



required by the Act, DNR forwarded the appraisal to SPC for review. Pursuant to SPC policy, SPC hired an independent appraiser, Joe W. Ball, MAI, to conduct a technical desk review of Petitioner's appraisal. Ball concluded that the information and analysis in Petitioner's appraisal did not support the appraisal value of \$1,944,000, and was not in conformance with Uniform Standards of Professional Appraisal Practice ("USPAP") requirements.

Petitioner submitted a revised appraisal on April 22, 2015, in which the Conservation Property's value remained unchanged. After reviewing the revised appraisal, Ball again found the appraisal did not support the appraised value of \$1,944,000. After the revised appraisal was rejected, Petitioner requested that SPC conduct its own appraisal. SPC hired Morgan Mellette, MAI, to perform an appraisal of the Conservation Property. Mellette concluded that the Conservation Property was valued at \$270,000. SPC accepted Mellette's valuation and forwarded the final determination of value to DNR, which then approved the \$270,000 value of the conservation easement. On February 5, 2016, Petitioner appealed Respondents' final determination certifying a tax credit in the amount of \$67,500.

On August 12, 2016, Respondents filed a Motion for Summary Determination. On January 13, 2017, the undersigned administrative law judge issued an order granting, in part, and denying, in part, Respondents' Motion for Summary Determination ("Order"). The Order affirmed Respondents' rejection of Petitioner's appraisal of the Conservation Property, but declined to rule on the validity of SPC's appraisal and DNR's certification of a \$67,500 tax credit.

### **III. FINDINGS OF FACT**

#### **1.**

Joseph Jordan, Petitioner's managing member, formed Petitioner to create conservation easements on three properties that he owned, including the Conservation Property. The only other member of Petitioner is Jordan's mother, who is a minority member. Jordan has 12 years of

experience as a real estate developer in South Georgia. (Testimony of Jordan.)

A. The Conservation Property

2.

The Conservation Property consists of two tracts totaling approximately 180.12 acres in Albany, which is in central Dougherty County, Georgia. Tract 1, consisting of approximately 30.14 acres, has 1,666 feet of frontage along the western right of way of Lockett Station Road and Tract 2, consisting of approximately 149.98 acres, fronts Brook Hollow Parkway at two places: 72.24 feet at the intersection of the south right of way of Brook Hollow Parkway and a 60-foot wide drainage easement that runs along the eastern boundary of the Conservation Property and sixty feet along the south right of way of Brook Hollow Parkway. Tract 2 has 3,250 feet of frontage along the north right of way for the Central of Georgia Railroad. Wetlands dominate the lowest areas of the Conservation Property on both tracts. (Exs. R-1, R-21.)

3.

The Conservation Property was initially purchased by Jordan on August 14, 2006, when he purchased a 240.05-acre tract for \$374,548, or \$1,547 per acre. In 2007 or 2008, and prior to the collapse of the national housing market, Jordan invested approximately \$100,000 to bring a sewage line to the Conservation Property. Jordan sold 20 lots along Brook Hollow Parkway containing 5.82 acres to Hester & Williams Construction, LLC for \$280,000, or \$48,110 per acre, on December 14, 2007. Jordan then purchased the 30.14-acre Tract 1 from Bank of America, NA, for \$35,000, or \$1,161 per acre in March 2010. On February 24, 2012, Jordan sold 92 acres of Tract 2 to Jack Daniel Garrett for \$260,000, or \$2,826 per acre, leaving Jordan with 149.98 acres of Tract 2.<sup>1</sup> On November 25, 2013, Jordan conveyed Tract 1 and Tract 2 to Petitioner in an internal transaction involving no consideration. Petitioner donated approximately 180.12 acres—the entire remaining acres of Tract 1

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<sup>1</sup> Jordan claims this transaction was a “distressed sale” because Garrett was a friend of the family. (Testimony of Jordan.)

and Tract 2—to the Georgia Land Trust, Inc. on December 26, 2013. (Testimony of Mellette, Jordan; Exs. R-4, R-5, R-16, R-17, R-18, R-19, R-20, R-21.)

