

# Answers to Frequently Asked Questions about Conservation Use Valuation and Agricultural Preferential Assessment

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## 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 collected over the past several years dealing with these ad valorem tax issues. A careful reading of the following contents will foster a better understanding among taxpayers, of how these particular property tax programs work.

# CONSERVATION USE VALUATION AND AGRICULTURAL PREFERENTIAL ASSESSMENT

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## **Which is better for me as an Effingham County landowner: Fair Market Value (FMV), Agricultural Preferential Assessment, or Conservation Use Valuation of my land?**

It really depends on your planned use for the land over the life of the covenant. For qualified landowners planning to continue the land use in agricultural or forest production, either program can earn tax benefits and serve as an incentive for continued agricultural and forest production.

Agricultural Preferential Assessment generally provides a 25% tax advantage over the Fair Market Value. (FMV)

Conservation Use Valuation can offer significant savings, in some cases greater than 50% from FMV.

Alternatively, to maintain a greater flexibility over the use of your land, it would be better to accept a FMV basis for your ad valorem taxes.

## **Why should I be interested in Conservation Use Valuation for ad valorem taxation?**

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 for ad valorem taxation. This can reap large tax benefits. Another benefit of CUVA is that the land value changes are limited to +/- 3 percent a year and a total of +/- 34.39 percent over the life of the 10-year covenant.

## **Why should I be interested in Agricultural Preferential Assessment?**

All land owners who qualify for Agricultural Preferential Assessment are entitled to have their property valued for assessment at 75 percent of FMV for ad valorem taxation. In most cases, 25 percent tax savings will be attained with Agricultural Preferential Assessment. However, Agricultural Preferential Assessment values change as fast as FMV changes and offer no degree of certainty on the property tax burden.

## **If Conservation Use Valuation offers large 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 dollars in building value on agricultural production and storage buildings. Conservation Use Valuation applies only to land values and has no effect on building values. A taxpayer that has a small amount of land with a good number of agricultural buildings, such as chicken farming, *may* receive greater benefits under Agricultural Preferential Assessment.

## **How does the value of my land under the Conservation Use covenant change: per year, per 10 years?**

Conservation Use values for land cannot change more than 3 percent per year or more than 34.39 percent over the life of the covenant.

But remember your land will be taxed according to Fair Market Value at the end of the covenant unless you renew the covenant.

### **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 or clubs, estates and trusts may be eligible

### **How do I sign up for one of these programs?**

Forms and details are available at the Effingham County Tax Assessors office or on the Effingham County Tax Assessors website. The Board of Assessors requires the following when submitting your application:

Application must be signed by all landowners

Application must be notarized

Applicant must designate on tax map the exact parcel and acreage being placed in covenant

**Applications for properties under 10.00 acres must be accompanied by the following additional proof of agricultural or forestry useage to be considered: an IRS Schedule E (reporting farm-related income or loss), Schedule F (with Form 1040 or 4835), or Schedule T (Forest Activities Schedule).**

A \$26.00 recording fee should be paid at the time the application is filed (checks, cash, cashier's check or money orders made out to Effingham County will be accepted.

You enter a 10-year covenant with the County whereby you agree to continue your property in agricultural or forestry production.

### **When I sign up for one of these covenants, is it recorded with the deed to my land?**

Once your application is approved, the covenant agreement will be placed on record in the Clerk of Superior Court's Office of Effingham County. A title search of your property should show that your property 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 transaction.

### **What are considered the allowable uses for a property in order to be eligible 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, floriculture, dairy, livestock, poultry and apiarian products

### **When can I sign up for either of these programs?**

The earliest anyone may sign up for Conservation Use Valuation or Agricultural Preferential

Assessment is January 2 of each year. ***The filing time runs yearly from January 2 until April 1.***

### **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 other acres in Georgia may be entered into Agricultural Preferential Assessment. Presently there is a minimum requirement of 10 acres per parcel for Conservation Use Valuation.

Landowners with less than 10 acres **must** give additional proof that the "**primary use**" of the property is for bona fide agricultural production purposes.

