



Frequently Asked Questions about Conservation Use Valuation and Agricultural Preferential Assessment

INTRODUCTION

Georgia Code Section 48-5-7.4 allows for up to 2,000 acres of real property of a single owner, the ***primary purpose*** of which is any good faith production, including but not limited to, subsistence farming or commercial production from or on the land of agricultural products or timber who meet certain criteria of ownership to enter into a ten-year covenant agreement.

Primary purpose is defined as the principle use to which the property is devoted, as distinct from an incidental, occasional, intermediate or temporary use for some other purpose not detrimental to, or in conflict with its primary use.

This booklet contains a listing of questions and answers regarding specialized assessments and is intended to provide a better understanding of these property tax programs. This booklet is for informational purposes only.

CONSERVATION USE VALUATION AND AGRICULTURAL PREFERENTIAL ASSESSMENT

Why should I be interested in Conservation Use Valuation for my property?

All landowners who qualify for Conservation Use Valuation are entitled to have their land valued according to its current use (agriculture, forestry or environmentally sensitive) instead of the Fair Market Value (FMV) for ad valorem taxation. Conservation Use Valuation (CUV) is a lower valuation than Fair Market Valuation, resulting in a significant reduction in tax liability for the owner. Another benefit of CUV is that the value changes are limited to +/- 3% per year, or a total of +/- 34.39% over the 10-year covenant period.

Why should I be interested in Agricultural Preferential Assessment for my property?

All landowners who qualify for Agricultural Preferential Assessment are entitled to have their property valued for assessment at 75% of FMV for taxation purposes. In most cases, 25% tax savings will be realized with Agricultural Preferential Assessment. However, Agricultural Preferential Assessment values change as quickly as FMV changes and offer no guaranteed reduction in tax burden.

If CUV offers large tax savings and appears to be more stable, why would I consider Agricultural Preferential Assessment?

Agricultural Preferential Assessment applies to all land and up to \$100,000 in building value on agricultural production and storage buildings. CUV applies only to land values and has no impact on building values. A taxpayer that has a small acreage tract with farm buildings, such as a poultry farm, *may* realize a greater benefit under Agricultural Preferential Assessment.

Who is eligible for Conservation Use Valuation and/or Agricultural Preferential Assessment?

U.S. Citizens

Family Farm Corporations who earn at least 80% of their income from farming
Non-Profit conservation organizations, estates and trusts may be eligible

How do I sign up for one of these programs?

Forms and details are available at the Oconee County Assessors Office located at 23 North Main Street Watkinsville, GA 30677. You will need to provide the following information when submitting your application:

- Application must be signed by all landowners
- All signatures must be notarized
- Applicant must designate on tax map the exact parcel and acreage being entered into the covenant
- Applications for parcels less than 10 acres in size must be accompanied by additional proof of agriculture or forestry use to be considered, such as Federal IRS form 4835
- \$25.00 recording fee in cash or personal check payable to the Oconee County Board of Commissioners (OCBOC).

Upon application, you are entering into a 10-year covenant with the county and agreeing to continue your property in agricultural or forestry production.

When I apply for one of these covenants, is it recorded with the deed to my land?

Upon approval by the Board of Assessors, the covenant agreement will be filed in the deed books for Oconee County through the Clerk of Superior Court. A title search of your property should show that the parcel is under a covenant. This is for the protection of both the potential seller and/or buyer who may not be aware of the covenant, and any penalties that may occur due to a sale of the property.

What land uses are allowed in order to qualify for Conservation Use Valuation?

The land uses required for Conservation Use Valuation are good faith agricultural/forest production and environmentally sensitive land including:

- Raising, harvesting or storing crops
- Feeding, breeding or managing livestock or poultry
- Producing plants, trees, fowl or animals
- Production of aquaculture, horticulture, dairy, livestock, poultry and apriarian products

When can I apply for these programs?

The filing period for Conservation Use Valuation or Agricultural Preferential Assessment is between January 1 and April 1 of each year. In addition to the primary filing period, when you receive your Annual Notice of Assessment you may make application along with, or in lieu of an appeal, during the 45-day appeal period indicated on your notice.

How much land can I enter into Conservation Use Valuation and/or Agricultural Preferential Assessment?

Up to 2,000 acres in Georgia can be entered in Conservation Use covenants. At the same time, up to 2,000 separate acres in Georgia may be entered into Agricultural Preferential Assessment. Presently there is a 10-acre minimum requirement to qualify for Conservation Use Valuation, unless documentation is provided which supports that the **primary use** of the property is for bona fide agricultural production purposes.

