

Conservation Easements

A Handbook For Mississippi Landowners

Second Edition



Preserving Special Places For Special People

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INTRODUCTION

Some of the many reasons people call Mississippi home are its rich history, prairies, red clay hills, bottomlands, bayous, coastal savannas, longleaf pine forests and scenic rivers and streams. As we face changing socioeconomic demands, we must actively work to preserve these unique features in our state.

A conservation easement is a legal agreement that ensures a property will be managed in perpetuity according to the landowner's desires.

Mississippi's private citizens own approximately 75 percent of the state's land. For many of these landowners, their property is more than a financial asset; it is part of their family's history, their sense of community and their state pride. But the Mississippi landscape is changing. Today

about 80 percent of all Mississippians live in cities and towns, compared to about 25 percent 50 years ago. As our urban population grows, natural habitats and scenic open spaces are displaced.

One of the most significant factors affecting our landscape is the continued disappearance of family-owned farms. Family-owned farms, plantations and recreational lands are affected by changing economics and the increasing tax burden on property owners. Passing on a family farm or plantation to the next generation is a time-honored tradition in Mississippi. However, estate taxes, which can be as high as 55 percent of an estate's total value, may force heirs to sell all or part of a family property.

This handbook is intended to help Mississippi landowners understand one of the most flexible and effective means of conserving and protecting private property—the conservation easement. A conservation easement is a legal agreement that ensures a property will be managed in perpetuity according to the landowner's desires. It may also qualify the landowner for tax benefits.

Conservation easements can assist landowners in protecting their land, wildlife habitat, scenic areas or historic buildings. Every conservation easement document must be individually crafted to reflect the special qualities of the land protected and the needs of the landowner. Conservation easements can be tailored to meet a landowner's specific needs, whether he or she owns 5 acres or 3,000 acres.



Conservation easements help protect natural habitat and scenic and open spaces. Photo by Michael Kelly.

WHO ARE WE?

The Mississippi Land Trust, a charitable, 501(c)(3) organization, works with private, willing landowners to find ways to preserve Mississippi's rich history, prairies, red clay hills, bottomlands and bayous, coastal savannas, longleaf pine forests and scenic rivers and streams.

Our primary tool for land conservation is a conservation easement. It is an alternative to selling the land for development. A conservation easement will allow a willing landowner to retain ownership of the land, protect the important



Bottomlands and bayous are one of the many habitat types desired by the Mississippi Land Trust. Photo by Michael Kelly.

environmental or historical assets of the land from future development and potentially obtain certain tax advantages.

Formed in 2000, the purposes of the Mississippi Land Trust are:

1. To improve the fish, wildlife and plant resources of Mississippi.
2. To acquire and hold title to land and conservation interests in land in the state of Mississippi, in cooperation with other land trusts and government agencies, in order to ensure the benefits of land protected from industrial, commercial and residential development by private landowners.
3. To educate the public about the conservation of fish, wildlife and plants, and encourage them to become responsible stewards of Mississippi's natural resources.
4. To develop incentive-based conservation programs.
5. To work with the major conservation agencies that affect Mississippi to pinpoint problems and target strategies so that these agencies have effective and cost-efficient programs to improve Mississippi's environment.
6. To educate the public and private landowners about the conservation options available to landowners.

LAND TRUST SERVICES

The Mississippi Land Trust works in cooperation with private investors, private landowners and government agencies to protect fish and wildlife habitat throughout Mississippi.

The Mississippi Land Trust services include:

1. Providing advice about conservation strategies appropriate to each landowner's goals and objectives.
2. Designing, holding and monitoring conservation easements to protect fish and wildlife habitat from undesirable activities.
3. Working to develop mitigation banks and serving as the long-term steward and conservation easement holder on many mitigation banks.

WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a restriction a landowner voluntarily places on specified uses of his or her property to protect natural, productive or cultural features. A conservation easement is recorded as a written legal agreement between the landowner and the "holder" of the easement, which may be either a non-profit conservation organization or government agency. In Mississippi, conservation easements are usually donated to non-profit conservation organizations, commonly known as land trusts.

Conservation easements are recognized for legal and tax purposes by the State of Mississippi (Uniform Conservation Easement Act) and the Internal Revenue Service (IRS) Internal Revenue Code, Section 170(h). However, before initiating a conservation easement, landowners should consult with their legal and tax advisors.