### **How many Conservation Use Covenants can I have? Does all of 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. Tract means a parcel of property with boundaries designated by the Board of Assessors according to the most recent plats filed to facilitate proper identification of the property on their maps and records.

### **What happens if I want to get out of the covenant before the 10-year period is up?**

You are bound by legal agreement with Effingham County for the duration of the 10-year covenant to maintain the Conservation Use. There are some conditions under which you can end a covenant with no penalty, or a partial penalty. Some examples include:

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

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

Up to 5.00 acres exactly or less can be gift-deeded to family members within the fourth degree of reckoning for residential purposes only, with certain restrictions, without penalty. The building process must be started within one year of the date of transfer and occupied within two years or else a **full penalty** will be accrued.

If you become medically unable to continue the land in its qualifying use, the covenant ends. The Board of Assessors requires a letter from a doctor stating the medical reason that a landowner cannot continue to farm. If tax savings have been enjoyed during the year this occurs, then a **one-year penalty of tax savings for the current year** is applied.

If your land is taken from you through foreclosure, the covenant ends. If tax savings have been enjoyed during the year this occurs, then a **one-year penalty of tax savings for the current year** is applied.

If you are at least 65 or 67 years of age, meet certain requirements, and would like to come out the covenant due **solely** to your age, you may only be responsible for a **one-year penalty of tax savings for the current year**.

*Please see page 7-8 for additional information on exceptions to Conservation Use breaches.*

**Otherwise to get out of the covenant early you must pay a tax penalty equal to twice the tax savings enjoyed to date, plus interest where applicable.**

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

Breaching a **Conservation Use** covenant results in a penalty that applies to the entire tract that is placed under an original ten-year covenant, even if the breach occurred on only a small portion of the tract under covenant. The penalty paid by the original covenant holder will be an amount equal to twice the property tax savings incurred each year from the year the covenant was entered until it was breached, plus interest where applicable.

In the event that a portion of the land under a Conservation Use covenant is sold to a qualifying landowner, who later breaks the covenant, penalties of twice the savings per year apply to the **entire** tract under the original ten-year covenant. Please be aware that the penalty plus interest constitutes a lien against the property.

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

- 5 if breached during the 1<sup>st</sup> or 2<sup>nd</sup> year
  - 4 if breached during the 3<sup>rd</sup> or 4<sup>th</sup> year
  - 3 if breached during the 5<sup>th</sup> or 6<sup>th</sup> year
  - 2 if breached during the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> or 10<sup>th</sup> year
- The landowner in the original covenant pays the penalty.

**Exactly how is a Conservation Use breach penalty calculated?**

The Tax Assessors office maintains the FMV of the property for each year of the covenant. They also calculate the CUVA value for the property. The difference between the actual FMV and the CUVA value becomes an annual exemption for the taxpayer. The tax savings benefit is calculated from the amount of the exemption.

The following is an example of how a penalty might be calculated if a covenant was breached in the 6<sup>th</sup> year of the agreement, and the parcel is vacant with no homestead exemptions.

FAIR MARKET VALUE	CURRENT USE VALUE	EXEMPT AMOUNT *	MILLAGE RATE	TAX SAVINGS	PENALTY	\$ AMOUNT PENALTY
195,000	92,000	41,200	.02150	885.80	X 2	\$1,771.60
195,000	94,760	40,096	.02120	850.04	X 2	\$1,700.08
260,000	97,600	64,960	.02280	1,481.09	X 2	\$2,962.18
260,000	100,500	63,800	.02075	1,323.85	X 2	\$2,647.70
260,000	103,500	62,600	.02170	1,358.42	X 2	\$2,716.84
288,000	106,600	72,560	.02058	1,439.28	X 2	\$2,986.56
<b>TOTAL PENALTY DUE AT BREACH</b>						<b>\$14,784.96</b>

\*Exempt amount is the difference between the FMV and the CUVA value multiplied by the assessment level of 40 percent.  
 I.e. (195,000 X 92,000 = 103,000 X .40 = 41,200)

The penalty amount will vary from covenant to covenant due to the fact that the FMV and the CUVA value will be different for each parcel.

As shown above, the FMV changed between the second and third year. Thus the penalty amount increased between the second and third year. This demonstrates the importance of keeping up with the FMV, even though you are not being taxed on that amount.

