxation and its relationship to land conservation, including a discussion of differential taxation programs, problems with the property tax assessment of conservation easements, and questions around land trusts as purely public charities. After a description of qualitative research and the methods used in this study, the results then present a picture of the local policies and actions of county tax assessors and the factors that shape the direction of those policies and actions.

The information presented here should be useful to people in the Georgia land trust community as well as to a broader audience that is interested in involving local government in land protection. Land trusts acknowledge that they can protect more land if they have working relationships with government (Emory, 1982b). This information will help convey to land trusts the concerns and problems that tax assessors face regarding private land protection, with the broader goal of creating more common ground upon which land trusts and local governments can develop a rapport.

County Government and Natural Resource Conservation

With the exception of Connecticut, Rhode Island and Alaska, county governments exist in every state in the U.S. (Engel, 1999). Traditionally, counties have been a particularly important political institution in the South, established in part to serve as a political center for widely dispersed, rural plantation residents (Grant *et al*., 1963; Berman and Lehman, 1993). Within 50 years of when Georgia's first 8 counties were created in 1777, the county government in Georgia evolved from being a weak, state-dependent entity to nearly an autonomous governmental unit (Hughes, 1944). Today there are 159 counties in Georgia.

Counties' initial role was to "extend the state into substate areas to provide state services locally" as the state's primary administrative arm (Thomas and Boonyapratuang, 1993). As Waugh and Streib (1993) note,

> Because counties have been perceived to be arms of state government, the capacity debate has generally focused on both the willingness and ability of state officials to address local concerns through county offices. Only recently the debate has focused on the willingness and ability of county officials to address those needs directly.

More and more, county services are extending beyond state responsibilities, including increased responsibility for administering federal programs as well as a continued role in grassroots governance (Thomas and Boonyapratuang, 1993; Berry *et al*., 2000). As suburbanization increases, counties serve new roles in coordinating services for the otherwise disjointed populations (Engel, 1999).

County involvement in conservation. County governments began serving federal and state interests in natural resource conservation in 1933 through county agricultural extension agents, bridging a gap between the federal government and county-level governments (Hughes, 1944; Grant *et al*., 1963). As more state conservation

agencies developed, they began using counties as arms for regulatory and educational efforts and, more recently, to address the loss of open lands (Grant *et al.*, 1963).

Studies from the 1980's indicate that most local government efforts to control loss of open space have been ineffective; although plans may be enacted by local governments to protect open lands, they are eventually overlooked or compromised when they truly impact the growth of the community (Furuseth and Pierce, 1982). Still, natural resource conservation is an important issue for counties. Three of the 12 steering committees of the National Association of Counties, the only national organization representing county government in the U.S., deal with land conservation and management issues (Berman and Greene, 1993).

More recently, the potential of local governments to address specific conservation goals, such as species conservation, has been considered. While the potential is to date largely unexplored, researchers are suggesting that local governments operate at a spatial scale that is conducive to addressing habitat protection. "Most conservationists," Press *et al.* (1996) write, "understand that habitat conservation is always, in the end, a local land-use matter and thus requires local support." The actual willingness of local governments to participate in such activity hinges on administrative, social, political, and financial factors, but should not be underestimated (Press *et al.*, 1996).

County governments consider land protection a problem that should be shared by various levels of government. In a study of county commissioners of Georgia and Florida counties, Marando and Thomas (1977) found that 29 percent of county commissioners saw the preservation of open space as solely a county responsibility, while 52 percent viewed it as an intergovernmental responsibility.

Property Taxation and Land Conservation

The financing of city and county governments and public schools in Georgia depends primarily on property taxes (Georgia Department of Revenue, 2001d). The importance of property tax revenue leads inevitably to the importance of proper property value assessment. As Hughes (1944) states, "since the general property tax constitutes the most important source of county government revenue, the first and perhaps most important phase of county financial administration is the discovery, appraisal, and listing of taxable property." In Georgia, county governments are charged with these responsibilities as administrative arms of the Property Tax Division of the Georgia Department of Revenue.

Property tax administration. The Property Tax Division of the Georgia Department of Revenue defines three groups of county tax officials to administer property taxes. The Tax Commissioner is the individual responsible for the collection of ad valorem tax in the counties. The Board of Tax Assessors for each county is made up of three to five members appointed by the county, and is responsible for determining that all property has been returned for taxation at the proper valuation. The Board also appoints the Chief Appraiser from the county appraisal staff. The Chief Appraiser oversees the staff's activity in appraising the fair market value of all taxable property in the county and maintaining all tax records and maps for the county (Georgia Department of Revenue, 2001a).

Property owners can appeal the assessment of their property to the Board of Assessors in their county. The Board of Assessors usually forwards this appeal directly to the county Board of Equalization, which hears both sides in the appeal and makes a

valuation decision (Ray and Dangerfield, 1994). In the hearing, the county appraisal staff provides the technical information regarding the county's assessment (Ga. Dept. of Revenue, 2001a). If either the Board of Assessors or the landowner is dissatisfied with the decision by the Board of Equalization, they may appeal the decision with the Superior Court (Ray and Dangerfield, 1994).

Property taxes as a conservation tool. In the U.S., it wasn't until the second half of the 20th century that the county's power to tax began to be used as a tool to achieve social objectives beyond the fundamental purpose of generating revenue. One of those objectives has been to protect open lands from development pressure. Specifically, rural land uses have been threatened by rising land values and the corresponding increases in property taxes based on highest and best use (Keene *et al*., 1976). In some cases, the annual property taxes can exceed the income generated by the land, thus making rural uses obsolete. Because of this threat, states began directing counties to use differential assessment to value properties based on current use rather than highest and best use. Georgia has implemented two such programs, the Preferential Assessment Program for Agricultural and Forestry Property (Preferential Assessment) introduced in 1984 and the Current Use Valuation of Conservation Use Properties and Residential Transitional Properties Act (Conservation Use) introduced in 1992 and amended in 1993.

Preferential Assessment. The Preferential Assessment legislation was passed in 1983 in response to concerns that "sales of property for development purposes in an area formerly devoted to agricultural or forestry uses would inflate general land values above the level supported by farming or forestry" (Dangerfield *et al*., 2001). Eligible land must have a primary use of "good faith commercial production from or on the land of

agricultural products, including horticultural, floricultural, forestry, dairy, livestock, poultry, and apiarian products and all other forms of farm products" (O.C.G.A 48-5-7.1).

Enrollment in the program reduces the assessed value of the property by 25 percent for 10 years in return for restrictions on the development of the property during that time. A penalty fee based on the tax savings is imposed if the contract is breached through a change from bona fide agricultural use. In 2002, approximately 3 million acres among 17 thousand contracts were enrolled in the program (Georgia Department of Revenue, 2003). Most enrollment occurs in the southern third of the state where agricultural use is the highest and best use and property values are relatively low. In this situation, Preferential Assessment provides higher tax advantages compared to Conservation Use (Herlevich, 1997).

Conservation Use. The passage of the Conservation Use Program came in part as a response to the biases of fair market value (FMV) assessment that were still inherent in Preferential Assessment. By assessing land based primarily on income derived from soil productivity, enrolled properties were no longer subject to valuation based on land values affected by increasing development pressure. Farm or forestland with the primary purpose of good faith subsistence or commercial production of agricultural or timber products is eligible for enrollment, as well as "environmentally sensitive" land. The environmentally sensitive land does require additional certification by the Georgia Division of Natural Resources. A 10-year restrictive covenant to prevent development is also used in this program, and a penalty fee of twice the tax savings to date is imposed for breaching the covenant through sale or development of the property (O.C.G.A., SEC. 48-5-2; Dangerfield *et al*., 2001).

By 2002, approximately 5.9 million acres among 73 thousand contracts were enrolled in Conservation Use (Georgia Department of Revenue, 2003). Most of these acres are in the northern two-thirds of the state where more intensive commercial, residential, and industrial development is more often the highest and best use. Differences between highest and best use assessment and current use assessment are high, resulting in greater tax benefits (Herlevich, 1997).

Effectiveness of differential taxation. Debate has flourished over the effectiveness of differential tax programs in protecting land. Due to its political popularity, differential taxation is currently used in 48 of the 50 states (Stockford, 1990). These programs can vary in the types of eligible land use, the landowner eligibility requirements, the penalties imposed for breaching the program contract, the length of time of enrollment, and the government entity administering the program (Coughlin *et al*., 1978).

Weaknesses. Because differential assessment only addresses property tax burdens, the literature suggests that standing alone, it is not an effective tool for protecting rural land uses (Keene *et al*., 1976; Coughlin *et al*., 1978). A review of research on the subject reveals that such programs have had little influence in preventing the sale of open lands for development because profits from sale far outweigh any tax savings (Malme, 1993). While differential taxation has been found to be effective in providing tax savings to those who wish to maintain ownership of their land and keep it in an undeveloped use, it must compete against many other factors when a landowner is considering selling or developing his or her property (Keene *et al*., 1976). While high sale prices are an important factor, demographic factors such as age and the willingness

of inheritors to maintain the existing land use are the most prominent factors, predominating in 55 to 60 percent of all sales (Keene *et al*., 1976; Coughlin *et al*., 1978). The true influence of property taxes on the sale of property by farmers is somewhat limited. Differential taxation programs often do not operate within a regional planning framework and have little relationship to landscape-scale management (Coughlin *et al*., 1978; Clendenning and Stier, 2000). Without the support of other land protection tools, land protection under differential taxation can be haphazard and unreliable, and could possibly exacerbate issues of sprawl (Keene *et al*., 1976). Also, the public benefit of protecting eligible properties may at times be questionable. For example, in Georgia, the majority of land enrolled in the program is lower productivity land (Newman *et al.*, 2000).

It may also be difficult to design a program so that it only enrolls the intended participants. Programs may end up excluding true farmers or admitting land speculators who have bought up farmland for future development (Furuseth and Pierce, 1982). Implementation of the program may not be consistent among counties. In Georgia, there is evidence that counties vary in their acceptance of small-sized parcels into the program (Newman *et al.*, 2000).

Such programs also come at a public cost. Tax shifting as a result of differential taxation would be negligible in a large county with a small farm-base, but could be large in a small rural county (Keene *et al*., 1976). In Georgia, the impacts of the Conservation Use Program on tax revenue vary dramatically across counties (Newman *et al.*, 2000). However, the same study by Newman *et al.* also found that Conservation Use itself is not the cause of significant tax shifting.

A study of participants and non-participants in a differential taxation program in Tennessee indicates that in general, respondents from both groups did not intend to change land uses, but one received a tax benefit while the other did not (Brockett and Gebhard, 1999). Whether the tax subsidy is worth the result in protected land is up to individual state legislatures to decide (Keene *et al*., 1976).

Strengths. As stated above, differential taxation programs are successful at reducing tax burdens for agricultural landowners. This effect is seen as an important component of a combination of tools that include more direct land use controls (Keene *et al*., 1976). Differential taxation can also delay land conversion, allowing local governments and communities extra time to plan for oncoming development (Nelson *et al*., 2001; Coughlin *et al*., 1978).

To maximize the effectiveness of a differential assessment program, the literature suggests tightening eligibility requirements while increasing the financial incentives and/or increasing the penalties for a breach of contract (Brockett and Gebhard, 1999; Keene *et al.*, 1976). Ideally, this would restrict enrollment to true rural land uses that would have otherwise been converted, and would reduce exploitation of the program by land speculators (Brockett and Gebhard, 1999).

Public response. Support for tax incentive programs like differential taxation is high among rural landowners, particularly in the Southeast. In surveys of non-industrial private forestland owners in the Southeast, Indiana, and Utah, respondents from the Southeast showed considerably higher support for tax incentives, around 90 percent, compared to 81 and 66 percent for Indiana and Utah, respectively (Brunson *et al*., 1996). Participation in Georgia's differential taxation program is widespread.

There are, however, factors that can limit participation in differential taxation programs. Eligible landowners may not enroll because they intend to sell or because they simply do not want to forfeit their property rights (Clendenning and Stier, 2000). On the other hand, landowners may enroll only to breach the contract with a buyer that is willing to pay the penalties (Nelson *et al*., 2001).

The same survey by Brunson et al. also revealed high support among southeastern landowners for direct payment programs for foregone resource options. Most respondents (78 percent) said they would be likely to support such programs, while only 35 percent in Indiana and 42 percent in Utah expressed the same support. Such programs could include the purchase of conservation easements.

Conservation Easements and Property Taxation

The proper assessment of land either encumbered by a conservation easement or owned by a land trust is important to county tax officials, owners of encumbered property, and land trusts. Depending on whether ownership is partial or in full, approaches to assessment vary. This discussion begins with a look at property tax treatment of conservation easements, or partial interests.

Valuation of conservation easements. As mentioned previously, the fair market value (FMV) of property is the basis for property tax assessment in Georgia and is in theory based on highest and best use (Stockford, 1990). Highest and best use can be defined as "the use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in highest land value" (American Institute of Real Estate Appraisers, 1983). As seen in the definition, highest and best use is based on individual opinion rather than absolute fact.

Georgia law defines FMV as "the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property in an arm's length, bona fide sale" (O.C.G.A., SEC. 48-5-2(3)). FMV is traditionally determined through the use of three techniques: comparable sales, income capitalization, and cost (American Institute of Real Estate Appraisers, 1983). The comparable sales approach uses sales of properties of similar attributes to determine the FMV of the property in question. This method often results in a highest and best use analysis, as the sellers of the comparable properties will accept the offer of the highest bidder.

The income approach is based on a calculation of the present value of the future benefits obtained from a piece of property. The method applies to income-producing properties and is not appropriate for properties that simply provide for personal use (*Appraising easements*, 1990). This approach can reflect a current use value or highest and best use value, depending on the predicted source of capitalized income.

The cost approach applies mainly to improvements to land, since it is based on the estimated cost to replace any existing structures (houses, driveways, fences) on the property. Vacant land values must be calculated using the previous two methods.

In determining FMV, Georgia law stipulates that county tax assessors consider zoning, existing use, covenants and restrictions on the property, and any other pertinent factors in addition to market data (O.C.G.A., SEC. 48-5-2(3) (B) (i)-(iv)). This law is broad, allowing for a range of interpretations among counties (Dangerfield *et al*., 2001). The Appraisal Procedures Manual, part of the Georgia Property Tax Division's rules and regulations, outlines procedures for assessing property. The Manual does not address

valuation procedures for property encumbered by conservation easement (Georgia Department of Revenue, 2001c).

Problems with traditional methods. Land values are primarily calculated with the sales method and may be supplemented with the income approach (Am. Inst. of Real Estate Appr., 1983). The applicability of any of these traditional methods to easement-burdened properties, however, is low (Stockford, 1990).

The use of the sales approach poses challenges for the appraisal of land encumbered by conservation easements because sales data are highly limited; the use of conservation easements is relatively recent in the Southeast, and initial transfers are often donations rather than sales. When using comparable sales for appraising an easement-encumbered property, the appraiser must adjust for the differences that will almost undoubtedly be present (Appraising easements, 1990). As Dangerfield *et al*. (2001) note, Georgia's FMV system "functions well where a large number of comparable sales are available to value similar types of property." At the time this research was initiated, however, sales data for easement-burdened property in Georgia were suspected to be highly limited (Neuhauser, 2001, personal communication).