4.

Historically, the Conservation Property has been used for timber production, personal recreation, and wildlife management. (Testimony of Mellette, Jordan; Ex. R-21.)

B. The Mellette Appraisal

5.

Mellette holds a Georgia appraiser's license and has approximately twenty-five years of experience valuing conservation easements for both private and government agencies. He is a member of the Appraisal Institute, an association of real estate appraisers that sets the standards for professionalism, ethics, methodologies, and practices for real estate appraisers. Mellette has experience in commercial valuation, including industrial, retail, and multifamily properties. Mellette was tendered as an expert in real-estate appraisal. (Testimony of Mellette; Ex. R-21.)

6.

The scope of the appraisal included: (i) a physical inspection of the Conservation Property and the subject neighborhood and surrounding area; (ii) the collection and analysis of pertinent data from local governments, published data sources, and from market participants; (iii) the collection and analysis of data received from SPC and Jordan; (iv) an analysis of the highest and best use of the property; and (v) the application of appropriate valuation methods. (Testimony of Mellette; Ex. R-21.)

7.

Mellette estimated the value of the Conservation Property on December 23, 2013, using both the "Before and After" method and the "Direct Comparison" method and reconciled the value estimate from both methods in order to determine his final opinion of value. His findings are summarized in the

following chart:

Estimated Value of the CP based on the Before and After Method	
Before Value	\$450,000
After Value	<u>\$170,000</u>
Difference (Value of CP)	\$280,000
Estimated Value of the CP based on the Direct Comparison Method (rounded)	\$260,000
Estimated Value of the CP (Reconciled)	\$270,000
Minus enhancement value	<u>\$0</u>
Total Estimated Value of the Charitable Contribution	\$270,000

(Testimony of Mellette; Exs. R-11, R-21.)

8.

After collecting data, Mellette did an analysis of the highest and best use of the Conservation Property immediately prior to the donation. The test for determining the highest and best use involves an analysis of the following four criteria: legal permissibility, physical possibility, financial feasibility, and maximum productivity. (Testimony of Mellette; Ex. R-21.)

9.

In determining the physically possible uses of the property, Mellette noted that approximately 73% of the property is wetlands that cannot be developed.<sup>2</sup> Approximately 34 acres, however, contained the type of land where residential development is possible. Because a portion of the 34 acres does not have frontage along a collector or arterial street, Mellette did not consider development for industrial use. (Testimony of Mellette; Exs. R-6, R-7, R-21.)

10.

Mellette found that approximately 121 acres on the Conservation Property was suitable for timber production. Forestry was therefore a physically possible use for the property. (Testimony of

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<sup>2</sup> Mellette based his wetlands determination on maps published by the U.S. Fish and Wildlife Service and a baseline-documentation report. (Testimony of Mellette.) Petitioner disputes that the Conservation Property contains 73% wetlands, but did not provide sufficient evidence to contradict Mellette's determination.

Mellette; Exs. R-8, R-21.)

11.

Leasing the hunting rights would have also been a physically possible use because the property is an excellent wildlife habitat. (Testimony of Mellette; Ex. R-21.)

12.

In addressing the uses that were legally permissible in 2013, Mellette noted that the property is zoned R-2 (single-family residential), C-R (community or multifamily residential), and M-1 (light industrial).<sup>3</sup> Although the City of Albany tree protection ordinances prohibited timber harvesting, Mellette spoke with Mary Teter, City of Albany Planning Manager, who stated that a portion or all of the subject property could be rezoned to agricultural, which would allow for forest management and timber harvesting. (Testimony of Mellette; Ex. R-21.)

13.

Mellette therefore found that the legally permissible uses of the conservation property in 2013 were the same as the physically possible uses: (1) residential development, (2) forestry, and (3) recreation. (Testimony of Mellette; Ex. R-21.)

14.