In fact, the tax amount due under Conservation Use for the first year would be \$791.20. Without the Conservation Use covenant, the estimated tax due would be \$1,677.00. So as you can see this covenant can offer substantial tax savings.

**Looking at the previous chart, what would be the penalty if I breached the covenant due to foreclosure or a medically demonstrated illness during the 6<sup>th</sup> 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 for what you have saved during the year in which you breach is due. So, under one of these circumstances, the penalty due would be \$1,493.28.

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

Yes, you can change usage among good faith production of agriculture or forestry crops provided that you notify the Effingham County Board of Assessors in writing of the intended use change. At least 50% of the property must maintain some type of agricultural usage. 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. However, to avoid a penalty, the buyer must continue the terms of the original covenant and sign a continuation for the land purchased. However, the original covenant holder still remains legally responsible for any penalty assessed after the property is sold.

When selling land under covenant, it may be wise to have your attorney include language with the property deed requiring the new owner to continue land use under provisions of the original covenant.

**If you are considering purchasing** property that is already enrolled in a Conservation Use covenant, it may potentially be a subparcel split off of a larger parcel that originally entered into a ten-year covenant before being split. While the current ten-year covenant is active, if one or more of the parcels breach, all subparcels are subject to potential penalties and liens resulting from unresolved breach issues.

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

The Board of Assessors will send both the transferee and the transferor a notice of the Board's 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* and shall set forth the following information:

The requirement of the new owner, or the owner of the property currently receiving current use Assessment, is to apply for a continuation of the current use assessment within 30 days of the date of postmark of the notice;

The requirement of the new owner of the property currently receiving current use assessment to continuously devote the property to an applicable bona fide qualifying use for the duration of the

notice;

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

The amount of the penalty if the breach is not corrected.

If any breach issue is not resolved within the 30-day window, owners can fill out a 45-day appeal form directly after the 30-day period has ended. This will give owners additional to correct a breach or else take the case to be discussed before the Board of Equalization.

**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 gaining the deed to the property?**

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 members of my family build a home and live on Conservation Use Covenant land?**

Up to 5.00 acres exactly or less can be gift-deeded to family members within the fourth degree of reckoning for residential purposes only, with certain restrictions, without penalty. The building process must be started within one year of the date of transfer and occupied within two years or else a **full penalty** will be accrued.

The gift-deeded portion of the property will no longer receive the Conservation Use exemption.

**What happens if the original covenant holder dies during the life 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, or the heirs have the option to renew the covenant without penalty.

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

When a public body (government) acquires the land through eminent domain, the covenant ends. You may be entitled to sign the remainder of your land up again, if you choose.

Property that is either given or sold to schools would also be included in this group.

**What do I do if I want to enter my land in a Current Use Covenant but feel that I may want to develop some of the land before the 10 years is up?**

The best approach would be to enroll **only** the land that you intend to keep under the qualifying uses for the life of the covenant. This means to create a new legal description for separate tracts or to sign a map indicating **exactly** which portion of the property you would like to exclude, and how many acres.

**Can I lease or rent my covenant land out for hunting, pine straw harvest, agricultural or tree crop production, or other qualifying uses without penalty?**

Yes, these rights are specifically spelled out in the law. **However, the person to whom you lease or rent land must otherwise qualify for the program.**

## **Can I lease or rent my covenant land for other purposes, such as cell towers?**

Leasing out up to 6.00 acres maximum for a cell tower is allowed. As noted above, anyone who leases land must otherwise qualify for the program. Caution should be taken if you are considering leasing for any purpose other than cell towers, hunting or agricultural purposes.

Allowing all or part of the property to be used for agritourism purposes.

The term agritourism means charging admission for persons to visit, view, or participate in the operation of a farm or dairy or production of farm or dairy products for entertainment or educational purposes or selling farm or dairy products to persons who visit such farm or dairy.

Allowing all or part of the property which has been in a covenant for at least one year to be used as a site for farm weddings.

Allowing all or part of the property which has been in a covenant for at least one year to be used to host not-for-profit equestrian performance events to which an admission fee cannot be required, but which may charge an entry fee from each participant.