How many Conservation Use Covenants can I have? Does all my land have to be in the same county?

You may have a separate covenant for each legally definable tract of land you own. No one covenant can cross county lines or state boundaries. Separate covenants can be held in separate Georgia counties, however the combined acreage of **all** covenants held must not exceed 2,000 acres total.

What if I decide I want to end my covenant before the 10-year period has expired?

You are bound by legal agreement with Oconee County for the duration of the 10-year covenant to maintain the Conservation Use. There are four conditions under which you can end a covenant with no penalty, or a one-year penalty. These reasons are:

If you or any party to the covenant dies during the period of the covenant, the covenant ends. This is considered a breach with **no penalty**.

If any part of your property is taken, or is conveyed, to a party with the power of eminent domain, the covenant may end. If this occurs, this is a breach with **no penalty**.

If you become medically unable to continue the land in its qualifying use, the covenant ends. The Board of Assessors requires letters from two (2) doctors stating the medical reason that a landowner cannot continue to farm. If the tax bill for the year has already been assessed, then a **one-year penalty** is applied.

If your land is taken from you through foreclosure, the covenant ends. If the tax bill for the year has already been assessed, then a **one-year penalty** is applied.

Otherwise, to terminate a covenant early you must pay a tax penalty equal to twice the amount of tax savings per year, plus interest.

What are the penalties for breach of the Conservation Use Valuation and Agricultural Preferential Assessment Covenant?

A penalty shall apply to the entire tract being assessed under **Conservation Use Valuation** when a breach occurs. The penalty paid by the original covenant holder will be an amount equal to twice the property tax savings incurred from the year the covenant was entered until it was breached, plus interest.

In the event that a portion of the land under a covenant is sold to a qualifying landowner, who later breaks the covenant, penalties also apply to the entire tract under the original covenant. Under this condition, there will be a pro-rata assessment of the penalty against each of the parties of the covenant in proportion to the tax savings realized by each party. This means that the original covenant holder will pay a penalty based on the tax savings on all of the acreage, from the beginning of the covenant up to the time of sale and of the breach. The subsequent covenant holder would pay a penalty based on the tax savings from the time of the purchase up to the time of the breach. Please be aware that the penalty constitutes a lien against the property.

Penalties for the **Agricultural Preferential** covenant are assessed as the tax savings during only the year of the breach, times a factor of:

- 5, if breached during years 1 or 2
- 4, if breached during years 3 or 4
- 3, if breached during years 5 or 6
- 2, if breached during years 7 through 10

The landowner in the original covenant pays the penalty.

Exactly how is a Conservation Use breach penalty calculated?

The Assessors Office maintains the Fair Market Value of the property for each year of the covenant, in addition to maintaining the Conservation Use values. The difference between the Fair Market Value and the Conservation Use Value becomes an annual exemption for the taxpayer. The tax savings is calculated from the amount of that exemption.

The following chart shows an example of a possible penalty calculation for a covenant that is broken in the 6th year. The example parcel is vacant, with no homestead exemption being claimed.

YEAR OF COVENANT	FAIR MARKET VALUE	CURRENT USE VALUE	EXEMPT AMOUNT*	MILLAGE RATE	TAX SAVINGS	PENALTY FACTOR	PENALTY AMOUNT
1	\$138,000	\$16,560	\$48,576	0.02400	\$1,166	2	\$2,331.65
2	\$142,000	\$17,040	\$49,984	0.02400	\$1,200	2	\$2,399.23
3	\$142,000	\$17,550	\$49,780	0.02600	\$1,294	2	\$2,588.56
4	\$150,000	\$18,000	\$52,800	0.02700	\$1,426	2	\$2,851.20
5	\$150,000	\$18,077	\$52,769	0.02800	\$1,478	2	\$2,955.08
6	\$153,000	\$18,600	\$53,760	0.02800	\$1,505	2	\$3,010.56
TOTAL PENALTY DUE AT BREACH							\$16,136.28

*Exempt amount is the difference between the Fair Market Value and the Conservation Use Value multiplied times the assessment level of 40 percent.
(138,000 - 16,560 = 121,440 x.40 = 45,576)

The penalty amount will vary from covenant to covenant due to differences in Fair Market Values and Conservation Use Values.

As shown above, the Fair Market Value changed in years 2, 4 and 6. The Conservation Use Value also increased by 3% each year, in accordance with the covenant. The millage rate increased in years 3, 4 and 5. All of these factors affect the penalty amount calculation.