Mellette then assessed the financially feasible uses of the conservation property in 2013. In addressing whether residential development was financially feasible, Mellette noted the following:

- (1) Dougherty County's population had increased since the 2010 Census but had decreased by nearly 4% since 2000;
- (2) The expected population growth in the County by 2015 was a modest growth rate of 4.6%, which significantly lagged behind the projected state growth rate;
- (3) By the year 2025, the expected population for Dougherty County would increase 5.4% from the present.

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<sup>3</sup> Mellette failed to note in his appraisal that the property was zoned single-family residential, but nevertheless addressed the feasibility of using the land for residential development in his appraisal. (Testimony of Mellette; Ex. R-21.)

(Testimony of Mellette; Ex. R-21.)

15.

Mellette also noted that in 2013 there was no significant residential development taking place in the area. According to the City of Albany Planning and Zoning office, there were 26 single-family residential building permits and one multifamily residential building permit issued in 2013. Mellette also noted that the current population growth and per capita income in Dougherty County would not support a demand for residential development. (Testimony of Mellette; Ex. R-21.)

16.

Given the lack of any significant residential development in the area at the time, and the data showing modest growth projections, Mellette found that residential development was not financially feasible in December 2013. Mellette found that the only financially feasible residential use was to hold the property for investment at some point in the future. (Testimony of Mellette; Ex. R-21.)

17.

Mellette found that, in 2013, the forest products industry was playing a significant role in South Georgia's economy. Additionally, Jordan supplied Mellette with a copy of a timber cruise that was performed by Jacob Paschal, Georgia Registered Forester #2836, dated December 20, 2013, which stated that the subject property contains approximately \$140,462 of merchantable timber ( $\pm$  \$780 per acre). (Testimony of Mellette, Jordan; Ex. R-8.)

18.

Mellette also determined that the Conservation Property would be suitable for recreational use, such as hunting, based on data that showed hunting remained a popular pastime in Georgia. (Testimony of Mellette; Ex. R-21.)

19.

In summary, Mellette determined that the financially feasible uses for the Conservation Property immediately before the easement donation were: (1) forestry, (2) recreation, and (3) holding the property for possible future residential development on the upland areas. (Testimony of Mellette; Ex. R-21.)

20.

Thus, Mellette credibly determined the maximally productive uses of the subject property immediately before the easement donation to be: (1) continuing to manage the timberland for natural timber production; (2) leasing the hunting rights; and (3) holding the property for possible future residential development. (Testimony of Mellette; Ex. R-21.)

21.

Once he determined the highest and best use of the Conservation Property before the donation, Mellette used the sales comparison approach to valuation. The sales comparison approach compares the subject property to an adequate number of similar properties that have sold recently or for which there are known listing prices. (Testimony of Mellette; Ex. R-21.)

22.

Mellette employed both the Direct Comparison method and the Before and After method to estimate the value of the Conservation Property. Both methods are generally accepted methods of appraising conservation easements. (Testimony of Mellette; Ex. R-21.)

23.

The Direct Comparison method analyzes sales of conservation easements that have similar terms on properties that have similar highest and best uses before and after the conservation easement. The U.S. Department of Treasury requires the use of the Direct Comparison method if data exists.



(Testimony of Mellette; see also 26 C.F.R. 1.170A-14(h)(3)(i).)

24.

Using the Before and After method, Mellette estimated the unencumbered value of the subject property before the conservation easement by analyzing recent fee simple sales of comparable tracts of land in the market area to arrive at an estimated before (unencumbered) value of the subject property. (Testimony of Mellette; Exs. R-12, R-21.)

25.

Mellette then considered sales of land that were encumbered with conservation easements similar to the subject conservation easement (after value). The difference between the before value and the after value is the value of the conservation easement. (Testimony of Mellette; Ex. R-21.)

26.

Mellette found seven sales of conservation easements that took place during the period of 2007 through 2014, all of which were in southwest and southeast Georgia. (Testimony of Mellette; Exs. R-9, R-21.)

27.