The income approach may also be inappropriate as conservation easements are often applied in a way that reduces or eliminates income potential, or are used on properties that serve personal uses. Just as sales data are lacking for encumbered properties, the impacts of easements on future income are not clear (*Appraising Easements*, 1990).

Even with the uncertainty of traditional appraisal methods, studies have indicated that conservation easements usually reduce FMV, and that the reduction depends on the

restrictiveness of the easement and the land's highest and best use without the easement (Marchetti, 2001). A study by the Maine Coast Heritage Trust defined three classes of easements and found the ranges of reductions in FMV for each class based on appraisals for federal tax purposes. The most restrictive class, "forever wild" easements, saw an average FMV reduction of 77 percent, with a range of 64 to 90 percent. The semi-restrictive class, "resource management," saw reductions from 21 to 85 percent, with an average of 53 percent. Finally, the least restrictive "limited development" class had an average reduction of 22 percent, ranging from 5 to 39 percent. (Marchetti, 2001). This study, along with a Massachusetts study, highlights the fact that conservation easements vary in their impact on land value. In the Massachusetts study of property tax assessments, reassessments decreased pre-easement valuations from 13 to 95 percent (Sicard, 1975).

Assessment on the county level. The limitations of traditional assessment methods have implications for county tax assessors. In Georgia's Uniform Conservation Easement Act, as in the majority of state conservation easement enabling legislation, the law grants easement donors the right to a revaluation that will reflect the encumbrance on the next tax digest (Stockford, 1990; O.C.G.A., SEC. 44-10-1). However, given the poor applicability of traditional methods, tax assessors may have a difficult time reassessing the property.

Each conservation easement and the parcel it encumbers is unique. Therefore, to accurately reassess an encumbered property, each easement document must be reviewed individually to determine highest and best use, making formulas and comparative sales obsolete (Closser, 1994). Assessors may have to carefully read through the restrictions of

a conservation easement, essentially conducting an individual appraisal (as opposed to a mass appraisal) (Marchetti, 2001).

There is uncertainty regarding the effect of easement-burdened property on the value of adjacent properties. Some sources argue that assessors should reduce the assessment of encumbered properties because their presence would increase the value of adjacent properties over time by assuring that the property stay undeveloped (Stockford, 1990; Closser, 1994). This "betterment theory" has been demonstrated through sales of properties adjacent to conservation lands (Closser, 1994). However, the effect of private conservation lands has not been distinguished from that of public lands. Private conservation lands may have less of an impact on adjacent property values because the protection may not be as publicized or as strict as that for public lands.

In addition to technical difficulties in assessment, property tax reductions for easement-burdened properties may be limited by negative attitudes of county officials towards such reductions (Diehl and Barrett, 1988; Stockford, 1990; Ceglowski, 1992). County officials may see such tax reductions as an unfair shifting of the tax burden or a reduction in the tax base, and some may believe that the conveyance of a conservation easement does not affect property value or results in an increase in property value (Stockford, 1990; Ceglowksi, 1992). There may also be a perception that easement donors are among the wealthiest landowners and are, therefore, the least deserving of a property tax break at the expense of lower-income landowners (Closser, 1994).

Alternatively, county tax assessors may have a positive view of conservation easements and reduce their assessment accordingly. They may see a need for land protection in their county to slow rapid development, provide recreation or education, or

protect water sources or habitat (Closser, 1994). Also, figures that show the cost to counties of development versus open lands indicate that development may increase a county's financial burdens. A cost-of-community-services study by Dorfman *et al.* (2002) showed that among four Georgia counties, expenditures for every one dollar in revenue for land in residential use, including schools, ranged from $1.24 to $2.26, while expenditures for every one dollar in revenue for land in farm or forestland ranged from $0.20 to $0.36. With knowledge of these data, tax assessors may support land conservation (Closser, 1994).

Whether or not states provide laws for easement valuation, resulting assessments may depend on whether county tax assessors like or dislike conservation easements for any of the reasons discussed above (Diehl and Barrett, 1988). Resulting assessments will often vary depending on their personal views.

Real revenue impacts of conservation easements. Reducing the property assessment on one property shifts the tax burden to other property taxpayers. A study by Nelson *et al.* (2001) looked at the hypothetical impact of acreage under conservation easement on county revenue. Using a farm in Habersham County, Georgia, the study found that the average loss in county revenue for each acre under conservation easement was $21.56. This change depends on the value of the conservation easement and assumes that the landowner receives an accurate property tax reassessment reflecting the easement. For the same property, average per acre revenue reductions were $22.35 for enrollment in the Conservation Use Program. While taxpayers essentially pay the same for conservation easements and land enrolled in Conservation Use (a difference of 4

percent), conservation easements are perpetual while Conservation Use lasts for 10 years (Nelson *et al.*, 2001).

An organized state program that assures property tax reductions may result in a larger impact on the tax base. A development rights purchase program in King County, Washington had significant expected impacts on the local property tax base (Furuseth and Pierce, 1982). In the end, county government guided by state law essentially decides whether a property receives property tax reductions under either tool.

State law regarding reassessment. As mentioned previously, Georgia includes a provision in its UCEA that entitles an easement donor to a reassessment of the affected property for property tax purposes, as do most states with UCEA legislation (Stockford, 1990). For example, the Indiana UCEA includes a provision stating, "'real property subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement'" (Ohm *et al*., 2000). Oregon has similar language providing that encumbered property "shall be assessed on the basis of the real market value of the property less any reduction in value caused by the conservation easement" (Oregon Statutes 271.729). Reportedly, landowners have encountered obstacles to reassessment in accordance with this provision, particularly in more rural areas (Hutton, 2000).

Additional legislation exists in a few states that addresses property tax valuations following the donation of a conservation easement more explicitly. Illinois provides perhaps the most specific direction for property tax treatment of encumbered properties. In the Illinois Property Tax Code (Sec. 10-166), property in counties of less than 200,000 people encumbered by a conservation easement that has been accepted and proven to yield a public benefit is valued at 8-1/3 percent of the FMV as though it were not yet

encumbered; any appurtenant structure is valued at 33-1/3 percent of the FMV. In counties with more than 200,000 people, the property is valued at 25 percent FMV, and there is no reduction for appurtenant structures.

Massachusetts law recommends a standardized process that involves applying a "forever wild rate" to the undevelopable land (which amounts to a 90 percent reduction) and the full single house lot value for each residence. For house lots adjacent to the undevelopable land, they recommend adding an excess acreage factor (10 percent increase) to those lots (Marchetti, 2001).

Maryland is unique in that it gives property tax credits for properties burdened by easements that have been certified by the state. The requirements for receiving the credit are very similar to the federal requirements for a qualified conservation contribution (see Ch. 3). Each county may specify the amount and duration of the credit, and the approval must be renewed by the state every 5 years (Carter *et al*., 2000).

With the exception of these few states with special laws regarding conservation easements and property taxes, and Idaho, which negates any impact that a conservation easement may have on property tax assessments (Idaho Code, 2002), most states simply allow for a reassessment that considers the encumbrance. However, studies indicate that these reassessments often do not occur, and easement grantors do not realize property tax reductions on a consistent basis (Bick *et al*, 1997; Stockford, 1990). A study of forestland easements in New York State found that about half of the grantors who sought property tax assessment reductions were successful (Bick *et al*., 1997). To curb uncertainty regarding tax benefits, states could institute legislation such as Illinois' guaranteeing a property tax assessment reduction to easement grantors, or could

standardize the assessment process for county assessors (Stockford, 1990; Ceglowski, 1992; Richardson, 1995; Rigby, 1998).

The impact of existing laws in Georgia on reassessments for encumbered properties is not consistent. There is a consensus in the literature that there is no guarantee as to the amount of property tax savings that landowners will receive from granting a conservation easement (Fowler *et al*., 1999; Nelson *et al*., 2001). The Georgia Natural Heritage Program identifies a potential savings in property taxes as an incentive for donating a conservation easement. It notes that a landowner may only pay on the encumbered value of the property, depending on the local county tax assessor (Cammack and Van de Genatche, 1999). In sum, grantors of conservation easements in Georgia may or may not pay property taxes based on the restrictions imposed by a conservation easement depending on the attitudes of the local tax assessor.

Landowner issues in assessment. There are conflicting accounts of the importance of property tax reductions to conservation easement donors or sellers in the literature, and there is little mention of the importance of those reductions to subsequent owners of encumbered properties. Bick *et al*. (1997) suggest that for many landowners, assurance of a property tax reduction may be a key incentive for granting a conservation easement. This may be true for donors with lower incomes or who face high property tax assessments. Other experts indicate that among the financial incentives, property taxes rank among the lowest (Diehl and Barrett, 1988). Land trusts and landowners may also fear that by seeking property tax reductions, they may harm relations with local government officials. Some literature for land trusts suggests that they weigh these

diplomatic factors before seeking property tax reductions for themselves or their donors (Diehl and Barrett, 1988).

A survey of original donors and sellers of conservation easements in the northeastern U.S. found that tax breaks and social pressures were not primary motivations for donating an easement (Elconin and Luzadis, 1997). This is not surprising because tax incentives do not usually outweigh the financial sacrifices in easement donations (Nelson *et al*., 2001). The primary motivations among donors were personal attachment to the property, a sense of altruism, and good stewardship, while sellers, mostly active farmers, were motivated less by altruism and stewardship and more by concerns of keeping the farm in family ownership (Elconin and Luzadis, 1997).

However, the survey did find that among items rated by original donors for satisfaction levels, satisfaction for tax and other financial issues were rated lowest. Survey respondents indicated that tax officials were ignorant of tax benefits due to the donor. In comparing ratings for satisfaction with tax benefits overall, the appraised value of the easement, and the assessed value of the encumbered property, satisfaction over the assessed value was lowest (Elconin and Luzadis, 1997). It would seem that property tax issues would be more important in easement sales as there would be no income tax deductions from such a transaction. In these cases, property tax benefits could assume a role of greater importance in the decision of a property-owner to accept an encumbrance on his or her property.

The Elconin and Luzadis study also looked at satisfaction among subsequent owners of easement-burdened land. The issue of second-generation ownership of these lands is practically nonexistent in Georgia because conservation easements are such a

recent phenomenon and the properties still rest in the original donor's hands. It is not clear how significant property taxes would be to subsequent owners of easement-burdened land. However, a study of new timberland owners in Georgia by Newman et al. (1996) found that the majority of these landowners did not consider or were unaware of property taxes in their decision to purchase the property, and were unfamiliar with Georgia's differential taxation programs.

Administrative issues in assessment. Agencies and organizations have an interest in simple and consistent valuation procedures for easement-burdened properties. Research by Burkhard (1994) indicates that local difficulties in reevaluating property taxes are an important hindrance for state agencies' use of conservation easements, while the same problem is relatively unimportant to the use of conservation easements by land trusts. Both entities did find that difficulty in appraising different easement restrictions was an obstacle to the use of easements.

At the July 2002 Land Protection Tools Workshop held for administrators of the Georgia Greenspace Program, only one challenge to implementation was identified in the session, "Using conservation easements, covenants, and land trusts for permanent protection." This challenge was that "work needs to be done at the state level to create a reliable and consistent framework that appraisers can look toward in their efforts to accurately estimate the 'true' value of land placed under conservation easements" (Georgia Community Greenspace Program, 2002). Administrators of land protection programs in Georgia are cognizant of the problems posed by the inconsistent valuation of conservation easements.

Relationship to differential taxation. Some donors of conservation easements may also be eligible to enroll their land in Conservation Use to realize property tax reductions. Because the assessment of encumbered property is so difficult, owners of those properties may simply turn to the differential taxation program for predictable results rather than attempt to get a reassessment based on the easement (Marchetti, 2001). However, there is no assurance that easement-encumbered property would be eligible for the program.

Some requirements for Conservation Use eligibility that may limit the eligibility of some easements are: 1) the property must be no more than 2,000 acres; 2) it must remain devoted to it's qualifying use, which must be a form of "good faith production" of agricultural products or timber for subsistence or commercial use; 3) properties less than 10 acres must submit additional proof of bona fide conservation use; 4) property does not qualify if it is subject to a restrictive covenant that prohibits the following: raising, harvesting, or storing crops; feeding, breeding, or managing livestock or poultry; producing plants, trees, fowl, or animals; or producing aquaculture, horticulture floriculture, forestry, dairy, livestock, poultry, or apiarian products (Georgia Department of Revenue, 2001b). In addition, due to the variability with which individual counties interpret the law, some counties may limit enrollment more than others.

Some easements may be qualified for enrollment as Environmentally Sensitive Property under the Conservation Use Program, but acceptance into the program requires more strict qualifications, including approval by the Georgia Department of Natural Resources. In general, the program has been used rarely because landowners fear that the "environmentally sensitive" designation may imply stricter regulations, and because the

application process is long and tedious. This process has been made even more difficult by state authorities who fear a broad interpretation of the law and, therefore, greatly increase the application requirements (Herlevich, 1997).

Recognition of conservation land types through differential taxation programs varies widely among states. Almost every state has a differential taxation program for agricultural lands. Some programs also include enrollment for forestlands, open space, scenic, historically significant, or ecologically significant properties. Six states—New Hampshire, Florida, California, Maine, Pennsylvania, and South Carolina—have differential taxation laws that include specific enrollment for lands encumbered by conservation easements (McStotts, 2002).

State Case Law. There is no record of state case law in Georgia involving the property tax assessment of land encumbered with a conservation easement. A number of other states—New Jersey, New York, Maine, Massachusetts, Minnesota, Nebraska, and North Carolina—have a history of case law on the subject. A review of the cases reveals that in general, states recognize that conservation easements can affect property value and must be considered in revaluation. They also recognize the difficulty in determining the extent to which the property value is affected. When this is the fundamental issue, the experience and credibility of the appraisers are weighed heavily in the decisions of the courts (Byrne, 2000). Also considered in several of the cases is the legislative intent demonstrated by the states to conserve open lands in various statutes. Finally, there is an indication that at the county level, the effect of an easement on property value is not acknowledged or considered in many cases.

Appraisal for federal income tax deductions. As discussed in the section on financial incentives for conservation easements, donors can receive an income tax deduction based on the value of the donation, or value of the conservation easement itself. The IRS published the final regulation on gifts of conservation easements (Reg. 1.170A-14) in 1988, which states that, in appraising an easement, easement sales should be used to determine FMV if they are available. If they are unavailable, then the before-and-after approach should be used (Maybank, 1998). Literature from the early 1990's asserts that in most cases, easement sales are unavailable (Stockford, 1990). As early as 1994, however, literature suggested that the availability of easement sales for direct comparison was increasing, and that "tangible market evidence compels appraisers to consider direct sales of easements as evidence of true market value" (Vicary, 1994). In Georgia, however, sales data are essentially nonexistent.