The chart also addresses the significant reduction in tax liability when Conservation Use Values are applied. The tax savings in year 1 equaled \$1,166. The tax bill calculated at Fair Market Value would have equaled \$1,325, but the taxpayer paid \$159 instead.

Looking at the previous chart, what would my penalty be if I breached the covenant due to foreclosure or a medically demonstrated illness during the 6th year?

If the covenant is breached due to foreclosure or a medically demonstrated illness, **and** tax benefits have been received for that year, then only the penalty amount due for the year in which you breach is due. So, under one of these circumstances, the penalty due would be \$3,010.56.

Can I change agricultural/forestry uses of the Conservation Use covenant land during the 10-year period?

Yes, you can change among good faith production of agricultural or forestry crops provided that you notify the Oconee County Board of Assessors in writing of the intended use change. Failure to notify constitutes a breach of the covenant with penalties as described.

Can I sell land that is under the Conservation Use Covenant?

Yes. But to avoid a penalty, the buyer must qualify and continue the terms of the original covenant and enter a new continuance Conservation Use covenant for the land purchased. The application period for continuance covenants for new owners is the regular application period for the next year – January 1 to April 1. The landowner under the original covenant remains in that covenant, unless the entire parcel under covenant was sold. But the original covenant holder still remains legally responsible for any penalty assessed against tax savings earned before the sale.

What happens if my spouse and I jointly own property entered in a Conservation Use Covenant and we divorce during the covenant period with one of us retaining ownership of the property?

Department of Revenue regulations state that when there is a change in ownership of property under covenant, the new owner must apply for a continuation of the covenant. This application must be made on or before the deadline for filing returns, which is April 1.

In the event of a divorce, the original parties to the covenant remain liable for any breach of the covenant. Responsibility for penalties due to a covenant breach should be specified in divorce decrees, contracts, etc.

Can I deed members of my family part of my covenant land?

Yes, under certain circumstances. Any family member who is related to the covenant holder within the fourth degree of civil reckoning can receive up to 5 acres of your covenant property solely for the purpose of building a home without breaching the covenant. Construction of the residence must begin within 12 months of the land transfer and must be occupied by said relative. Residences built for rental purposes or that are to be sold after construction do not qualify and would constitute a breach of covenant with penalties.

The fourth degree of civil reckoning is defined as:

- A parent, grandparent, great grandparent or great-great grandparent
- A child, grandchild, great grandchild or great-great grandchild
- A sibling
- A niece/nephew or great niece/nephew
- An aunt/uncle or great aunt/uncle
- A first cousin

What happens if the original covenant holder dies during the life of the covenant or cannot carry out the requirements of the covenant?

If the original covenant holder dies before the Conservation Use or Agricultural Preferential covenant expires, the agreement is nullified, and the covenant ends without penalty.

If the property owner ends the covenant because of a foreclosure or medically documented illness, the covenant is breached. But only the tax savings incurred in that particular year will be assessed.

What happens if the County or State wants some of my land for right-of-way?

When a government entity acquires the land through eminent domain, the covenant ends. You may be entitled to enter a new covenant, if you choose.

Property that is either given or sold to schools and power companies would also be included under this scenario.

I want to enter my land in a Conservation Use Covenant, but I think I might want to develop or sell some of the land before the covenant expires. Is that allowed?

Selling, developing or changing the use of the covenant property can result in a breach with penalties. The best approach would be to enter only the portion of property you intend to keep in the qualifying use into the covenant and exclude any portion of the property that you may decide to sell or develop.

Am I allowed to lease or rent my covenant land out for hunting, pine straw harvest, agriculture or tree crop production, or other qualifying uses without penalty?

Yes, these rights are specifically outlined in the statute. However, the person you lease or rent the land to must also qualify for the program.

What is the status of my house and yard if I enter into a Conservation Use or Agricultural Preferential covenant?

Your residence and two acres surrounding it will not be included in the covenant, although it will remain as part of your total parcel. In other words, your house and yard will not have a separate parcel number from your covenant land.

Can I sell my house and yard that is located on Conservation Use covenant land or rent it without breaking my covenant agreement, even when the remaining land stays in the qualifying use?

No. Leasing/renting the house is permitted if the lessee meets the qualification under O.C.G. 48-5-7.4 (a)(1)(C) and the use remains the same as the original covenant. Owner must notify the Oconee County Board of Tax Assessors if there are any changes to the original covenant to determine if a breach has occurred.

Can I lease or rent my covenant land for other purposes, such as cell tower location?