Mellette determined that the three most comparable sales of conservation easements were "Sales #4," which sold for \$1,238 per acre; "Sales #6", which sold for \$2,054 per acre, and "Sales #7," which sold for \$1,050 per acre. Sales #4 had seven similar characteristics and Sales #6 and Sales #7 had five similar characteristics to the Conservation Property. Mellette found that the estimated value of Petitioner's conservation easement through the Direct Comparison method was \$1,430 per acre x 180.12 acres = \$260,000 (rounded). (Testimony of Mellette; Exs. R-10, R-21.)

28.

Using the Before and After method, Mellette estimated the unencumbered value of the

Conservation Property before the conservation easement by analyzing recent fee simple sales of comparable tracts of land in the subject market area. (Testimony of Mellette; Ex. R-21.)

29.

Mellette then considered sales of tracts of land that were encumbered with similar conservation easements (after value). The difference between the before value and the after value is the value of the conservation easement. (Testimony of Mellette; Ex. R-21.)

30.

Mellette compared each of the sales for a number of market-influenced factors and gave them a rating of similar, slightly superior, superior, significantly superior, or slightly inferior, inferior, and significantly inferior to the Conservation Property. (Testimony of Mellette; Exs. R-13, R-21.)

31.

Mellette placed the greatest weight on Sale #614 (\$2,333 per acre) and Sale #613 (\$2,826 per acre), because both sales are adjoining the subject property and were originally part of the 758.80-acre W. J. Martin Tract, have similar percentages of wetlands, and Sale #614 occurred six days prior to the effective date of his appraisal. (Testimony of Mellette; Exs. R-13, R-21.)

32.

Mellette estimated the value of the Conservation Property before the conservation easement to fall between Sale #613 and Sale #614 at \$2,500 per acre, or \$450,000 total. (Testimony of Mellette; Exs. R-13, R-21.)

33.

Because Jordan asserted that Sale #613 was not an arm's length transaction, Mellette testified that if he removed that sale from his calculation the estimate would still fall between \$2,400 and \$2,500 per acre. (Testimony of Mellette.)

34.

Mellette then estimated the value of the property as encumbered by Petitioner's conservation easement (after value). Noting that the Conservation Property is encumbered by a relatively restricted conservation easement (including a prohibition on cutting the only merchantable timber) and that nearly three quarters of the Conservation Property is wetlands, Mellette found that all of the comparable easements were either superior or significantly superior to the Conservation Property. Therefore, Mellette opined that the value of the subject property immediately after the conservation easement donation falls slightly below the low end of this range, at \$950 per acre, or \$170,000. (Testimony of Mellette; Exs. R-14, R-15, R-21.)

35.

The value of the easement by the Before and After method is shown in the table below:

<b>Before &amp; After Comparison</b>	
Before Value	\$450,000
After Value	<u>\$170,000</u>
Value of Easement (Before-After)	\$280,000
Value per Acre (rounded)	\$1,600

(Testimony of Mellette; Exs. R-15, R-21.)

36.

Combining the above two methods of valuation, Mellette found the following value estimates:

<b>Before &amp; After and Direct Comparison</b>		
<b>Method</b>	<b>Total Value</b>	<b>Value per Acre</b>
Before & After	\$280,000	\$1,600
Direct Comparison	\$260,000	\$1,430

(Testimony of Mellette; Ex. R-21.)

37.

To determine a final reconciliation, Mellette placed equal weight on the two valuation methods.

As of December 26, 2013, the effective date of the appraisal, he found the estimated value of the Conservation Property was: 180.12 acres x \$1,500 per acre = \$270,000 (rounded). (Testimony of Mellette; Ex. R-21.)

C. Petitioner's Rebuttal

38.

To rebut Mellette's testimony, Petitioner called Jordan, Petitioner's managing member, as its sole witness. Jordan testified that the value of the Conservation Property was "somewhere north of \$2 million." Jordan based his value opinion on three points: (1) a feasibility study regarding the development of multifamily housing, (2) his intention to develop the property, and (3) a prior sale and an offer to purchase timber. (Testimony of Jordan.)

39.