The before-and-after method subtracts the FMV of the property after it has been encumbered by the easement from the FMV of the property before it was encumbered. This value reflects the value of the rights donated by the landowner, or value of the conservation easement. The resulting value of the easement will depend on its restrictiveness and the pre-existing highest and best use of the property. Because property appraisal is based on opinion, case law has developed around this subject from differing opinions between private appraisers and the IRS. Except for McLennan v. Commissioner, where the court ruled in favor of the IRS that the pre-existing highest and best use was linked to the existing landowner's intentions for development and not simply to objective development potential, the courts have ruled that highest and best use is determined objectively by the potential legal uses of the property, regardless of what

the landowner intends to do with it (Byrne, 2000). This precedence favors the taxpayer in that it may allow for higher appraisals of pre-existing highest and best use, resulting in an overall higher donation value (subtracting post-easement value from a higher pre-easement value will result in a higher easement value).

Federal law discourages inflated easement donation values with an overvaluation penalty. IRS Code Section 6659(f) charges a donor 30 percent of the additional taxes due if the landowner's appraisal is found to overestimate the value of the easement by 150 percent or more (Boykin, 2000).

Proper valuations, whether for charitable deductions or property tax, is a concern for land trusts and potential donors. Tax incentives for conservation easements, and for land protection generally, can be viewed as a government subsidy to land trusts for attracting gifts. From this view, land trusts should be at least partially responsible for ensuring accurate appraisals and discouraging inflated easement values. Improper valuations can potentially damage the credibility of the land trust movement; indeed, it may be the single largest threat to that credibility (Browne, 1982; Black, 1983).

Knowledge of how conservation easements are viewed and assessed by county tax officials in Georgia will be helpful to land trusts, easement donors and sellers, and local governments. This research addresses the questions that have been raised by each of these entities regarding property tax treatment of easement-burdened land.

Fee Simple Conservation Lands and Property Taxation.

Conservation lands owned fee simple by land trusts comprise 30 percent of the total private conservation lands in Georgia. It should be noted that these are self-defined

conservation lands—that is, the land trusts themselves have defined these properties as conservation lands, and are not legally bound by the definition.

Fee simple land acquisition by land trusts shares many of the same positive and negative attributes found in government land acquisition, which has been widely implemented as an alternative to regulatory measures. Fee simple acquisition provides full compensation to a landowner for her property and, for the most part, reduces management responsibility to one entity. Depending on the circumstances, it may be the best way to ensure that land is protected. However, it can have a negative effect on local economies by removing land from the tax base, and does not necessarily guarantee good management. It also relies on the willingness of a landowner to sell her property (Main *et al.*, 1999).

Land owned fee simple by land trusts may or may not be removed from the tax rolls. Valuation of land trust properties shares some problems faced in the valuation of easement-burdened properties. Land trusts may choose to (or have no choice but to) pay full taxes, apply for an available differential taxation program, or pay a service fee or payment in lieu of taxes to the local government. However, the primary question that arises regarding these properties is whether or not they will be fully exempt from taxation in belonging to a non-profit organization (Siegel, 1997).

Tax exemption for public charities. Arguments have been made for and against the exemption of public charities under state law. Non-profit organizations may be seen as a private provider of public goods, filling in where the for-profit sector or the government has failed. In theory, the eligibility of a non-profit organization to be exempt from property taxes may be based on whether the activities of the organization are very

similar to activities that the government would carry out in order to satisfy "articulated policies." Proponents of exemption would then argue that taxing such activities would essentially be the same as taxing the government itself (Siegel, 1997).

A central issue in the argument against statewide exemptions is that local governments unfairly bear the burden of the subsidy allowed by the state. Siegel (1997) concludes "the operative analysis from a societal perspective may be less one of an overall comparison of benefits to costs, and more an inquiry into whether the burdens of this public good are adequately shared between local residents and nonresidents." As a result, the question of current property tax status for land trusts still remains.

State law and county responses to assessment. All states allow property tax exemptions to charitable organizations through statutes or constitutional provisions. Georgia law exempts "all institutions of purely public charity" (O.C.G.A., SEC. 48-5-41). The Code defines this term as "when the income of the institution is not directly or indirectly for distribution to shareholders in corporations owning such property or to other owners of such property" (O.G.C.A. 48-5-40). In addition to these exemptions are the commonly exempt properties such as places of worship, hospitals, and nursing homes.

There is no state statute indicating that non-profit land trusts are automatically considered a charitable institution. That interpretation is left to government officials at the county level. However, case law in Georgia has addressed the issue to a certain extent. The court ruled early on that the term "charity" was to be interpreted broadly and included "substantially any scheme or effort to better the condition of society or any considerable part thereof" (Camp v. Fulton County Medical Society; Tharpe v. Central

Georgia Council, B.S.A.). Later, the court defined three factors that must coexist for an institution to qualify as a "purely public charity." It must be devoted entirely to charitable pursuits; the pursuits must be for the benefit of the public; and the use of the property must be "exclusively devoted to those charitable pursuits" (York Rite Bodies of Freemasonry of Savannah, *et al*. v. Board of Equalization of Chatham County, *et. al*.).

At the same time, the courts have upheld that taxation is the rule and exemption the exception; when a county is unsure of the exempt status of a property, it should err on the side of taxation rather than on the side of exemption (Leggett v. Macon Baptist Ass'n). However, while implication is not enough to exempt a property, the above rule should not be used unreasonably (Roberts v. Atlanta Baptist Ass'n).

County officials may hold various views regarding the exemption of land trust properties. The negative and positive attitudes held by county tax assessors towards conservation easements could also be held towards land trust properties owned fee simple. In addition to those attitudes discussed previously, local tax officials may see an exemption allowed by the state as an unfair burden on local governments. The conservation lands may benefit residents of the state overall, but the county alone pays for the exemption (Siegel, 1997).

Land trust issues in assessment. Land trusts have a particular interest within the non-profit sector in the taxation of their property because, as indicated by their name, they are often in the business of owning property. In surveys sent to land trusts, the ongoing cost of ownership, with property taxes noted in particular, was ranked as one of the four most important obstacles to the use of fee simple acquisition (Burkhard, 1994).

As mentioned in the discussion of conservation easements, land trusts may avoid seeking a property tax reduction in order to maintain positive relations with local government officials (Siegel, 1997). However, no studies were found that documented the actual property tax assessments asked for or received by land trusts for property they owned, fee simple. This research examines this question for land trusts operating in Georgia.

Methods

Qualitative research—meaning and application. Qualitative research is a research method useful for uncovering patterns in human reactions that would not be discovered or accurately represented by quantitative data and analysis; it seeks to make sense of the meaning of social reality (Strauss and Corbin, 1998).

What makes a research question appropriate for qualitative analysis? First, such a research question does not make a statement regarding a relationship between a dependent and independent variable, as do quantitative research questions. The question instead is framed as "a statement that identifies the phenomenon to be studied" (Strauss and Corbin, 1998). While the question relates to a specific phenomenon, it is stated broadly enough as to not exclude discovery during the research process (Strauss and Corbin, 1998).

The questions that I initially encountered and deemed appropriate for qualitative research were the questions underlying policy problems involving land trust activity and property taxes. I first noted that local government responses to conservation easements varied with tax assessor "attitudes." The questions that then arose were "what are those attitudes?" and "what influences those attitudes?" I decided that interviews with tax assessors regarding land trust activity and, more generally, special assessments for land

conservation, could begin to answer my questions and could reveal more complex concepts and issues.

To answer these questions with qualitative research, I turned specifically to the grounded theory approach. Grounded theory is one of the major types of qualitative techniques used in social science research (Creswell, 1998). However, this methodology has not been widely applied in the natural resources arena, so I provide a brief description here. A grounded theory is "inductively derived from the study of the phenomenon it represents. It is discovered, developed, and provisionally verified through systematic data collection and analysis of data pertaining to that phenomenon" (Strauss and Corbin, 1998). The result is a theory closely related to the context of the phenomenon being studied, close to a specific problem or population of people (Creswell, 1998). This theory contributes to an overall process of discovery; it aims to provide a "fresh theoretical interpretation of the data rather than explicitly aim for any final or complete interpretation of it" (Charmaz, 1983).

Grounded theory as an analytical tool involves simultaneous data collection and analysis (Glaser and Strauss, 1967). As the analysis is conducted, sampling methods and data collection methods (in this case, selection of interview participants and use of questions in the interview) are altered to respond to discoveries in the data.

Sources on the subject of grounded theory advocate the use of coding as the basic analytical tool (Glaser, 1967; Charmaz, 1983; Strauss and Corbin, 1998). Coding is used to summarize, synthesize, and sort the observations made of the data (Charmaz, 1983). In a series of coding stages, the raw interview data are "fractured" and reassembled into categories that can be interpreted into a grounded theory (Bickman and Rog, 1998). The

initial codes are designed to fit the data; data are not forced into codes (Charmaz, 1983). However, coding categories should reflect the purpose of the research and the interests of the intended audience (Rubin and Rubin, 1995). Coding in the later stages of analysis goes beyond the raw data to reflect the interpretations of the researcher (Charmaz, 1983).

At the end of the process, coded categories and themes can be reassembled into groups of ideas that are thematically related, a procedure also known as axial coding (Rubin and Rubin, 1995; Strauss and Corbin, 1998). This organization allows for the development of overarching themes, a key element of the final report presenting the analysis. The final report presents the overarching themes and the implications of the discoveries for the intended audience (Rubin and Rubin, 1995).

Data collection and analysis. This research is based on qualitative methods supplemented by quantitative data. I used the grounded theory approach as the basis for my qualitative data collection and analysis. The primary data-collection tool was an open-ended interview with county tax officials, usually the chief appraiser. A total of 14 interviews were held with county tax officials. Interviews were also conducted with the executive directors of two land trusts, three conservation easement donors, one official from the Department of Revenue, and one county land use planner for a total of 21 interviews over a non-consecutive 3-month period in 2002. In-person interviews lasted from 20 minutes to 103 minutes, averaging 51 minutes. One interview was held over the phone and, due to time constraints felt by the interviewee, lasted only 11 minutes. All interviews were recorded on audiotape with consent from the interviewee and transcribed.

County tax officials were selected for interviews based on a number of factors. Due to the perceived importance of geographic location, rural or urban character, and land trust activity in influencing a county tax official's view of private land conservation activity, I selected counties individually based on these factors to represent a wide diversity of counties and regions. Prices per acre of timberland were used to approximate development pressure, and counties with more than two easements were initially targeted.

County tax officials from 23 counties were contacted by phone for an interview. The tax officials from six of those counties had not heard of conservation easements; another three had heard of conservation easements but were not aware that they had them in their county. In those cases, I did not schedule an interview. Table 4-1 breaks down the final interviews conducted. There was a sampling bias towards officials in counties with more conservation easements in them and towards officials more familiar with land trust activity. The regions are based on the Georgia Agricultural Statistics Districts (National Agricultural Statistics Service, 2002).

Table 4-1: Number of counties represented by interviews with county tax officials from each region in Georgia

Region	Northwest	North-Central	Northeast	West-Central	Central	East-Central	Southwest	Southeast
Number of counties	**3**	**5 (2*)**	**1**	**1***	**1***	**1**	**1**	**1**

* These counties are located in or on the fringe of the Atlanta metropolitan area

I began the interviews with an introduction to my research and the broad questions that had arisen from it. After introductory questions, I asked the county tax officials to first describe the land use trends in their county, how the land uses have changed in the recent past, and how they believe they will change in the near future. I then asked them to share their experiences with conservation easements, land trusts, and the public regarding private land conservation. These discussions often led to the topic of

the Conservation Use program as well. I usually had copies of the conservation easements in the appraiser's county, and if appropriate, would share those documents with the appraiser. If the appraiser was not aware that conservation easements were in his county (occasionally I went to an interview under the assumption that the appraiser knew he had easements in his county, when in fact he didn't know), he was enthusiastic about seeing the easements and would inquire further about land protection activity in his county. In this way, roles of authority and information-sharing were traded back and forth between researcher and subject, creating a more open atmosphere hinged on the sharing of useful information. As county tax officials are accustomed to criticism from the general public and tend to speak defensively, the researcher made a special effort to develop a rapport that was non-threatening and non-accusatory.

Due to the public nature of the county tax official's position, all quotes are uncited. I promised confidentiality to all interviewees in order to allow them to speak freely without concern of criticism from the publics or the governments they serve, or from their fellow appraisers.

Full exemption data. The research was adjusted towards the end of the data-collection period to include the issue of property tax exemption for land trust properties. I decided to gather data on this topic from individual land trusts late in the interview process as the theme of "land trust as purely public charity" emerged from the interview data. Rather than returning to the tax assessors to determine how they handled exemptions for land trusts as purely public charities, I decided it would be more practical to gather these data from the land trusts themselves, given their small number. I also

directed the remaining interviews with tax assessors towards the issue of exemptions for land trust properties.

I interviewed the director of one such land trust in person as part of the qualitative interviews, and interviewed administrators of six land trusts by telephone. The interview script used in the telephone interviews is provided as Appendix E. I took notes on the interviewee's responses during the interviews. The goal was to reconstruct the exemption policies applied to the land trusts using the interviews with the tax assessors and the land trusts. I targeted the land trusts with more than one parcel and/or with land in more than one county so that I would be able to determine any variation in treatment among properties owned by one land trust.

Quantitative data. In addition to the qualitative data, I also collected property tax assessment data on conservation easements that I was able to locate during my visits to the county courthouses. I attempted to collect yearly assessments for the easement-burdened properties to determine any change in assessment, but found that I could not distinguish other factors associated with the properties that would have affected the assessed value from any effect that the encumbrance may have had. I was able to collect data on enrollment of encumbered properties in the Conservation Use Program and, based on the interviews, was able to categorize the type of treatment that the easements received. The full exemption data also have some quantitative aspects that are presented in the results.

Results and Discussion

Quantitative data. These data provide a general overview of the property tax treatment of conservation easements in the state. Figure 4-1 shows the property tax

treatment for a 71 percent sample of all the easements in the state conveyed to land trusts (100 out of 141 easements).

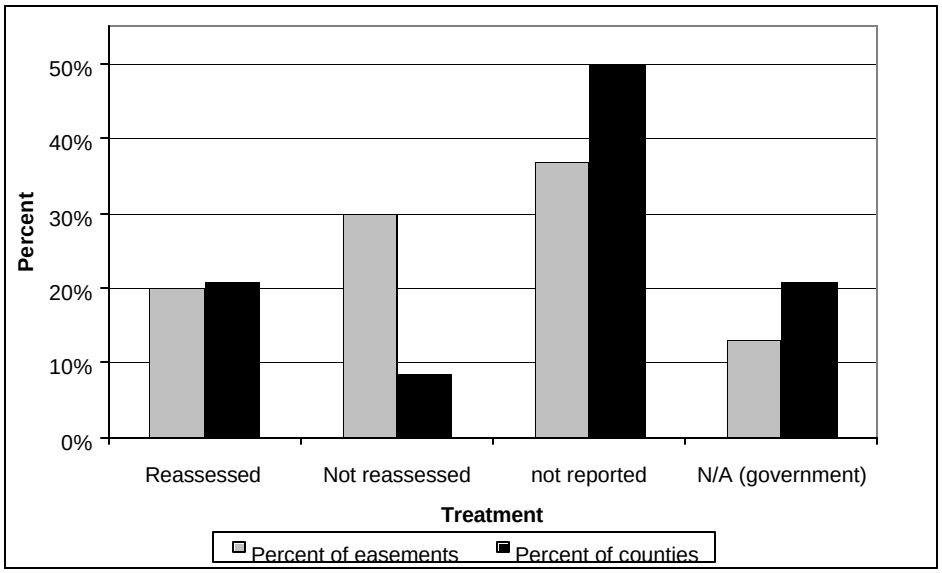

Figure 4-1: The property tax treatment for a sample of conservation easements in Georgia

The sample may be biased against "not reported" easements because much of the information came from counties that were at least familiar with conservation easements, making it more likely that they had encountered them in their job.