With a conservation easement, the landowner retains legal title to the property while determining the types of land uses to be continued and those to be restricted. As part of the arrangement, the landowner grants the holder of the conservation easement the right to assess the condition of the property periodically to ensure that it is maintained according to the terms of the legal agreement.

The simplest way to understand the concept involved in conservation easements is to look at the basic rights that come with land ownership. When a conservation easement is placed on a property, the owner may give up certain rights (e.g., the right to subdivide the property, develop the

With a conservation easement, the landowner retains legal title to the property while determining the types of land uses to be continued and those to be restricted.

property, etc.). Restrictions on the property are specified in the easement document. The conveyance of the property must be made in perpetuity in order to receive federal tax benefits. The easement document itself is a legal instrument signed and recorded in the county of record.

WHY USE A CONSERVATION EASEMENT?

Conservation easements are one of the most owner-friendly conservation management tools available for private landowners wishing to preserve and/or promote a certain conservation ethic on his or her property. Conservation easements are an increasingly important tool in the efforts to protect and conserve significant habitat types and open spaces. While easements provide potentially substantial federal tax benefits, the attempt to obtain a tax benefit should never be the primary reason for granting a conservation easement.

Landowners interested in conservation usually have two principal concerns. First is the desire to protect the natural or productive qualities of their property. The landowner is typically interested in conserving special features such as fertile soil, mature trees, wildlife habitat or a piece of history even after his or her ownership comes to an end.

Second, along with maintaining productivity, Mississippi landowners must also contend with the increasing tax burden associated with property ownership. Estate taxes, property taxes and the financial incentive to sell or develop are all factors that affect land-use decisions.



Many landowners desire to preserve property containing special features, such as this ancient stand of baldcypress. Photo by Michael Kelly.

WHAT IS THE UNIFORM CONSERVATION EASEMENT ACT?

Mississippi is one of several states which have adopted a Uniform Conservation Easement Act. Under the Act a landowner can place restrictions on the present and future uses of their property with the intent of promoting and/or preserving conservation practices. Furthermore, the federal government, via the IRS, recognizes that the conveyance of a real property interest to a qualified conservation organization to accomplish a specific conservation purpose has potential public benefits and, as such, may qualify the owner for a substantial tax deduction.

Three important aspects of a conservation easement must conform to the Uniform Conservation Easement Act. First, the easement must have a significant conservation purpose. For example, the easement may protect

Conservation easements do not allow public access to the property unless it is specifically provided for in the easement document.

and/or restore bottomland hardwoods, longleaf pine or native prairies. Furthermore, conservation easements may address national priorities established and funded by incentive programs such as the Partners for Fish and Wildlife Program, the Wetlands Reserve Program, the Healthy Forests Reserve Program, the Grassland Reserve Program, the Wildlife Habitat Incentives Program, the Conservation Reserve Program and the North American Wetlands Conservation Act.

Second, in order to qualify as a conservation easement under the Uniform Act, the easement must be granted to or held by a "qualified conservation organization." Simply stated, the landowner donates the specific rights he or she has elected to relinquish to the conservation organization of his or her choosing by execution of the easement document. A qualified conservation organization is defined by law to include certain local, state or federal governmental agencies whose primary purpose is the conservation of natural resources. Also included are publicly supported,



Hunting clubs have found the conservation easement to be a practical tool to protect habitat. Photo by Michael Kelly.

private conservation organizations such as the Mississippi Land Trust or the Mississippi River Trust.

It is important to note that the conservation organization which holds the easement does not actually acquire the rights donated by the conservation easement. Instead the easement gives the conservation organization the right and responsibility to monitor and enforce the restrictions placed on the property and to ensure adherence to the easement document in perpetuity. Therefore, the landowner must clearly define and communicate, through the easement document, the rights they are giving up. It should be understood that the easement does not give the conservation organization or easement holder the ability to exercise any rights that the landowner has specifically chosen to restrict. Conservation easements do not allow public access to the property unless it is specifically provided for in the easement document.

A third essential aspect of the conservation easement process called for in the Act is the development of a baseline ecological assessment. This assessment is usually conducted by resource professionals experienced in ecological progression and associated plant, animal and physiographic details. It is an "ecological snapshot" of the property at the time of the conveyance. The baseline ecological assessment establishes and records the condition of the property as well as the land uses that exist when the conservation easement is established. The baseline document is then used in monitoring by the conservation organization which serves as the easement holder of the property.