Jordan testified that, contrary to Mellette's determination, the highest and best use of the property prior to the easement was the development of 240 units of multifamily housing. Jordan based his opinion on a feasibility study performed by Stuart Patz and Associates ("Patz Study"), dated January 13, 2011. Jordan, however, mischaracterized the Patz Study, which concluded that there was sufficient demand for only 120 units of multifamily housing, not 240 units. Jordan's testimony failed to consider that the Patz Study was performed prior to Jordan's sale of 92 acres of land that had superior road frontage and had a lower percentage of wetlands than the Conservation Property, which may have rendered the Patz Study unreliable. (Testimony of Jordan; Exs. P-1, R-13.)

40.

Jordan also relied on his own intention to develop the property to support his opinion of the highest and best use of the property, stating he was "pretty serious about building an apartment complex," as evidenced by his investment in a sewage system in 2007 or 2008. Indeed, prior to the

national recession and housing crisis, Jordan took steps toward developing the Conservation Property, such as building a public sewage line and consulting with the City of Albany Planning and Development Services about access points. In 2009, Jordan consulted with Yielding, Wakefield and McGee Architects, P.C. (“YWM”) to build a HUD-based apartment complex on the Conservation Property, but Jordan determined YWM’s fee was too high. In 2010 or early 2011, Jordan applied for a loan under Deutsche Bank’s Mortgage HUD-based financing program. Jordan did not ultimately obtain a loan to develop the property and never developed the property. (Testimony of Jordan.)

41.

Finally, Jordan based his opinion that the northern portion of Tract 2 was worth \$50,000 to \$52,000 on a prior sale of 20 lots, consisting of 5.82 acres adjacent to the Conservation Property, to Hester & Williams Construction, LLC for \$48,110 per acre in December 2007. The lots were part of an existing subdivision, had street frontage, and were not wetlands. Jordan stated that the back half of Tract 2 was worth about \$3,000 per acre based on the fact that a timber company told him that they would have offered approximately \$200,000 for Tract 1 if Jordan let the timber grow five to six years. (Testimony of Jordan, Mellette; Exs. R-6, R-8, R-17, R-21.)

42.

Jordan stated that he was not exactly sure of the value of Tract 1, but estimated that it was worth \$10,000 per acre. (Testimony of Jordan.)

#### **IV. CONCLUSIONS OF LAW**

Pursuant to the Conservation Tax Credit Act (“Act”), the corporate donor of a conservation easement may claim a state income tax credit for twenty-five percent of the value of the real property donation up to \$500,000. O.C.G.A. § 48-7-29.12(b). The fair market value of a conservation property must be determined through the donor’s submission of an appraisal performed by an appraiser licensed

in Georgia. See O.C.G.A. § 48-7-29.12(a)(5). The Act requires SPC to review and approve the appraisal submitted by the donor or to recommend a lower amount based on its own review. O.C.G.A. § 48-7-29.12(c.1). The donor must then file a copy of SPC's determination of value with his or her income tax return. O.C.G.A. § 48-7-29.12(c).

“A final determination by the Department of Natural Resources or the State Properties Commission shall be subject to review and appeal under Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act.’” O.C.G.A. § 48-7-29.12(c.2); see also Ga. Comp. R. & Regs. 391-1-6-.04(5). Respondents bear the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(d). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). In this case, the final determination was DNR's certification of a \$67,500 tax credit, which was based on DNR's rejection of Petitioner's appraisal and acceptance of SPC's appraisal. The only issue remaining for determination at the hearing on the merits was whether DNR appropriately accepted SPC's appraisal, which turns on the validity of Mellette's conclusion regarding the highest and best use of the property prior to the donation and the valuation methods he used to ascertain the value of the Conservation Property.

A. Highest and Best Use

Mellette found that the highest and best use of the Conservation Property immediately prior to the donation was managing the timberland for natural timber production, leasing the hunting rights, and holding the property for possible future residential development. Mellette provided a detailed explanation of the methodology he used to determine the highest and best use, which was based on legal permissibility, physical possibility, financial feasibility, and maximum productivity. Mellette credibly testified that multifamily residential development was not financially feasible in December 2013 based on his expert analysis of the city's demographics and population growth.