"Reassessed" means that the tax assessor made a reassessment of the property following the encumbrance, but does not guarantee that a reduction was given. "Not reassessed" means that the tax assessor made a conscious decision to not consider the encumbrance as a indication for reassessment. "Not reported" means that the tax assessor was not aware that an easement existed in his county. This category only includes easements in counties with tax assessors that were working as chief appraiser at the time the easement was conveyed. Finally, "N/A (government)" means that the easement was conveyed by a government entity, so property taxes did not apply.

The largest category is of easements not reported. While the second highest category for easements is for easements not reassessed, only two counties had tax

assessors that made this assessment choice (one of the counties that had such a tax assessor happened to have the most easements of any county). Of the counties that received notice of a conservation easement, 70 percent conducted a reassessment. From the property tax digest records, I was able to identify 30 encumbered properties; one-third of those were enrolled in the Conservation Use Program. The availability of the program might be one reason that some conservation easements are not reported; the program may provide some landowners with sufficient property tax reductions. However, it is surprising that more conservation easement donors were not enrolled in the program.

I reconstructed exemption policies applied to eight of the 12 land trusts with fee simple conservation land in Georgia. Two of the land trusts were national organizations and six were local/regional organizations. Based on the number of parcels they own, the land trusts interviewed represent a 95 percent sample of the total number of fee simple parcels in the state (92 percent if we exclude The Nature Conservancy from those interviewed).

All eight of the land trusts that I interviewed had sought at least some reduction in property taxes for their fee simple conservation properties. A reconstruction of the exemption policies for conservation land owned fee simple by land trusts provides the information summarized in Table 4-2.

The data show that half of the land trusts I interviewed have a policy of seeking full exemption; they almost always receive this exemption, though it may not always come easily. Conservation Use values are another popular means of handling fee simple

conservation lands. A more detailed explanation of this data is provided in the discussion of qualitative results.

Table 4-2: The results of sought property tax assessment reductions for fee simple conservation property owned by land trusts in Georgia

			Assessment results		
	Sought reduction	Sought full exemption	Full exemption provided*	Conservation Use values applied	Other reduction
Number of Land trusts	**8**	**4**	**4**	**3**	**1**

*There were two larger land trusts that had received full exemption for the majority of their properties. Although one or two properties may have not received full exemption, the placement of the land trusts in this category represents the overall success of the land trust in receiving exemptions.

Land trusts have varying future plans for the properties that they own fee simple for conservation purposes. Of the land trusts with which I spoke, only one had conveyed conservation easements on its fee simple properties; the others stated that they would convey an easement on their properties as a condition of sale or transfer. The list below provides all the possible future plans for the fee simple properties that the land trusts mentioned.

1. Keep the property indefinitely;

2. Transfer the property with an easement attached (to a government or other non-profit entity);

3. Sell the property with an easement attached (the easement may or may not allow development, but would be designed to protect the conservation values in either case).

As these data indicate, while the designation of property as "fee simple conservation land" limits the potential uses of that land, it does not set the fate of that property in

stone. As we will see later in the discussion, this uncertainty is a cause of concern for some tax assessors when faced with the question of exemption.

Qualitative data—overarching theme. Tax assessors see as a central objective of their job to engage in fair, equitable, and uniform treatment of all property owners. In fact, Georgia statutes direct that "county boards of tax assessors…make adjustments in the valuation of property to ensure uniformity and equity" (O.C.G.A., SEC. 48-5-340). State laws providing for the special treatment of certain classes of land ownership for property tax purposes may in theory be designed to address concerns over equity and fairness, but they also complicate the assessor's duties in administering fair treatment. This is especially true if the laws are vague. As a result, tax assessors interpret the laws within their discretion to balance equity with other legislative intents (in this case, public benefit of land protection), both within their county and across counties, through written and unwritten policies.

The elements of the discussion that follows arise from and contribute to the following grounded theory regarding the way tax assessors approach the challenge just described: *While tax assessors' approaches to private land protection are shaped by concerns over equity (i.e., shrinking tax bases and a shifting tax burden), they are equally influenced by questions regarding the purposes and motivations behind specific private land conservation decisions. The county administration of property taxes for privately-protected land is influenced by an effort to measure the public benefit of private land protection and balance it with the traditional objective of conducting equitable and uniform assessments.*

The discussion that follows is designed to reinforce and expand upon this theory with evidence from interviews with county tax officials in Georgia based on the subjects of the Conservation Use Program, conservation easements, and the exemption of fee simple conservation land. Several key themes are brought out in the process; these themes are distinguished by the italicized headings in each section. The discussion concludes with remarks on the relevance of these findings for researchers, land conservationists, and state and local government.

The problem. "Much of what counties do is directly affected by what the state requires them to do" (Marando and Thomas, 1977). Tax assessors' goals of conducting fair and uniform assessments are complicated by the fact that some Georgia property tax laws and regulations are notoriously vague and give deference to county authority. In this section, tax assessors reveal the challenges that have arisen from their duties to treat the public uniformly, from vagueness of existing laws, and from the lack of data upon which to base decisions. They also express their opinions regarding the balance of state versus county involvement in questions regarding assessment.

Equitable and uniform treatment. Tax assessors recognize their duty to treat all property owners fairly and uniformly. As one assessor says, "if you read the revenue laws, the underlying themes of all those revenue laws is that everybody statewide has to be treated uniformly…. Everybody's got to be treated exactly the same." However, that same assessor saw obstacles in state policies to satisfying this objective. He goes on to say, "but, our [state] Code isn't very good on this, or very good on that, and so it leaves all these gray areas, and it tends to undo the main idea that is good, which is treat

everybody the same." Herein lies the conflict between the state mandates and the objectives of county tax assessors.

Assessors recognize the importance of public assurance in the fairness of the assessment process. "Every year when we send out all the assessment notices, … people's biggest fear is this: am I in the same boat as my neighbors? Are we all being treated the same together? If you can pretty much demonstrate that, you're okay." The credibility of an assessor's work lies in equity and uniformity.

Clarity of state law. The concern over uniformity extends beyond the county lines of each individual assessor. Assessors see the maintenance of statewide uniformity as much a part of their job as uniformity within the county. However, achievement of this statewide uniformity is more subject to the whims of state policy that oftentimes leaves individual assessors with the discretion to act differently than their neighbors. In this way, uniformity is directly related to the clarity of state law.

The problem is defined by one tax assessor who states, "right now there's 159 different counties, so I'd probably estimate there's 159 ways [the Conservation Use Program is] being done. And that's a problem, that's really a problem." The problem that results is a lack of uniformity around the state. This, according to the tax assessors, translates into unfairness for taxpayers. "There's such a wide range of interpretations of what should and shouldn't be in the [Conservation Use] program, it's virtually impossible to administer statewide and be fair to everybody."

Similar sentiment exists over state exemption laws. One assessor who was particularly concerned about uniformity among all the counties stated, "I know that one of the issues that not only we have but that a lot of the counties in Georgia [have is that

they] want the Revenue Department to clarify what is exempt. That is a big issue. What I might exempt here might not be exempted in South Georgia."

While state legislative guidance is one means of addressing a lack of uniformity, assessors can also look to case law for guidance. However, as one assessor explains, all tax assessors do not regard case law with the same deference.

> Anytime you have a Superior Court case where a judge has ruled [a certain] way, I wouldn't challenge it in court, because…that judge is going to agree with that other judge, and they should. Once it goes to the Court of Appeals, then I think that sets precedence and the county should look at that.
>
> I was asking some of the other chief appraisers, how are you going to handle [this court decision] now, since it's a court case? "Well, its just one court case, I'm gonna continue to tax"; and I felt like that was wrong.

Assessors do attempt to compensate for variation in the interpretation of statutes by sharing information with each other, a theme that is discussed in a later section. However, this is not viewed as a panacea for vague statutes; the only answer to many of their concerns is clarity in state law.

Conflicting roles of the state. While state guidance is seen as important in some situations, tax assessors still value their discretion. The result is that most assessors encourage guidelines (not mandates) for special assessments, as in the case of conservation easements.

First, assessors do not see some mandated assessments as appropriate. The following excerpt represents a common view:

> *Interviewer*: Do you think a statewide policy [for conservation easement assessment] would be useful, or do you think it's better to leave it to individual counties?
>
> *Tax assessor*: No, individual counties…. The state can't set a standard for conservation easements, or present some magic formula. There's too wide a variety of counties in Georgia.

Note that assessment of easement-burdened properties is a problem not because there is too much variety among *easements*, but because there is too much variety among *counties*. The essential problem with state mandates lies with the desire to accommodate various county interests and values.

Does this evidence contradict the arguments for uniformity provided in the discussion of clarity of state law? While it may appear to be so, the answers are consistent along the policy questions at hand. Problems with the assessment of conservation easements are problems of fact (as opposed to law)—what is the effect of a conservation easement on value? What are the restrictions? Additionally, there is essentially no statutory language regarding conservation easements about which to have a legal question. While the state can provide guidance on how to obtain the facts, counties choose to ultimately make the final value determination based on those facts.

On the other hand, problems with the Conservation Use Program and state exemption law for public charities arise from questions of law—what was the intent of the legislature? What is the definition of "bona fide conservation use," or "charitable purpose"? In one assessor's experience, "questions arose as to the tax standing of the land trust itself and the property that it owned. There's gray area in the property tax exemptions for these types of properties. Would they be considered quasi-governmental? A purely public charitable institution?" In these instances, counties need (and want) clarification in order to ensure legal equity and uniformity.

A final mention should be made of the conflict between state interests in, for example, greenspace protection, and the resulting impact on the tax base at the county level. The argument has been made that counties end up carrying the financial burden for

benefits enjoyed by all residents through the state-sanctioned exemption of certain properties (Siegel, 1997). As a result, counties may end up resenting state mandates for exemptions.

I received conflicting ideas from the interview data regarding this issue. On the one hand, some assessors expressed concern about the impact that the special treatment of conservation easement properties could have on the local tax base. "If enough of these [conservation easements] come out statewide, I think you're gonna see the tax digests affected by this, seriously affected, especially in some of the rural counties." However, this concern was based mainly on speculation and on the assumption that a conservation easement would remove nearly all taxable value from an encumbered property. For the most part, it was offered up as a possibility rather than a certainty.

The more pervasive idea was that, if the state decided it was in the public's interest to exempt certain properties, then it was the tax assessor's job to enforce that decision. One tax assessor summarized this idea when he explained, "we're here to do a job, and that job is to enforce the laws of the state. Now if the state comes out with some kind of laws that we should exempt these things and develop a criteria for that, that's fine." This quote from this particular tax assessor is especially salient because his county had a particularly large exempt digest. He demonstrated a conservative approach to granting exemptions, but expressed acceptance towards state exemption programs nonetheless. For the most part, tax assessors appear willing to comply with state laws allowing special exemptions. While equity is an important concern for tax assessors, it does not appear that land protection programs are perceived as posing a large threat to

county tax bases overall. I will return to this idea later in the discussion of influences on tax assessor decisions.

Data needs. The evidence presented here simply reiterates the point made in the literature review that data upon which to assess properties encumbered with conservation easements are lacking. This was widely recognized among assessors. "We don't have any sales, we don't have any appraisals, and I would be interested in seeing that information developed to where we can use it in the near future, but its not available right now." Sales data are considered the most reliable data; second to that is the raw information provided by the easement document itself. "Sales is a big one. And actually if you look at most of this stuff, they provide you with what you need [to do the assessment] in the conservation easement itself. They're fairly detailed."

The burden of proof for an assessment is often on the tax assessor during the appeals process. Four of the tax assessors with whom I spoke could recall at least one appeal of an assessment of privately conserved land (either an easement-burdened property or a conservation property owned fee simple by a land trust). One tax assessor that had recently lost an appeal for the valuation of an easement-burdened property commented,

> I didn't have any way of proving that a permanent conservation easement did or did not affect the value of that property. That's one of the limitations I run into not crossing county lines. I had checked with some of the adjoining counties and they had not had any sales at that time either. And I don't want to go into [an adjacent state] to start grabbing them because then I'm dealing with a different issue all together.

Tax assessors have little information to work with in assessing conservation easements. This remark also provides an example of the geographic limitations that tax assessors must deal with in collecting sales data—these limitations are an inherent part of property

appraisal. However, as we will see later, tax assessors still depend heavily on sharing information and ideas with one another in an attempt to reach uniformity around the state in assessment issues.

As we have seen from the evidence provided here, tax assessors work to develop fair and uniform treatment of taxpayers both within their county and among counties. A balance between state guidance and county discretion is sought to best achieve this goal of fairness. When it comes to questions of law regarding the interpretation of statutes and legislative intent, counties worry that their discretion exists at the cost of fairness and uniformity. In these instances, counties desire guidance and clarification from the state. Finally, from the tax assessor's perspective, counties appear to hold little or no resentment towards the state for mandating special assessments that may reduce a local property tax base.

Formal and informal policies. In addition to revealing some of the problems that tax assessors face in relationship to assessing privately conserved land, the interviews also indicate how the assessors go about their job in spite of these problems. In this section, evidence from the interviews indicates that tax assessors develop individual written and unwritten policies for handling the "gray areas" or unanswered questions of assessment. These policies and the resulting actions are designed to interpret and implement state law, specifically the Conservation Use legislation, the directive for the reassessment of easement-burdened properties, and exemption law for purely public charities. The themes described here represent the type of interpretations and the extent of implementation.

Specific interpretations of law. During the interview process, tax assessors explained to me their policies and actions with respect to conservation land. While not every tax assessor had a clearly articulated policy for each of the laws in question, there were some reoccurring patterns for each law. A descriptive account of the policies is provided here. The analysis of the reasons behind these policies will come later in this chapter.

The reassessment of easement-burdened properties. Tax assessors' policies regarding the reassessment of easement-burdened properties vary significantly. Recall the relevant statute, O.C.G.A., SEC. 44-10-8, which, upon recordation of the easement with the county clerk of superior court, "shall entitle the owner to a revaluation of the encumbered real property so as to reflect the existence of the encumbrance on the next succeeding tax digest of the county." While the intent of the law is clear, its implementation is open to interpretation.