Placing a cell tower on your property is allowed. The covenant allows for the lease of up to six acres for the purpose of cell tower location.

The law for Conservation Use Valuation says at least 50% of the property has to be in the qualifying use. What does this mean about the other 50% of the property? Can smaller portions be in other uses as long as at least 50% is maintained in the qualifying use?

The law states that ***no other type of business may be operated on the unused portion.*** Additionally, the unused portion must be minimally managed to prevent significant erosion or other environmental problems. If you have questions about your specific case, check with the Board of Assessors **before** you change **any** portion of your covenant land.

Can I change my covenant from Agricultural Preferential Assessment to Conservation Use Valuation and vice versa?

You can change your covenant from Agricultural Preferential Assessment to Conservation Use Valuation once during the life of the covenant. You cannot change from Conservation Use Valuation to Agricultural Preferential Assessment except at the end of the Conservation Use agreement.

How much is my land worth under the Conservation Use covenant? Who decides what it is worth? How is a particular piece of land given a value?

Conservation Use land values are based on use, location and soil production. Annually, the Georgia Department of Revenue publishes a table of values for all Conservation use land in Georgia. The table of values is available at the Oconee County Assessors Office, the University of Georgia Cooperative Extension Service County Office, the Georgia Forestry Association, the Georgia Farm Bureau Federation and the Georgia Forestry Commission.

I want to start estate planning. Can I deed off portions of my covenant property to my heirs?

If you do not change the use of the property, each party **may** be eligible to file for a continuance of the original covenant. The Assessors Office recommends consulting the Board of Assessors prior to filing any deeds to divide property or transfer ownership to insure the covenant is not breached.

I have chosen to transfer my covenant property into a LC, LLC, LP, Family Farm Corporation etc., for estate planning purposes or other income tax purposes. Will this constitute a breach of covenant?

If ownership is transferred into any of the above, there are specific requirements under the law. The partnership or family farm corporation MUST derive 80% of its income from bona fide agricultural production purposes within this state. It may NOT receive more than 20% of its income from other non-related agricultural purposes, such as dividends on stocks and bonds, other non-agricultural investments, rental income, etc. All parties of the partnership or corporation must be related to each other within the fourth degree of civil reckoning, with an allowance for 5% ownership to be held by an unrelated party for management purposes. Under these circumstances, the Oconee County Board of Assessors will require the following documents along with your application:

- Copy of your certificate of corporation filed with the Secretary of State
- Letter from CPA on their letterhead stating the percentage of income
- An affidavit that the parties are related to each other in accordance with the law

What happens if I divide my property or sell it, and the new owners do not come in and file a continuation of the covenant?

The Board of Assessors will send both the buyer and the seller a notice of intent to assess a penalty for the breach of the covenant. The notice shall be entitled *Notice of Intent to Assess Penalty for Breach of a Conservation Use Covenant* via Certified Mail and shall set forth the following information:

The requirements of the new owner or the owner of the property currently receiving conservation use assessment to apply for a continuation of the covenant within 15 days of the date of the postmark of the notice;

The requirement of the new owner to continuously devote the property to an applicable bona fide qualifying use for the duration of the notice;

The change to the assessment if the covenant is breached, and;

The amount of the penalty if breached.

If I apply for one of these programs, what will the Board of Assessors use to decide if I qualify?

The Board will review the zoning and current use of the property. Members of the appraisal staff will perform an on-site inspection of the property and prepare a report for the Board.

You should submit any documentation you have regarding the bona fide conservation use of the property. Examples include, but are not limited to:

- Federal Income Tax Schedule “F”
- Timber Management Plans
- Receipts of sale of hay, livestock, produce, etc.
- Receipts for purchase of feed, fertilizers, seed, equipment, etc.
- Any documentation that will assist the Board in determining the qualifying use

My covenant is ending. Will it automatically be renewed?

No. You must apply for a new 10-year covenant if you wish to continue receiving Conservation Use or Agricultural Preferential assessment. If you apply for your second 10-year period, it is considered a **RENEWAL COVENANT**.

If I had the exemption before, I should automatically qualify to renew, right?

Not in all cases. The covenant rules are subject to change through legislation, and it is possible that some changes could keep your property from qualifying for a renewal. Also, changes to the primary use of the property affect eligibility.

Are there any special benefits for taxpayers who are in a renewal covenant?

The covenant was amended to offer an opt-out provision for covenant holders who are at least 65 years old and have completed at least three years of the renewal covenant. The covenant holder can elect to end the covenant without penalty.

If I have questions, who do I contact?

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