Contrastingly, Jordan asserted that the highest and best use of the Conservation Property prior

to the donation was the development of multifamily housing. To support his proposition, Jordan incorrectly summarized the Patz Study and cited to his own plan to develop the property, which never actually came to fruition. Jordan's testimony is further undermined by the fact that he sold off a large superior portion of the land in 2012 and never followed through on, or was never approved for, obtaining a loan to develop the remaining property.

Petitioner further argued that Mellette's appraisal was invalid because Mellette did not specifically note that the Conservation Property was zoned for single-family residential in his appraisal. Petitioner contends that the omission establishes that Mellette did not appropriately consider such use of the Conservation Property. Although Mellette did not explicitly note in his appraisal that the Conservation Property was zoned for single-family residential use, he explored whether such use was feasible in his appraisal. Mellette testified that development was not financially feasible in December 2013 and the fact that the Conservation Property was zoned for such use did not alter his opinion. Thus, Mellette's omission did not alter the credibility of his testimony.

**B. Valuation of the Conservation Property**

Mellette used generally-accepted, government-sanctioned Before and After method and Direct Comparison method to determine the value of the Conservation Property. Based on his examination of comparable properties and easements, Mellette estimated that the value of the Conservation Property in December 2013 was \$1,500 per acre, totaling \$270,000. Mellette's testimony was thorough and credible. Petitioner did not proffer any evidence from an appraiser to provide an alternative value opinion. Rather, Petitioner's sole witness was Jordan, the former owner of the Conservation Property and Petitioner's managing member.

Jordan is not an appraiser and has no formal appraisal training. On the whole, Jordan's testimony was self-serving and lacked sufficient credibility. Jordan based his value determination of

Tract 2 on a 2007 pre-recession sale of superior land and a timber cruise performed in 2013. Jordan's testimony ignored that the nation had undergone a housing crisis and a recession since 2007, which seriously diminished the financial feasibility of developing property. Moreover, Jordan's reliance on the offer from the timber company is flawed because the company would only offer \$200,000 if Jordan let the timber grow for five to six years, which he had not. Jordan did not provide any explanation for his value estimate for Tract 1 at \$10,000 per acre. Accordingly, Jordan's attempt to poke holes in Mellette's appraisal, which was based on standard industry practices, was not sufficient to rebut Mellette's value determination.<sup>4</sup>

In summary, Respondents established by a preponderance of the evidence that SPC's finding that the value of the Conservation Property was \$270,000 was appropriate and therefore, DNR's certification of a \$67,500 credit was valid.

#### V. DECISION

For the above and foregoing reasons, the DNR's acceptance of SPC's appraisal and subsequent certification of a \$67,500 tax credit is **AFFIRMED**.

**SO ORDERED**, this 11<sup>th</sup> day of July, 2017.



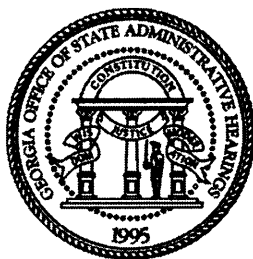
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**AMANDA C. BAXTER**  
**Administrative Law Judge**

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<sup>4</sup> Petitioner also attempted to discredit Mellette's appraisal based on the following: (1) one of the previous sales of the Conservation Property was not at arm's length, (2) Mellette could not remember with whom he verified all of the comparable sales he used, and (3) Mellette's appraisal contained scrivener's errors. These arguments do not adequately rebut Mellette's testimony. First, Jordan's testimony that the sale to Garrett was at a discounted rate because Garrett was a friend was not credible. Even if credible, removing that sale would not alter Mellette's value estimate. Next, the fact that Mellette did not remember the details of the comparable sale verifications did not call his credibility into question. Finally, the scrivener's errors in Mellette's appraisal are minor and do not suggest any serious flaw in Mellette's reasoning.





## NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41(e)(3). A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

### Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(3). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: [kwestray@osah.ga.gov](mailto:kwestray@osah.ga.gov); Fax: 404-818-3731; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

### Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.