There are three types of reassessment policies adopted by the tax assessors with which I spoke. The first involves the substitution of Conservation Use values for easement-burdened properties ("thus far, we haven't had any easements that we've looked at where we did not just simply value the remaining interest in the land itself using the state's Conservation Use [values]"). The second involves examination of individual easement terms to determine the specific impact on the current use of the property ("I'm going to look at the data…and I'm going to ask myself, 'what impact is this putting on the property? Is this costing that current landowner something now?'"). The final approach is a conscious decision to not conduct a reassessment ("My only contact has been through the deeds that have been recorded with references to the

easements…. We haven't had to deal with them yet in any respect to valuation and taxability.").

In addition to vagueness in the law, another explanation for why this particular variation exists may be that conservation easements are relatively new—communication among tax assessors regarding this issue may not yet be widespread enough to have established a widely accepted informal policy.

Implementation of the Conservation Use Program. The Conservation Use law leaves significant room for interpretation of the definition of "good faith production" of agriculture or timber products. It may include subsistence farming and commercial production of agricultural products or timber (O.C.G.A., SEC. 48-5-7.4).

Interpretations of "good faith production" among the interviewees include very liberal interpretation ("we're looking at the Conservation Use Program as applying to as much as possible, not necessarily the exact intent of the legislation…. If there's any way we can accept a property into the Program, we try to."), literal interpretation ("as long as you have a growing product on your property…. It doesn't say you have to harvest it"), and conservative interpretation ("The intent of the law was to help farmers, and that was it…. Are they truly growing trees, are they truly farming the property in its entirety, or is it just sitting idle…? Just natural regeneration of the land—that's not farming. That's just taking it off the tax rolls."). As introduced in the discussion of tax assessors' frustration over vague laws, this is an example of the variation that raises questions of equity and uniformity.

In addition to defining "good faith production," tax assessors also use discretion in the program application process, sometimes requiring additional application materials

or a personal visit to the assessor's office. There was a general consensus among the tax assessors that properties under 10 acres had to meet additional application requirements, usually in the form of a management plan or documentation of land uses.

The Conservation Use Program has been in effect for 10 years. In retrospect, the tax assessors commonly felt that their county had been too lenient in accepting applications in the early part of the program; if they weren't doing so already, they intended to be stricter in who they admitted into the program. "I think when it first came into effect we were all a little green on what Conservation Use was, and a lot of people got in it that probably shouldn't have gotten into the Conservation Use deal."

Interpretations of state exemption law. The interpretations described in this section come from the interviews with land trusts as well as with tax assessors. Recall that Georgia law exempts from property taxes "all institutions of purely public charity" (O.C.G.A., SEC. 48-5-41). Land trusts and tax assessors have responded to this law in a variety of ways. As we saw from the quantitative data on fee simple conservation land exemptions, tax assessors in Georgia have granted full exemptions, have provided for enrollment in the Conservation Use Program, or have negotiated other levels of reductions.

While I did not ask most tax assessors how they approach this issue, data from the land trust interviews can give us an idea: "The decision to exempt is made on a county-by-county basis. It's like that in most every state, but here in GA, some assessors have paperwork, some just say 'sure, just send the proof of your non-profit status.'" While the approaches vary from county to county, the tax assessors with whom I did speak to on this issue suggest that they act on the overriding principle that exemption is the

exception, taxation the rule. If a tax assessor is in doubt, he will decide in favor of taxation and/or seek legal advice.

The policies of land trusts vary regarding exemptions. Some see it as their civic duty to pay property taxes ("We don't have any thoughts of not having to pay ad valorem taxes—that's out of the question. The organization feels that as long as there's a reasonable assessment for the property, they're satisfied"), while others see tax exemption as a fair reward for land protection ("We went to the county and convinced them for full exemption…. They had a lot of argument and disagreement but they went along…. We told them it was a public benefit to have habitat and water retention areas"). Still other organizations saw that there was room for compromise:

> Based on some research I've done, the more publicly accessible, …the stronger the argument for claiming property tax exemption. Currently we don't allow open access. We do allow access, but it is more controlled; so, we don't feel like we have an argument for total exemption.

Implementation approach. Informal, unspoken policies are represented by the extent to which a tax assessor embraces the implementation of a law and the intent behind the law. With land protection programs and options, tax assessors may solicit, discourage, or be neutral to enrollment or participation among landowners.

One tax assessor told this story about soliciting a landowner for enrollment in the Environmentally Sensitive category of Conservation Use:

> Last year we began looking at this issue with the Conservation Use Program that's available through the state, and began to realize that [this land] qualifies as Environmentally Sensitive property. And so I began looking at it and began talking to people at the Department of Revenue and just kind of batting around the idea, and it was time for [the landowner] to renew his covenants anyway, and I suggested that to him. And since he's a major fan of the Conservation Use Program, he really loves it dearly, he and I sat down and worked through his property and got everything set up, and he now has the only Environmentally Sensitive covenants in this county.

This tax assessor spoke of the enrollment as a success for the landowner and himself. In other instances of solicitation besides this one, tax assessors spoke proudly of finding an ideal match between a property and a land protection program, indicating that tax assessors can feel ownership for land protection efforts in their county.

Discouragement from participation in a program may come in a less direct form. One tax assessor summarized the situation:

> You don't find very many people that are neutral on the issue. People either say, "[Conservation Use is] the law, its good for the county to keep it green, if they qualify lets do everything we can to get them in, lets even try to solicit people to get them in." Then you've got the other type that says, "that's just an exemption passing the taxes on to somebody else, we need the money, we're going to turn them down and if they want to appeal it then we'll look at it closer."

While I did not witness this strong of a polarization through the interviews, there were tax assessors who were especially cautious about enrolling landowners in Conservation Use. As one assessor explained,

> Yes, I am pretty strict with the interpretation…. I will not accept an application if [the landowner] has not come in and sat down and talked to me. I give them all the paperwork, I give them the rules, I give them our policies, …and then I explain it to them in plain English, so there's no misinterpretation…. I say, "look, you may enter this thing thinking you're gonna do this for 10 years. Things change! Three years from now you might be called to preach in Ethiopia. You might want to liquidate or do something."…So we do what we can to help everybody with it.

In instances of cautious assessors, the concerns were usually (once again) equity for all taxpayers, as well as avoiding breaches.

A tax assessor may be in the position to advocate for land protection in county land protection decisions. As an example, one tax assessor witnessed the development of conservation subdivision zoning in his county, and was dismayed to see a requirement for conservation easements dropped from the zoning.

> *Tax assessor:* I've promoted [conservation easements] a hundred percent…. The initial intent of this new development policy was to require conservation easements. But as the proposed new policy went through the process, the requirement that a perpetual conservation easement be given was withdrawn…. And I was very disappointed that they lessened those requirements.
>
> *Interviewer:* Why do you think that happened?
>
> *Tax assessor:* There wasn't enough knowledge. I'm familiar with conservation easements…; I know what they do and what their intent is…. I think some of the policy makers were not that comfortable.

Depending on the relationships between local government officials within a county, tax assessors may be in a position to advocate for strong land protection policies. Policies that ensure reliable land protection are consistent with tax assessors' policies for equity and uniformity—they strive to reward land protection activity that benefits the public. As we will see in the next section, subjectivity then comes into play when defining public benefit.

In sum, when provided with discretion, tax assessors will interpret laws in different ways. The role that tax assessors play as advocates or solicitors of land protection programs is an important one to consider. I do not believe that this role is common among tax assessors in Georgia; but I do believe that the potential exists for assessors to assume such a role, given the relevant education and experience.

The factors that influence policies and actions. A local government's "policy capacity" can be defined as its ability to consider responses to social and economic problems, to enact or reject solutions to those problems, and to implement the final decisions (Robertson and Judd, 1989). Press *et al.* (1996) argue that, with respect to land conservation, the policy capacity of a local government is defined by five elements: 1) past and present land-use policies, 2) local government administrative capacity, 3)

characteristics of land ownership and use, 4) political culture and demographics, and 5) funding sources for land acquisition.

While tax assessors are not in the business of conserving land, they are part of broader governmental units (counties) that have varying levels of policy capacity for land protection. Specifically, tax assessors play a role by implementing the Conservation Use Program and by interacting with land trusts and conservation easement donors. In this way, the responses provided here by tax assessors can be examined in the context of policy capacity, relating specifically to the elements of current land-use policy and administrative capacity.

To reiterate the grounded theory presented at the start of the discussion, the actions described above are influenced by information that the tax assessor receives regarding the purposes of and motivations behind private land conservation actions. This section provides specific evidence of these concerns and interprets the way in which they influence assessors. The factors that influence tax assessors' decisions fall into three topic areas: conservation value, credibility of land protection, and education/information.

Conservation value. Embedded in the idea of conservation value as it is used in this context is public benefit (i.e., what does the land protection activity do or not do for the public?) I assume that a tax assessor's personal view of the public benefit provided by a protected property will impact the way in which he treats that property for assessment purposes; once again, concern over equity plays an important role.

As already discussed in the literature review, cost-of-community-services studies have indicated that residential development, especially of lower-valued homes, costs the county more in services than it provides through property tax revenues; open lands

provide the county with more in property tax revenue than they cost the county in services. Tax assessors are cognizant of these study results.

> You can't just think about [land protection] in terms of, "how much money are we losing on the tax digest?" Because really, if that were developed into 150 houses, and those 150 houses were minimal cost and minimal value houses, then its really costing the county money because they're not paying enough in taxes to offset what it costs to fund those houses and pave those roads and so on.

Many tax assessors expressed this idea as one of *several* benefits of open land protection. However, if a tax assessor was less familiar with some land protection methods, such as conservation easements, the positive impacts of conserved properties on county budgets may be the first or only positive aspect of land protection that he sees.

> If you choose to encumber [your property], that's fine, but I don't really see that many benefits to the county other than you stop from developing the property—the tax dollars it costs to service development, you don't get enough taxes from developed areas to cover the costs of the services…. So I like it from that point of view…. But I don't agree with encumbering the property in a way so that it can never be developed. I just don't see that, I guess because I don't understand it, why anybody would want to do it.

The extent to which cost-of-community-services studies influence a tax assessor (and other county officials) will depend on the nature of development in their county. Officials in counties with slow economic growth or poverty may be more reluctant to adopt the ideas presented in these studies; officials in counties with rapid growth in traditionally rural areas may find the studies to be highly important in their decision-making processes.

The perceived conservation value of a protected property also depends on the uniqueness of that property, or the scarcity of open lands in the county. This scarcity may be considered on a spatial scale or, since conservation easements run in perpetuity within a changing landscape, on a temporal scale. An example of the former is expressed

in the remark of one tax assessor: "[This conservation easement] is a standard wooded area tract, it's just like a thousand others out there. There's nothing that stands out about it." Tax assessors may treat the protection of private property less favorably if they cannot identify any unique benefit that it provides.

The federal government bases its interpretations of the rules for qualified conservation contributions on a similar philosophy. It suggests that factors to be considered for scenic easements include the "degree of contrast and variety provided by the visual scene" and the "relief from urban closeness," among others (Internal Revenue Code 1.170A-14 (d)(4)(ii)). Land trust activity has responded through growth, intentional or not, in rapidly urbanizing and suburbanizing areas where open space is rapidly becoming scarce. This growth is apparent in Georgia as discussed in Chapter II.

Tax assessors may recognize the temporal aspect of conservation easements and consider their conservation value accordingly. As one tax assessor explained,

> The normal covenant that you see here is one where they basically restrict the land to its current use…. Basically, they really haven't changed anything. But it has been my contention all along that the primary impact of these conservation easements is going to be in future years.

While the conservation easement may not restrict the existing use of the property at the time the easement is conveyed, changing property demands and uses will slowly increase the relative impact that the conservation easement has on the property.

Finally, tax assessors identify a wide array of specific benefits that, in an ideal world, would be made available to the public through private land protection. These values included but were not limited to watershed protection, scenery, public access, wildlife habitat, controlled development and improved quality of life, and varied from county to county depending on the nature of existing land use and resource needs. In

cases where protected properties did not provide the expected benefits, tax assessors were frustrated. With regard to land trusts seeking property tax exemptions, one tax assessor explained,

> Well then when you ask them if its open to the public, "oh, well no, they've got to get permission to go on it." We'll that's not open to the public. If this is going to be for public benefit, purely charitable benefit, there shouldn't be a hoop you've got to jump through to get there.

While this quote illustrates the balance that tax assessors must strike between encouraging public benefit and maintaining equity, it does not reflect a pervasive idea—overall, tax assessors did not consider public access as a requisite for public benefit; they noted other values, such as the ones listed above, as satisfactory for providing public benefit. Indeed, the federal government does not require public access for qualified conservation contributions. While federal policy might be an influence, I would argue that the legislative intent demonstrated by the Conservation Use Program has been more influential in this respect; the Conservation Use Program gives a signal from the state that *private* property provides public benefit simply by not being developed and instead remaining in an open space use.

Although I assume that the Conservation Use Program has had an influence on ideas regarding conservation values, we have seen from the previous discussion that tax assessors interpret the law in a variety of ways. I would hypothesize that some of the variation in interpretation of land protection laws reflects stages of structural change among counties at different points along a continuum of rural ⟶ urban. One major structural change occurring in rural counties is the shift in the role of natural resources from raw materials to amenities (Brown and Deavers, 1987). Such a shift has implications for property appraisal. As evidenced in the earlier section, some tax

assessors see public value in raw material production (and interpret the Conservation Use Program as requiring such production), while others do not require that materials be produced. This variation in viewpoints will no doubt also become apparent as the use of conservation easements spreads around the state—easements that preclude extractive uses are a perfect example of natural resources as amenities.

This discussion provides an overview of the public benefits that tax assessors feel are provided or could be provided through legitimate land conservation. Important conservation values will be unique to each county and will vary with the public's resource needs. Ideally, local and regional land trusts would respond to those unique needs, thereby ensuring widespread public support for land protection activity. The next section delves into the question of legitimacy and the related issues and concerns among tax assessors that shape their approach to privately conserved land.

Land protection credibility. Any land protection effort must work to establish credibility with the public. Despite views among some counties that state legislators are corrupt or act in their own interest, I will assume that the credibility of state-initiated programs is, for the most part, accepted by county officials. However, as private entities, land trusts must work harder to establish that same credibility with county officials.

Tax assessors raised concerns over the legitimacy of land trust activity, including the land trusts and the easement donors. This discussion will begin by examining the perceptions that tax assessors have of land trusts.

Legitimacy of land trusts. Three main concerns arose among tax assessors regarding land trusts. These were 1) perpetuity, 2) enforcement, and 3) conflicts of interest. Regarding perpetuity, tax assessors either did not like the idea of a perpetual

restriction or did not trust the true strength of such a restriction. "I've just got such a horrible feeling that perpetuity is a long time," said one tax assessor. "I've talked to too many attorneys and people from New England that have been involved in conservation easements that say they just don't work." Alternatively, another tax assessor stated, "I guess one of my fears would be that through the magic of a legal loophole somewhere, somebody undoes it. And then basically it's the old, 'you lied, you cheated me.'"

In the case of providing exemptions to properties owned fee simple by land trusts, tax assessors noted that there were no guarantees that the properties be maintained as a benefit to the public.

> We have a lot of people from what they want to call a land trust, and I don't know if people know a lot about that yet, because the ones that we've interviewed when they apply for exemptions, they can all sell that land for a profit someday if they want to get out of the land trust business; they can take a profit and get on down the road. So I think once we see that, most assessors offices are not going to exempt those parcels.