Allowing all or part of the property to be used to host a not-for-profit rodeo event to which spectator admission and participant entry fees are charged in an amount that in aggregate does not exceed the cost of hosting the event.

Allowing part of the property subject to the covenant to be used for solar generation of energy and conversion of such energy into heat or electricity, and the sale of the same in accordance with applicable law.

The provisions of subparagraph (A) of this paragraph shall not allow the portion of the property on which such solar energy generating equipment is located, as depicted by a boundary survey prepared by a licensed surveyor, and which is subject to an existing covenant to remain in the covenant. Such property shall be removed from the existing covenant at the time of the installation of the solar energy generating equipment and shall be subject to the penalty for breach of the covenant contained in subsection (q) of this Code section and shall be subject to ad valorem taxation at fair market value, or a one-year penalty of tax savings earned for the current year on that portion of the property when applicable ; or

Allowing part of the property subject to the covenant to be used for farm labor housing. As used in this paragraph, the term "farm labor housing" means all buildings or structures used as living quarters when such housing is provided free of charge to workers who provide labor on agricultural property.

The provisions of subparagraph (A) of this paragraph shall not allow the portion of the property on which such farm labor housing is located and which is subject to an existing covenant to remain in the covenant. Such property shall be removed from the existing covenant at the time construction of the farm labor housing begins and shall be subject to ad valorem taxation at fair market value.

**\*\*Up to 25.00 acres maximum can be sold or given to a church or charitable entity – it must be used for church or charitable purposes.**

**The law for Current Use Valuation says something about at least 50 percent of the property having to be in the qualifying use. What does this mean about the other one-half**

**of the property? Can smaller portions be in other uses as long as at least 50 percent is maintained in the qualifying use?**

The law states that no *other type of business may be operated on the unused portion.*

In addition, 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 Tax Assessor's Office *before* you change use on *any* portions of your covenant lands.

**What is the status of my house and yard if I am currently enrolled in an Agricultural Preferential or Conservation Use covenant and also live on the property?**

For Conservation Use, Georgia law states that 1.00 acre per residence is excluded at the beginning of a ten-year covenant, and is valued according to Fair Market Value. The house in which you live does not receive the benefit of the exemption, and is also valued according to FMV. More importantly, total value changes under a Conservation Use covenant (including any eligible Miscellaneous Improvements) are limited to +/- 3 percent per year up to +/- 34.39 percent over the 10-year life of the covenant.

It should be noted that physical changes to the house, such as additions, are valued according to FMV.

**What if I want to change between Agricultural Preferential Assessment and Conservation Use Valuation?**

There is no apparent time limit set by Georgia law on when you can change from an existing Agricultural Preferential Assessment covenant to a Conservation Use covenant. However, you can change from Preferential Assessment to Conservation Use, for a particular covenant, only once.

You cannot change from an existing Conservation Use covenant to a new Agricultural Preferential Assessment covenant until the 10-year CUVA has expired.

**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 value is based on its use, location and soil productivity. Annually the Georgia Department of Revenue publishes a table of values for all Conservation Use land in Georgia.

Once your Conservation Use application has been approved, the acreage of your parcel is broken down by soil classifications. The soil types are costed against the above table and totaled for a new Conservation Use Value. Once applications for new ten-year covenants are approved, approval letters that include a breakdown of soil types are sent out in the Spring.

**While my land is in a Conservation Use covenant, how do I keep up with its Fair Market Value (FMV)?**

The Assessor's Office will continue to notify the taxpayer of any changes to the FMV of the covenanted property. This information is on your Assessment Notice, mailed annually. Remember the difference between FMV and Conservation Use Value (tax savings) is the basis for calculating any penalty. So, pay careful attention each year to the FMV of your land, even while in a protective covenant.

## **What happens if I want to divide my property for estate planning purposes and deed off portions while I am in the covenant?**

If you do not change the use of the property, each party **may** be eligible to file for continuance of the original covenant depending on new acreage and new ownership. It would be wise to discuss this with the Tax Assessors office to make sure that the division will be done in a manner that would **not breach the covenant**.