While this tax assessor's remark represents a more cynical view than most tax assessors took, it illustrates a common concern. This tax assessor did go on to say, "But I think land trusts and conservation easements have a place. Somebody has to define that place, and put the necessary measures in play to protect the interests of the whole." He suggested that the state provide some criteria by which to judge the legitimacy of land trust activity.

Enforcement of private land protection, easements in particular, was also a concern. These concerns were primarily over future assignment of easements. "What happens if these [land trusts] evaporate, then where's that conservation easement? …There need to be provisions in these things for what happens if that organization ceases to exist."

Fortunately, the federal government addresses the concerns related to conservation easements through requirements for qualified conservation contributions (recall the discussion of assignment and perpetuity in Chapter III). There are less clear-cut answers to the questions regarding exemption of fee simple conservation land; this issue will be discussed in depth in a section later in the chapter.

Concerns over conflicts of interest also have less clear-cut answers. Tax assessors made note of conflicts of interest within the land trust community that they had witnessed through personal observation. While these quotes describe circumstances unique to only a few individual tax assessors, they represent a concern that may easily be spread by word of mouth to other county officials and other counties. One tax assessor made this comment within the first few minutes of the interview: "If you delve a little deeper into it, you find that [these land trust organizations] are made up of many of the same people who are also granting these easements, so there's a dual interest there." Another assessor was a little more direct in his accusations:

> I find it somewhat ironic that some of the people that are on the land trust…are also some of the people that represent the developers, if they're trying to rezone a piece of property. And to me that's a direct conflict…. I see that a lot, I see it a lot in other counties, not just [our] county…. So I think as time goes on, those kind of issues will be brought out, especially when it gets into the politics of everything, …somebody will take a beating on it one of these days.

While such viewpoints do not automatically mean that a tax assessor will be antagonistic towards land trust efforts, they do suggest problem areas that could create obstacles for land trusts in the future.

One way in which land trusts can proactively address these problems is to establish relationships with county officials such as the tax assessor. Relationships and communication arose as an important element in the acceptance of land protection

efforts. One tax assessor who had been especially conscientious in developing a policy on property tax assessments related to land trust activity noted, "I've worked very closely with the [land trust]. I've met with their board of directors. We talked about the valuation issue, especially as a non-profit organization, from their point of view…. They needed to know how we were going to treat their properties." Similarly, another tax assessor stated, "we've had a real good working relationship with these people…. Any time they do anything, they'll bring us plats and surveys, and we'll deal with it." While it won't guarantee cooperation in every case, open, face-to-face communication is an important first step to working successfully with the county.

Legitimacy of private landowners. The perceptions of land trusts and the landowners that contribute to their efforts overlap in some respects; however, there are some characteristics unique to the landowners that should be considered.

Professionals experienced with conservation easements make the claim that a major obstacle to public acceptance of conservation easements is the idea that they only benefit the wealthy elite and unfairly shift the tax burden away from those who can afford it most (Closser, 1994; Emory, 1982a). Based on the grounded theory presented by this research, I would argue that this concern among tax assessors is tempered by consideration for public benefit of land conservation, even though they acknowledge that wealthy people are more inclined to make such donations. "For us to really see much in the way of conservation easements on property, its going to have to be a philanthropic-type of deal, [somebody who's] got plenty of money, money's not an issue."

First, as discussed earlier, tax assessors do not see land trust activity as a serious threat to the tax base in general. I suggest that this lack of a concern arises from the view

that conservation easements will never be widespread enough in use to cause a noticeable impact. A tax assessor of a rural county stated, "I don't think [conservation easements are] going to become a real popular thing, because people want that option to be able to change what they want to do, especially in agriculture." The tax assessor of a rapidly developing county felt the same way:

> I don't think you're going to see many conservation easements in [our county], … we're right on that metro Atlanta line…. At some point in time we're going to become officially metro Atlanta, and I don't think anybody's going to give up those rights. There's just too much money to be made.

Perceived motivations for conservation easement donations were mixed. Tax assessors recognize that landowners may participate out of stewardship ("I don't think [the donor's] goal is to save in taxes or anything like that, I think…he wants to preserve that river…. It's a very noble thing he wants to do"), self-interest ("[the donors] wanted to protect themselves from any other development that might happen in the area"), financial interests ("I don't understand the motivation other than a tax write-off; and that's what I've been told is why they do it"), or some combination of the three. It is difficult to measure the extent to which these ideas affect tax assessors' responses to privately conserved land; a belief in one motivation or another does not necessarily translate into predictable levels of cooperation, and some tax assessors may willingly accept the good with the bad. Also, these perceptions of motivations can change quickly as a result of education, personal experience, or word of mouth.

Overall, tax assessors' policies for protected land may be influenced to varying degrees by the perceived credibility of the participating individuals and groups. These policies will be informed through personal experience as well as through shared communication with other tax assessors. The next section will examine the important

role of education and information-sharing among tax assessors around the state as related to attitudes towards land protection.

Education and information—the tax assessor community. The last part of this discussion focuses on the influence of education and the importance of information-sharing in the shaping of tax assessors' views as related to land conservation. Assessors appear to always be eager for information. Their professional abilities depend on access to the most recent information relevant to their field, whether it is market data, new methods, or case law. Data-sharing within the assessor community is an important tool.

Advice from neighbors is used ("I haven't had any training on this, …but I talk with the chief appraiser in [the adjacent county]"), as well as state-wide sharing ("We'll get together and we'll start a database; the different counties will say, 'hey, what are you doing with it? How are you handling it? Have you had any sales?' We'll be able to all do it together"). Counties are by no means isolated in their policy decisions—they look to each other for data and, if they lack education on a subject, for advice as well.

While it was not stated as explicitly, I think that current, widespread views of the Conservation Use Program were the result of information-sharing. Certain ideas were repeated from county to county, such as "if too many people are accepted [into the program] that shouldn't get it, there might be the chance of losing the whole thing. The state might come back and say 'well, this is being abused and we're doing away with it.'" As a result, tax assessors are interpreting the law more conservatively out of fear that a liberal interpretation could risk the entire program or, at very least, risk their credibility among their colleagues.

Tax assessors also look to their neighbors to measure the accuracy of their interpretation of the Conservation Use law. "At first it wasn't strict enough…. We have been accused since then of being too strict…. But we also have more Conservation Use covenants than anyone else in the surrounding area…. So that says 'yeah, we're strict, but we're not too strict.'" Overall, because of the vagueness of the state law, information-sharing plays an important role in the interpretation of the Conservation Use Program.

Education is a factor worth noting as influencing a tax assessor's level of cooperation with private land conservation (I should note that cooperation does not necessarily mean deference; it means a willingness to ask important questions and work with land protection efforts with an open mind to attempt to reach a mutually satisfactory result). Because of my selection process, all of the tax assessors with whom I spoke were at least familiar with conservation easements. Education levels for conservation easement assessment included no training, special assessment courses (at which the state essentially acknowledged that they existed and suggested they may arise in the future), self-education, university-led seminars, and formal courses on easement valuation offered by the Lincoln Institute of Land Policy. While a lack of education did not necessarily result in a lack of cooperation, extensive education almost guaranteed cooperation.

Conclusions

Overall conclusion. The overarching conclusion based on the qualitative analysis is that the efficiency of rewarding credible private land conservation activity through property tax reassessments is hindered by a lack of clarity and guidance in state law and policy, rather than simply by varying personal views of individual tax assessors.

This conclusion indicates a need for the development of state policies that provide greater clarity and guidance to local officials. Possible policies are discussed in Chapter V.

Summary of influencing factors. It is difficult to pinpoint the exact influence of each of the factors discussed above on the attitudes of tax assessors towards land protection, but I would argue that a combination of education, scarcity of the resource, relationships with the land trust and/or landowner, and perceived credibility have the greatest impact on the cooperativeness of a tax assessor regarding conservation easements. Issues that other sources cited as being the major obstacles to cooperativeness that I found to be de-emphasized include erosion of the tax base, unfair benefit to the wealthy, and public access (Emory, 1982a; Closser, 1994).

With respect to the Conservation Use Program, I would suggest that variations in interpretation depend on scarcity of the resource, the personal ideas surrounding natural resources as raw material or amenity, and information-sharing. Concerns over a shifting tax burden are also more prominent here, most likely because of the potential for high enrollment.

Exemptions for land trusts as purely public charities raises some different questions. I would argue that the legality of such an exemption is the first concern of a tax assessor. While he may not object to the public value of the property, he may not be able to find the legal evidence to support its exemption from property taxes. As one tax assessor explained in reference to an appeal to an exemption request that he denied, "the [land trust] took it to the board of equalization, which we really didn't object to; we thought they were doing a good thing, but we just didn't have the authority [to exempt it]."

After the legal concerns, I suggest that the cooperation of tax assessors will depend on concerns over a shrinking tax base (because it involves a full exemption), perceived conservation value, relationships with the land trust, and perceived credibility of the activity.

Implications for land trusts. This first raises the question of how land trusts and easement donors should approach tax assessors for reassessments of conservation easements. As seen from the quantitative data presented early in the discussion, nearly 40 percent of the conservation easements in the state have not been reported to the tax assessors. Of those tax assessors that receive reports of a conservation easement, 70 percent conduct a reassessment. I disagree with the advice that Diehl and Barrett (1988) provide in their handbook. They write,

> All in all, property tax reduction is rarely a strong motivation for easement donors…. Because it may not strongly appeal to potential donors, and because it actually may harm relations with local public officials, easement administrators should decide whether the advantages of promoting easements as a way to reduce local property taxes outweigh the opposition that may be created.

Given that tax assessors balance concerns over eroding tax bases with the potential public value of land conservation, I suggest that this is not a reason to avoid seeking a property tax reassessment. If a land trust's and landowner's actions are in the interest of stewardship, then I believe that the local tax assessor would actually prefer to be notified about the easement. I interviewed some tax assessors who were not aware that they had easements in their county. In nearly every instance, the assessors were highly appreciative when I shared the documents with them (which I had retrieved from the county deed records), and expressed strong interest. Tax assessors feel more credible when they know what is going on in their county: "I can just see it now, when I'm

standing up there talking to the board of assessors, and the taxpayer says, 'What about my easement?' and I say, 'What easement?' You know? That's not a good feeling."

Unless the state mandates it, there is no guarantee that the assessor will reduce the assessment of an easement-burdened property at the time of notification. However, there may be other benefits to informing a tax assessor of an easement. The tax assessor may take the liberty to inform other landowners of the option if they are familiar with it. As one assessor pointed out, "I've had some individuals who inquired [about conservation easements], and I wasn't a lot of help because I didn't know a lot about it." They may also educate other tax assessors through their network of information-sharing, creating a statewide atmosphere that is more unified behind private land protection efforts. In the end, if a property tax reduction is not realized, a landowner always has the option of enrolling in the Conservation Use Program.

In some cases, tax assessors have extreme ideas about the effect conservation easements have on a property. If they are concerned about impacts to the property tax base, it may be because they think that conservation easements remove the possibility of any and all practical use of a property. ("A conservation easement says you can't do anything with it, *nothin'*. You leave it *au natural*.") A more accurate understanding may bring more cooperation. Finally, if the state does create a more extensive law regarding the reassessment of conservation easements, tax assessors will need less training (and less convincing) if they are already informed.

Of course, these recommendations have their weaknesses. One major weakness is that county officials may leave and be replaced by new ones. New relationships may have to be formed as local government positions change. However, land trust

administrators and landowners change as well, so both sides will see turnovers and encounter new relationships. Also, there will always be some local government officials that are irreversibly antagonistic towards private land conservation. In these instances, land trusts and landowners should clearly identify their goals for local government relations and try to achieve them as best they can, given the circumstances.

Recommendations for the State. These results also raise questions about the implementation of the Conservation Use Program. It is essentially up to the state to measure the success of the program. However, I recommend that more guidance on the interpretation of the law would benefit counties overall. Currently, individual counties are spending time and resources in determining what the intent of the law is, and yet still continue to be frustrated when they witness another county interpreting the law differently from their own way. If tax assessors are expected to apply uniform treatment to all taxpayers, they must be given additional guidance on implementing the Conservation Use law.

Finally, some conclusions can be drawn from the data regarding the issue of exemptions for land trusts as purely public charities. I argued that the biggest problem associated with this question is the lack of clarity in the state exemption law. Therefore, I suggest that the state clarify their stance on exemptions for land trust properties. This would be the most direct and efficient way of addressing the confusion over these exemptions. If the state were to address this issue, I recommend that they develop some criteria or minimum requirements for the properties to ensure that they are in fact held for a charitable purpose related to conservation.

Applicability of the findings. This qualitative analysis was intended to discover and explore ideas towards private land protection among county tax assessors. Qualitative studies are unlike quantitative studies in that they are not generally reproducible or statistically representative. The grounded theory and associated themes presented here are not final or unchangeable. Rather, they introduce ways of thinking about the relationship between private land protection, property taxes, and county government. That said, the extent to which the findings can be applied to all tax assessors in Georgia is somewhat limited by some sampling bias—I interviewed tax assessors who were, for the most part, already knowledgeable of private land protection activity. This may have biased the sample towards tax assessors who were more self-directed with regard to land conservation. However, as I briefly discuss in my analysis, the tax assessor community is a close-knit community that shares data, methods, and ideas frequently. Also, I did encounter a variety of views towards private land protection in my interviews. Given the purpose and nature of grounded theory, I feel that the findings presented here are relevant to county tax assessors around the state.

This research could have benefited in some ways from the inclusion of data from the land trust community. Such data would have provided a contrast to the data collected from tax assessors, and may have assisted the researcher in identifying specific points of conflict between the two groups. As it is, though, the data provide some important information *to* the land trust community *about* the tax assessment of conservation lands.

While this research has dealt with tax assessors, it speaks to broader ideas about local government and land protection. As we have seen, tax assessors' roles have expanded to making judgments on the public benefits of land protection. Counties' roles,

too, have seen changes in modern times, as was discussed at the beginning of this chapter. As more locally initiated land conservation tools are developed and implemented such as conservation subdivisions and transfer of development rights, local governments will become more and more active in and knowledgeable of land conservation. Despite the current lack of land-protection savvy in some Georgia counties, the grassroots nature of local government may eventually lend itself to effective relationships with local land trusts and stewardship-minded landowners.

Press *et al.* (1996) stress that local governments can play a vital role in meeting land acquisition goals. Specific problems such as habitat conservation that have traditionally been tackled by federal agencies may see more effective solutions if they appear on a local government's agenda; local and regional land trusts are in the ideal position to work with local governments to address local land protection issues. Hopefully, this analysis indicates to researchers and members of the land protection community that counties are already thinking about land protection, and that the potential for cooperation exists.

CHAPTER V

SUMMARY, CONCLUSIONS, AND POLICY RECOMMENDATIONS

"There is power in local ownership of problems and solutions, and strength in a sense of responsibility derived from identification with a place."
-Steven Yaffee, 1996

The in-depth examination of land trust activity, conservation easements, and the property tax assessment of conservation land in Georgia provided by this research raises several policy questions. This final chapter summarizes the major findings and conclusions of each chapter in the thesis and presents my policy recommendations that relate to property tax assessments for easement-burdened land and for fee simple conservation lands. The recommendations relate to state policy, and are intended to serve as frameworks upon which stakeholders can build final policies.

Summary of Major Findings and Conclusions

Fee simple conservation land and conservation easements—the presence of land trusts in Georgia (Chapter II). Land trust activity in Georgia has grown extremely rapidly in the last 10 years, as it has across the nation. While the overall level of activity is still somewhat low, growth in Georgia has occurred in the number of land trust organizations working in the state (from two in 1990 to twenty-five in 2002) and the amount of conserved land (a 240 percent increase in acreage protected and a 675 percent increase in the number of parcels protected between 1992 and 2002).

The two tools most commonly used by land trusts in the state are conservation easements and fee simple acquisition. Together, these tools have been used to protect

64,710 acres among 225 parcels as of 2002. Around the state, the use of conservation easements is about twice as common as the use of fee simple acquisition.

Within the state, there are some regional differences. South Georgia has roughly two-thirds of the total acreage of privately conserved land, while North Georgia has about two-thirds of the total number of parcels. The North also has four times as many active land trusts as the South. While Central Georgia has about twice the number of active land trusts as South Georgia, it has the lowest level of activity.

The influence of development activity in the northern part of the state has led to changes in the use of conservation easements over the last 10 years. Encumbered parcels have on average become smaller, and their use in urban and suburban contexts has grown. They are more likely to occur in counties that are more populated, have higher per capita income, and have experienced more rapid population growth. We can see that these changes are unique to conservation easements; patterns in the use of fee simple acquisition have changed little in the last decade.

Most of the land trusts operating in Georgia have a local or regional focus and have protected a relatively small amount of land compared to the national organizations also operating in the state. The dominant or notable land use types for nearly three-quarters of the total protected acreage are longleaf pine/quail plantation lands, unspecified forestlands, coastal/barrier island habitat, and wetlands. The missions of local and regional land trusts most frequently include the protection of scenic, natural, and historic values.

The rapid growth in the use of conservation easements makes it especially important that land trusts understand the pros and cons of their use. Also, fee simple

acquisition is often viewed as being a more effective, though more expensive, land protection method; land protection advocates should consider the trends of the last 10 years and whether the possibility of fee simple land acquisition is receiving sufficient consideration by land trusts and governments.

As opposed to fee simple acquisition, conservation easements appear to be more reactionary; they are commonly used in response to impending development threats. In some ways, federal tax incentives for easements encourage this type of use by rewarding properties that have high development potential. Is this an effective and efficient way to protect land? Should development control land protection patterns, or should land protection patterns control development? These questions do not have simple answers.

The raw data by itself should provide land trusts and governments with a framework for thinking about land trust activity in the state. Analysis of the data raises important questions regarding the direction of land trust activity. These types of data should continue to be made available by future surveys of land trusts.

Analysis of a tool—conservation easements in Georgia (Chapter III). Being the most widely used tool among land trusts in the state and the nation, it is important to understand exactly what impact conservation easements have on the properties that they encumber. From the results presented in Chapter III, we see that it is common for easement-burdened properties to function as residential properties as well. Outside of residential use, the maximum allowable uses of encumbered properties are either income producing or non-income producing. Income-producing uses among the encumbered properties include commercial forestry and agriculture, mineral extraction, commercial

recreation, and wetland mitigation banking. Non-income uses include communal use, subsistence use, and use for research/education.

The rights that the land trust obtains in the transaction of a conservation easement, the affirmative rights, allow the land trust to enter the property for certain specified reasons. While essentially all land trusts can enter a property for inspection and enforcement purposes, about one-quarter of the land trusts in the sample may enter the property for special purposes. These special purposes include scientific study, resource monitoring and management, and educational tours. Regarding other terms found within the easement document, amendment terms should be specially considered in order to avoid making an easement too strong or too weak.

Overall, the analysis of the impact of an easement on the remaining uses of a property can help clarify concepts of what easement-burdened properties are and are not. It becomes apparent that the potential of a conservation easement to provide a conservation value, whether it is the maintenance or improvement of environmental health, natural resource productivity, or scenic quality, or the provision of public recreational opportunities, varies among easements. This potential relates not only to the language of the easement but to pre-existing development pressures and the extent to which the property is actively managed for these values.

These results present a real-life picture of easement-burdened properties around the state. This picture can be used to educate policy-makers and administrators, as well as the public, as to the various meanings behind the word "conservation easement." It can also be used to address questions regarding the prospect that land trust activity is a substitute for governmental land-saving action. Easements are an appropriate tool for

those landowners who are willing to donate many of their development rights, and are a useful tool in the context of other programs (such as conservation subdivisions and transfer of development rights programs). However, they are not a substitute for fee simple acquisition and should not be portrayed in such a way as to squelch the public's concern over a lack of land protection and comprehensive planning activity on the part of the government.

Counties, property taxes, and land trust activity in Georgia (Chapter IV). With the recent 10-year anniversary of the implementation of the Conservation Use Program in Georgia and with the growth of land trust activity around the state, the question of property tax assessment for privately conserved lands has been circulating among land trust administrators and local and state government officials. It is an issue around which land trusts and local governments often interact, sometimes with positive results, sometimes not.

Data in Chapter IV reveal that half of the counties with conservation easements have not had those easements reported to them. Of the counties that were made aware of easements, 70 percent reassessed the easements with consideration of the encumbrance. Overall, there is a lack of communication and a widening gap of misunderstanding between easement donors and land trusts and the local tax officials.

The data also show the variety of ways that fee simple conservation properties are treated for property tax purposes. While all the land trusts sought some kind of a property tax reduction, half sought full exemption. For the most part, those that sought full exemption received it. Other valuation methods included enrollment in the Conservation Use Program or reductions on a case-by-case basis. Uncertainty around the

exemption of these properties arises from the fact that their use as "conservation properties" is not guaranteed unless a highly restrictive easement is conveyed on the property.

Interviews with 14 tax assessors in Georgia regarding this question reveal ideas about the way that tax assessors and, more broadly, local governments approach private land conservation activity. Specifically, analysis of the interviews resulted in the overarching theory that tax assessors balance concerns over equity, such as shrinking tax bases and shifting tax burdens, with questions regarding the public benefits provided by privately conserved lands.

First, based on my qualitative analysis of interviews, tax assessors see an inherent problem in the vagueness of state law and lack of uniformity of interpretation of special assessment laws among counties. Such vagueness results in the development of formal and informal policies regarding the taxation of privately conserved lands that are unique to each county. Uniformity across counties may depend on the extent to which tax assessors have shared information with one another regarding their policies and experiences with such properties. Depending on his attitudes towards the various types of land protection, a tax assessor may solicit, discourage, or be neutral towards participation among landowners in his county.

As stated above, some tax assessors ask questions regarding the value of privately protected land. The issues of importance to tax assessors include the conservation values of the properties and the credibility of the landowners and land trusts involved in the land protection. Their ability to consider these issues and make careful judgments regarding

the taxation of conservation lands varies with their education on the subject of privately protected land and the tools used to implement protection.

Several conclusions can be drawn from the findings of Chapter IV. First, the efficiency of rewarding credible private land conservation activity is hindered by a lack of clarity and guidance in state law and policy. Specifically, tax assessors' approaches to the reassessment of conservation easements seem to vary the most based on education, scarcity of the resource, relationships with the land trust and/or landowner, and perceived credibility. Interpretations of the Conservation Use Program appear to vary with scarcity of the resource, personal ideas surrounding natural resources as raw material or amenity, and information-sharing, in addition to possible tax shifting. Finally, exemption policies for fee simple conservation lands appear to be most influenced by concerns over unanswered legal questions. After that, tax assessors also consider a possible shrinking tax base, perceived conservation value, relationships with the land trust, and perceived credibility.

From the land trust community's point of view, relationships with tax assessors and credibility of their activities are areas that they can focus on to improve local government relations and/or receive property tax reassessments for privately-conserved properties. Tax assessors should be informed of the land trust activity in their county. They are more credible when they are familiar with such activity and they may educate landowners and other tax assessors. Overall, tax assessors weigh many criteria when considering special assessments for conservation properties; sensitivity to the concerns of tax assessors and local governments may help land trusts to establish better relations with these entities.

Policy Recommendations

The information outlined above can be applied to the development of policies for the property tax treatment of privately conserved lands. This discussion begins with recommended steps for addressing the property tax reassessment of easement-burdened properties.

Problem statement 1. Donors of conservation easements are entitled to a reassessment of their encumbered property for property tax assessment purposes, according to state law. To date, the law has been implemented haphazardly. As the use of conservation easements continues to grow around the state, land trusts and Greenspace coordinators will be looking for a more definitive answer to the question of whether the conveyance of a conservation easement will result in a reassessment and/or a reduction in property taxes. The state and counties alike will be interested in encouraging credible voluntary land conservation while maintaining fair treatment of all taxpayers and avoiding notable tax shifting. This section recommends potential policies that the state might adopt in order to dissolve this assessment problem.

Policy choices. There are three primary variables among the types of potential policies designed to address this problem. First, the policy may provide *guidelines* for determining reductions or it may *require* reductions. Second, it may make assessment determinations based on *individual easements* or it may predetermine an assessment for *all easements.* Third, the determination may take place at the *county level* or the *state level*. I will assume that for any policy, a judgment of the validity of an easement must be made at some level of government (not all easements are assumed to be valid).

A policy that requires reductions for all easements judged to be valid by a state review process would be far removed from the county government; a policy that provides guidelines for the reassessment of individual easements judged to be valid at the county level would provide the highest level of county control.

Based on work done in conjunction with the Georgia Greenspace Program administrators and county tax officials, and based on an existing policy in Massachusetts, I recommend that the following policy be adopted. First, Georgia should express its support for land trust activity and the use of conservation easements as being in line with the intent of the Georgia Greenspace Program, the Preferential Assessment Program for Agricultural and Forestry Property, and the Conservation Use Program. Second, Georgia should require a reassessment based on a form like the draft provided as Appendix C. The form, completed by the easement donor, along with a copy of the easement, would serve as the official notification from the easement donor to the county of the conveyance of the easement.

The purpose of the form is to allocate all parts of the encumbered property into a residential, income-producing, and non-income-producing category. The Massachusetts law recommends the application of a 90 percent reduction rate to the "undevelopable" land and a full single house lot value for each residence. It also recommends that house lots adjacent to the undevelopable land receive a 10 percent increase (Marchetti, 2001). With respect to the undevelopable portion, I would not recommend an across-the-board reduction; rather, I recommend two alternatives: if the state feels that easement-burdened properties satisfy a similar purpose as that satisfied by properties enrolled in the

Conservation Use Program, then the tax assessor should be required to apply Conservation Use values to the "undevelopable" portion of the property.

If the state does not feel that conservation easements necessarily satisfy a similar purpose as that satisfied by properties enrolled in Conservation Use, then the tax assessor should be required to either apply the Conservation Use values or use the completed form to reassess each portion of the property based on the assessments of properties of similar uses and/or that cannot be developed in other parts of the county. For example, if the easement-burdened property allows two residences and restricts the rest to commercial agricultural use, then the tax assessor should take assessments of other commercial agricultural land in which agricultural use is the highest and best use and apply those values to the property (minus the residences). If those types of properties are not available in the county, the tax assessor should look to neighboring counties or should use values for other undevelopable land, such as wetlands.

Each residence (existing or proposed) should be assessed at the full value for a single-family residence, if the proposed residences are considered the highest and best use. Based on the data presented in Chapter III, I would define the acreage envelope for each existing or proposed residence and associated outbuildings as 3 acres. The state should require that the value of the residences within the encumbered property not be increased in order to offset the decreases realized by the encumbered portion of the property.

With reference to Massachusetts' recommendation that a 10 percent increase be made in the property tax assessment of adjacent residential lots, I would not include this in my recommendations. This judgment should be left to the individual tax assessor

based on the extent to which the neighboring easement benefits adjacent properties. At most, I suggest that the state recommend that tax assessors consider the betterment of adjacent properties resulting from the conveyance of the easement, and alter the assessments accordingly.

The state should require that any amendments made to the conservation easement be reported to the tax assessor's office upon recordation of the change with the county. If the conservation easement ceases to exist due to changed conditions, there should be no penalty to the landowner. If the landowner violates the terms of the easement, a penalty should be considered based on the extent of the violation. It is assumed for the purposes of this law that the vast majority of easements will remain in effect in perpetuity, and that the extinguishment of an easement is so unlikely as to be of no concern.

I would like to make a special recommendation with regard to communal easements, particularly those in conservation subdivisions. Because the ownership scheme of these types of properties is often different, I recommend that counties adopt a policy similar to that adopted in Oconee County. In Oconee County, any value associated with the protected portion of a conservation subdivision is associated with the value of the residential lots. The encumbered land itself is assessed at a nominal value (Paschal, per. comm., 2001).

Implementation of the recommended policy would require education for tax assessors and land trusts. Land trusts should be provided with copies of the application form to distribute to easement donors and sellers, and should be expected to inform these landowners of the policy.

The predicted outcomes of the implementation of the recommended policy would be as follows: the state would provide leadership for counties by expressing its support of the use of conservation easements. If Conservation Use values are used, the values may in some cases overestimate or underestimate the true impact of the easement on the property (35 percent of the Conservation Use value is development value). If comparable highest and best use values are used, reassessments of easement-burdened properties would more closely reflect the true impact of each easement on its particular property (given the available data), maintaining fairness and equity for taxpayers. In response to inquiries, a landowner would be told that if the easement restricts the use of the property below that currently viewed as the highest and best use, she would see a reduction; or, alternatively, if Conservation Use values are used, a landowner would be told that her county's Conservation Use values will be used to assess the non-residential portions of her property without requiring enrollment in the Conservation Use Program.

Other possible outcomes would be that the county would then have on file all those easements that sought a reassessment; also, counties would still participate in the reassessment, but would not be forced to interpret the complicated language of the easements. It is possible that properties adjacent to easement-burdened properties could see an increased assessment as a result of an easement. Policy-makers and administrators should be aware of this potential impact. If easement terms are violated by a landowner, the credibility of all easements may be damaged. Land trusts should take special care to educate the county about their monitoring efforts.

Consideration should be given to the availability of sales data in the future. Sales data are the most accurate data a tax assessor can use to assess a property. The policy

should state that as appropriate sales data become available, they should be used for reassessments. The application form in Appendix C will still be of use in comparing the sales data to the property in question.

I have two final comments. First, I hope that the state chooses the option that applies the Conservation Use values to the undevelopable portion of encumbered properties. This would simplify the process for tax assessors and the outcomes for existing and potential donors, and would reduce any perceived incongruity between the assessments for land enrolled in the Conservation Use Program (which is undevelopable for 10 years) and the assessments for easement-burdened properties (parts of which are undevelopable in perpetuity). While the use of comparable highest and best uses may be better in theory, its practical application may be more difficult due to a lack of comparable parcels.