*The Board of Assessors should be consulted before building any improvements on Conservation Use property, especially if it is divided for estate planning purposes.*

## **What if I want to combine my Conservation Use property with another property?**

If a parcel that is under an active Conservation Use covenant is combined with either a parcel that is under a separate Conservation Use covenant, or with a non-cuva parcel that is **not subsequently acquired**, this will cause a breach of the covenant(s). Subsequently acquired here is defined as property acquired **after** the original parcel has been entered into a ten-year covenant.

To avoid any covenant issues the subsequently acquired parcel must also be less than 50 acres, contiguous to the covenant parcel, cannot be already in an existing covenant, and can only be entered into the covenant by the same owner who entered the main property into an original ten-year covenant.

## **If I choose to place my property into an LC, LLC, LP, Family Farm Corporation, merger of Family Farm Corporations, etc., for estate planning purposes or other income tax purposes, how will this affect my covenant?**

If property is placed in any of the above, there are specific requirements under the law. The partnership or Family Farm Corporation **MUST** derive at least 80% of its income from bona fide agricultural production purposes within this state.

All parties of the partnership or corporation must be related to each other within the fourth degree of civil reckoning.

The Effingham County Board of Assessors will require the following along with your application under these circumstances:

A copy of the business's Operating Agreement/Articles of Organization

A copy of the income tax return for the partnership or corporation, or a letter from a CPA stating that 80% of income is agricultural, and

An affidavit that the parties are related to each other in accordance with the law.

## **If I file an application, what will the Board of Assessors look at to determine if I qualify?**

The Board will review the current use of the property. An appraiser from the Tax Assessors Office will perform an on-site inspection of the property and prepare a report for the Board of Assessors.

You should submit any documentation you have regarding the bona fide Conservation Use of the property. Examples include:

IRS Schedule E, reporting farm related income or loss

Federal Income Tax Schedule "F" with Form 1040  
Form 4835

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 of the property.

**If I have property that has been under a Conservation Use or Preferential Agricultural covenant for ten years, will my covenant automatically be renewed at the end of the 10 years?**

No, in October the Tax Assessors office will send you notification that your covenant is about to expire.

You must requalify and file an application for a new 10-year covenant, if you desire the exemption to continue.

If you apply for your second 10-year covenant directly after the first, it is considered a **renewal covenant**.

**If I had the exemption previously, I should automatically qualify again, right?**

Not necessarily. Ten years is a long period, and many changes can occur.

During the first 10 years since the covenant was originally placed into law in 1992, there have been changes made to the law, changes made to the state regulations, and changes due to court cases that clarify the law. These changes included making it more difficult for smaller tracts to enter into these covenants, clarification of the type of income allowed, and clarification of the definition of **primary use** of the property.

There may have been changes in ownership, changes in use and other factors related to the property that need to be reviewed.

**Were there any changes that benefit the taxpayer?**

Yes, the law now states that if you enter into a **second ten-year** covenant right after the first ten-year covenant, it is considered a **renewal covenant**.

If you decide to sell your property or change the usage (in such a manner that would lead to a breach of covenant) during the 6<sup>th</sup> through the 10<sup>th</sup> year of your **renewal** covenant, and you are the original covenantor or a transferee related within the fourth degree of reckoning, you only have to pay back the taxes that would have been due were you not in the covenant.

**What do I do if I am turned down for a Current Use covenant?**

If your application is turned down, you may appeal the decision of the Board of Tax Assessors within 45 days upon receiving your yearly assessment notice, or by providing any missing information that may be needed to process the application(s).

**If I have questions, who and where do I call for answers?**

Any time you have questions regarding filing an application, or changing the use of your property, you can contact one of the following persons at the Effingham County Board of Tax Assessor's Office.

**Neal Groover, Chief Appraiser**

**Jennifer Keyes, Senior Real Property Appraiser IV**

**Christine Sarna, Covenant Real Property Appraiser III**

**For Further Information Contact:**

**The Effingham County Tax Assessor's Office**

**Monday – Friday 8:30 a.m. – 5:00 p.m.**

**(912) 754-2125**

**Or by email: [Csarna@effinghamcounty.org](mailto:Csarna@effinghamcounty.org)**