Second, the policy recommended here is meant to be reshaped in future discussions among stakeholders before adoption. It should provide a useful framework upon which to begin the crafting of a final policy.

Problem statement 2. The second policy problem to be discussed is that regarding full exemptions for land trusts as purely public charities. Georgia law exempts "all institutions of purely public charity" from property taxes (O.C.G.A., SEC. 48-5-41). It is not clear to land trusts or county tax officials whether properties owned fee simple by land trusts for conservation purposes should automatically be exempted. County tax officials would like to have more legal certainty regarding the exemption of such properties, land trusts would like to be certain of exemptions without the hassle of

appeals, and the state would like be certain that only properties that are "exclusively devoted to…charitable pursuits" receive full exemption.

Policy choices. As mentioned in the discussion in Chapter IV, the most efficient and effective solution to the policy problem posed here is clarification of state law regarding exemptions. The same three variables exist among the potential policy options for this problem as existed for the previous problem. First, the policy may provide *guidelines* for determining exemption or it may *require* exemption. Second, it may make assessment determinations based on *individual properties* or it may predetermine an assessment for *all properties.* Third, the determination may take place at the *county level* or the *state level*.

Based on existing Georgia law, the interview data presented in Chapter IV, and existing laws in other states, I recommend that the state adopt the following policy. First, the state should express its support for land trust activity as being in line with the Georgia Greenspace Program. Second, I recommend that the state specify land owned by land trusts that is owned for certain conservation purposes as being exempt from property taxes. Ideally, the state would make the exemption determination.

In order to ease the burden on counties, the state should define certain conservation purposes that exempt conservation land should serve. North Carolina law exempts "real property owned by a nonprofit corporation or association exclusively held and used by its owner for *educational and scientific purposes as a protected natural area*" and defines "protected natural area" as "a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and

study" (italics added) (NCGA General Statutes, Article 12, Sec. 105-275-12). Maryland law exempts properties owned by land trusts that are used for the following:

> i) to assist in the preservation of a natural area;
> ii) for the environmental education of the public;
> iii) to conserve agricultural land and to promote continued agricultural use of the land;
> iv) generally to promote conservation; or
> v) for the maintenance of a natural area for public use of a sanctuary for wildlife (Maryland Code Sec. 7-304).

As a final example, Washington State law exempts land trust properties that are

> used and effectively dedicated primarily for the purpose of providing scientific research or educational opportunities for the general public or the preservation of native plants or animals, or biotic communities, or works of ancient man or geological or geographical formations, of distinct scientific and educational interest, and not for the pecuniary benefit of any person or company…, and shall be open to the general public for educational and scientific research purposes subject to reasonable restrictions designed for its protection,

and exempts land trust properties that are being held for future transfer to a government entity (Revised Washington Code 84.36.260). Georgia may want to consider those criteria developed for defining greenspace as also applying to exempt land trust properties. For example, qualified land would provide protection of water resources, natural habitat for native plant and animal species, scenic qualities, or archaeological and historic resources, and would provide benefit to the public through scientific research, education, or recreation (O.C.G.A., SEC. 36-22-1—see Ch. III).

The question then arises of what level of government makes the exemption determination. Given the relationship between the state and county in Georgia, it may be more politically necessary to allow the county to make the determination based on the revised state law. If we consider the law for enrollment in the Environmentally Sensitive category under the Conservation Use Program, however, we see that the Georgia

Department of Natural Resources could potentially serve as the entity that determines exemption (O.C.G.A., SEC. 48-5-2). In Washington State, a trained official of the state revenue department receives the applications for exemption and visits the properties before accepting or denying the exemption (R.W.C. 84.36). In Maryland, land trusts and the exempt properties must be certified by the state-run Maryland Environmental Trust (Maryland Code Sec. 7-304).

If the exemption determination were made at the county level, implementation of the policy would require the education of county tax officials and land trusts. If the determination were made at the state level, state tax officials would need to be educated as well.

A third potential element of the policy would require a Memorandum of Agreement between the land trust and the exempting authority. This agreement would state that upon sale of the exempt property, the land trust would convey a conservation easement on the property. A standard would be set beforehand as to the restrictiveness of the easement.

Considering only the recommended policy that the state specify that land trust properties that meet defined criteria are exempt, the predicted outcomes of this policy would be more clarity in the law for accepting or rejecting property tax exemption for land trust properties. This would give land trusts more confidence in acquiring ownership of properties, and would make the administration of such exemptions more efficient and effective, while also putting the concerns of local tax officials at ease.

If the determination were left to the state, counties would lose all discretion in the matter, except in the possible instance where a property is rejected for exemption by the

state but exempted by the county authorities. It is possible that exclusion of the county could cause some animosity among county officials towards land trusts operating in their county. However, based on my analysis of the interview data, I would guess that this would be uncommon.

If the determination was left to individual counties, it would result in more work and less assurance for the land trusts, and more training for tax officials. However, the process may then better reflect local interests. Overall, the policy should reduce the number of appeals related to these exemptions.

As with the previous policy discussed, this policy recommendation is meant to be a starting point for discussions among stakeholders. In particular, the criteria for determining conservation value should receive careful consideration. If a special application process is required for the exemptions, the application should be informative and thorough, but should not require a large investment in time or money on the part of the applicant (such as by requiring survey work or legal advice).

Conclusions

New questions about fair property taxation have arisen with the rapid growth in land trust activity. This thesis has made an attempt to start addressing those questions through research and through policy. New knowledge of 1) the scope of land trust activity in the state, 2) the true impacts of conservation easements on encumbered properties, and 3) the challenges that tax assessors meet in seeking ways to assess the public value of private conservation land, all provide direction for local and state government and advocates of land protection to answer the questions that have arisen.

The State of Georgia has a strong interest in conserving land and directing growth; they can explore this interest by supporting the expansion of credible, voluntary private land protection, in part by recognizing its importance through property tax policies. The federal government has done its part to encourage private land conservation through federal income tax incentives. It is now the state's turn to take a leadership role; counties should ultimately follow.

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APPENDICES

Appendix A—Questions used in land trust survey

The survey was distributed by the Georgia Land Trust Service Center. It was titled, "Keeping Track of Conservation: a statewide census of conservation lands held among land trusts in Georgia."

1. Please update the contact information we have for your organization (*current information provided.*)

2. Does your organization own any land fee simple for conservation purposes OR hold any conservation easements? (If yes, go to next question; If no, the questionnaire is finished. Please return this questionnaire to us so we know that your organization does not at this time own any conservation lands or hold any conservation easements.)

3. How many properties does your organization hold fee simple for conservation purposes?

4. On how many parcels of land does your organization hold a conservation easement?

5. For each land parcel that your organization owns fee simple for conservation purposes or is encumbered by an easement, please provide the requested information (*a table was provided in the survey).* Or, if it is easier for you to produce this information from your computer, you may simply attach a printout. Please provide one row of information for each parcel. (*Requested information included:* method of protection (fee simple or conservation easement), county or counties containing owned or easement-burdened parcel, acreage of parcel owned or covered by easement, year ownership or easement was conveyed, *and* dominant or notable land use type(s)).

6. Finally, we welcome any additional comments or explanation you care to provide. Also, please indicate here if you would like a summary of the results.

Appendix B—Suggested revised survey questions for future use

The survey would be distributed by the Georgia Land Trust Service Center. It would be titled, "Keeping Track of Conservation (*Year)*: a statewide census of conservation activity among land trusts in Georgia."

1. Please update the contact information we have for your organization.

2. The next three questions address some general information about your organization. First, please provide us with your organization's mission statement.

3. What is the legal status of your organization? (*Non-profit, private foundation, or other)*

4. What year was your organization established?

5. What is the status of your organization's staff? (*Number of part-time paid staff, number of full-time paid staff, number of volunteer staff)*

6. Now we would like some information on your organization's land protection activity. Does your organization own any land fee simple for conservation purposes OR hold any conservation easements? (If yes, go to question 8; if no, go to question 7.)

7. Has your organization transferred conservation land to another entity (governmental or non-profit) or protected land through other methods (e.g., holding deed restrictions, acquiring mineral rights or negotiating for acquisition by other organizations or agencies) in Georgia? (If yes, go to question 9; if no, the questionnaire is finished. Please return this questionnaire to us so we know that your organization does not at this time own any conservation lands or hold any conservation easements.)

8. For each land parcel that your organization owns fee simple for conservation purposes or is encumbered by an easement, please provide the requested information (*a table was provided in the survey).* Or, if it is easier for you to produce this information from your computer, you may simply attach a printout. Please provide one row of information for each parcel. (*Requested information included:* method of protection (fee simple or conservation easement), means of acquisition (donation or purchase), donor type (private, public, or corporate), county or counties containing owned or easement-burdened parcel, acreage of parcel owned or covered by easement, year ownership or easement was conveyed, primary conservation value of property, *and* whether the property plans for public access).

9. Please indicate the approximate acreage of land (if any) that your organization has protected through the following methods: transferred to other entity (governmental or non-profit), and other land protection methods (please list method and approximate acreage).

10. If your organization owns property fee simple for conservation purposes, are any of the parcels encumbered by a conservation easement?

11. Finally, we welcome any additional comments or explanation you care to provide. Also, please indicate here if you would like a summary of the results.

Appendix C—Conservation Easement Property Assessment (draft)

This form is designed to assist your county tax assessor's office in reassessing the value of your property to reflect the impacts of the existing conservation easement.

Name: _____

Parcel ID: _____

I. Total acres under conservation easement: _____

II. Within the conservation easement-encumbered property, are there (Circle No or Yes):

A. Existing residences and/or commercial buildings (do not include structures related to agricultural production)?

No Yes If yes, how many? _____

B. Provisions that allow the construction of additional residences and/or commercial buildings?

No Yes If yes, how many are allowed? _____

C. Provisions that allow subdivision of the property?

No Yes If yes, what is the maximum number of subdivisions allowed? _____

For each residence and associated outbuildings, a building envelope of 3 acres will be assigned.

III. Not including the building envelope(s) and any associated residential facilities and activities, what are the primary **maximum** allowable uses of the remaining acreage? (Select at least one category overall, and select no more than one category from each section (A) and (B). To select a category, provide the approximate number of acres in that land use category).

A. Income-producing uses (Select up to one category) ACRES

1. Commercial agriculture and/or forestry _____
2. Commercial recreation _____
3. Wetland mitigation _____
4. Other (you **must** provide explanation on reverse) _____

B. Non-income-producing uses (Select up to one category)

1. Communal use (multiple homeowners, neighborhood, or public use) _____
2. Personal recreation/subsistence use _____
3. Research/education/conservation values **only** _____
4. Other (you **must** provide explanation on reverse) _____

(continued on reverse)

Provide any explanations for Part III here:

IV. If there are any other factors related to the conservation easement that you feel affect the value of your property for property tax assessment purposes, please provide an explanation here.

V. Signatures, etc.

Appendix D

Georgia Department of Natural Resources

Lonice C. Barrett, Commissioner
Harvey G. Young, Greenspace Coordinator

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MEMORANDUM

To: Columbia Mecham, University of Georgia

From: Harvey G. Young

Date: December 12, 2002

Subject: Case Statement: Property-tax Valuation of Property Burdened by a Conservation Easement

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Issue: The Georgia Community Greenspace Program encourages urban and rapidly growing counties to give permanent protection to 20% of their geographic areas as open and connected greenspace. To achieve this ambitious goal, local governments will need a variety of tools. Fee-simple land acquisition is one such tool, but funds are inadequate to purchase 20% of each participating county in fee simple. Georgia law provides for conservation easements, which are less expensive and may even be donated by some landowners. However, tax incentives for a gift of easement are uncertain because the State has not provided a method for determining the property-tax effects of encumbering property with an easement. To be effective, this method must be equitable for taxpayers and easy for local tax assessors to administer. The State needs to develop such a method.

Goal: The State wants to develop and distribute guidance to tax assessors about property-tax valuation of real property that is burdened with a conservation easement. The guidance must:

1. Give a landowner certainty about the property-tax consequences of placing a conservation easement on a parcel of real property,
2. Make the valuation of such property relatively easy for local tax officials to administer, and

3. Result in a re-valuation that is perceived as fair and equitable, to forestall future litigation.

Approach: The Department of Natural Resources and the Department of Revenue will convene experts to develop a method of implementing the goal. The approach will require that the group answer at least three major questions:

1. What process will balance the fairness and accuracy of the re-valuation with relative ease of administration? Examples:
    a. Possible approaches:
        i. Absolute value, or a range of values, based on the easement terms (a table lookup approach)
        ii. Current tax valuation less a percentage or range of percentages based on the easement terms
        iii. Current tax valuation of comparable property elsewhere in the jurisdiction that is zoned for uses to which the easement restricts the subject property
        iv. Conservation use valuation (use the current table for conservation use property)
        v. Market appraisal as burdened by the easement
    b. Easiest: Mandate an absolute or percentage reduction below the value of comparable property if the terms of the easement retire some minimum threshold of rights.
    c. Most accurate: Require a full market appraisal of each property as burdened each time re-assessment occurs.
    d. Possible compromise #1: Owners have a choice of various easement forms that correspond to specific percentage reductions in value from full tax-appraisal value. For example:
        i. Include or exclude building envelopes within easement area
        ii. Limit or exclude any of the following factors:
            1. Further development of any kind
            2. Agricultural or forestry use
            3. Access by the landowner without permission of the easement holder
            4. Access by the public
    e. Possible compromise #2: Owners may present the local tax assessor with a market appraisal, performed in full accordance with IRS standards, which the assessor must consider in making the re-assessment.

2. Should the State use a pilot approach, in which the guidance is tested in one case before being broadened to cover a wider

variety of easement situations? For example, the pilot project could limit the initial scope of the guidance to conservation uses, because:

a. Agricultural and forestry owners can take advantage of 10-year conservation use assessments that allow continued productive use of the land and that appear to offer greater-than-market property tax abatement. There would be little tax incentive for a landowner to grant a permanent conservation easement on land that is eligible for conservation use assessment.
b. Most easement problems to date have occurred when easements were used to retire development rights.

3. Should the State consider tax abatement that exceeds the reduction in fair-market value by burdening a property with a conservation easement? This would provide extra incentive for granting a conservation easement. However, it might also attract extra opposition.

Appendix E—Telephone interview schedule for land trusts with fee simple lands

1. I'd just like to start with some basic information. What is your position in the organization?

2. How long has your organization been in operation? Do you have full or part-time paid staff?

3. What is the legal status of your organization (are you a 501(c)(3))?

4. According to the information you provided in the land trust survey, you own ___ properties for conservation purposes. Can you start by telling me how you acquired those properties?

5. What is the current property tax status for those properties?

6. Through what process did you come to these assessments?

a. What information, if any, did you provide to county officials?

b. What were the responses of the officials? Did responses vary among counties?

c. Did you appeal any decisions? What were the results?

d. Have you applied for either the Conservation Use or Preferential Assessment Program?

7. What do you feel is a fair assessment for these types of properties?

8. In the land trust survey to which you responded, you included these properties as properties you owned for conservation purposes. How would you define this type of property?

9. Do you have plans to transfer or sell any of your properties?

10. Is there anything else you would like to add, or do you have any questions?