COMMON QUESTIONS

Invariably the subject of conservation easements raises many questions in the minds of landowners contemplating their use. The following is a compilation of some of the most commonly asked questions.

Who may give a conservation easement?

Any landowner of record may donate a conservation easement establishing self-imposed restrictions on the uses of their property. If there is a lien holder on the property, the lien holder must accept and agree (subordinate) to the terms of the easement. Taxes are still paid on the property by the owner of record.

What rights and duties does the landowner retain?

A landowner gives up only those rights which are consistent with

achievement of the conservation intent specified in the easement. All other rights of ownership remain unchanged. Except for the specific restrictions set forth in the conservation easement document, the landowner retains all other rights which were originally conveyed when the property was acquired. The land can be sold, leased and/or conveyed to heirs at the death of the original owner. Additionally, hunting, fishing, other recreational uses, timber management and utilization of other natural resources such as minerals can all be enjoyed as long as such activities are consistent with the restrictions that are chosen and placed in the initial easement conveyance.

How can you know if your property qualifies for a conservation easement?

If your property is undeveloped and has a minimum amount of agriculture or intense timber use, it will meet the basic qualification for conservation easement conveyance. Furthermore, in Mississippi, most property in prairie, upland or bottomland hardwoods, mixed pine/hardwoods or longleaf pine are considered to be significant habitat types and qualify for development of a conservation easement.

Does every easement qualify for an income tax deduction?

No. To qualify as a charitable contribution, conservation easement donations must be perpetual, must be donated to a qualified organization (a non-profit land trust) and meet one of the “conservation purposes” tests outlined in the Internal Revenue Code. Easement donors should be aware that these contributions are subject to review by the IRS for a number of years.

Does every easement have to be perpetual?

For the donation to qualify for income and estate tax benefits the conservation easement must be perpetual and apply to all future owners. Some organizations may be willing to purchase conservation easements. Easements that are purchased can be designed for a limited period of years. For example, the Wetlands Reserve Program, administered by the Natural Resources Conservation Service (NRCS), pays landowners for conservation easements on restored or existing wetlands that provide significant habitat for birds and other wildlife. The Grassland Reserve Program, also administered by the NRCS, pays landowners for conservation easements on restored or existing grasslands that provide significant habitat for birds and other wildlife. The Healthy Forests Reserve Program, also a NRCS administered program, pays landowners for conservation easements to restore and protect rare forest types, such as longleaf pine, that contribute to the recovery of a declining, threatened or endangered species.

What are the “conservation purposes” recognized by the Internal Revenue Code?

The Internal Revenue Service Code, Section 170(h) requires that conservation easement donations meet one or more of the following conservation purposes: protect relatively natural habitats of fish, wildlife or plants; preserve open space, including farms or forests, either for scenic enjoyment or in keeping with an adopted public policy; preserve land for public outdoor recreation or education; and/or preserve historically important land or certified historic structures. The conservation purpose of most conservation easement donations in Mississippi is derived from the protection of open space or fish and wildlife habitat.



Unless desired by the landowner, conservation easements do not allow public access. Photo by the Mississippi Land Trust.

What does “significant” mean?

In addition to meeting the basic “conservation purposes,” the IRS requires the donation be significant with regards to, but not limited to, the North American Wetlands Conservation Act, the North American Waterfowl Management Plan, the Environmental Monitoring and Assessment Program, the Partners in Flight Program, the Clean Water Act, the Endangered Species Act, the conservation provisions of the Farm Bill and Mississippi’s Comprehensive Wildlife Conservation Strategy.

Can a conservation easement protecting open space in a real estate development qualify for an income tax deduction?

No tax deduction will be allowed if the donation is made under compulsion or in exchange for a benefit that the landowner expects to receive. Also, charitable income tax deductions for real estate developers are generally limited to the tax basis of the property. The property owner must be prepared to defend the appraisal of his or her deduction.

Does a conservation easement grant public access to my property?

No. Landowners retain control of access to their property. They may choose to allow access to specific groups or the general public in their conservation easement agreement, but are not required to do so.

Can I still sell my property?

Yes. Property with a conservation easement can be bought, sold and inherited. However, the conservation easement is tied to the land and binds all present and future owners to its terms and restrictions.

What will a conservation easement mean for my children?

Future landowners, including family members, will abide by the terms of the conservation easement agreement and will continue the relationship with the organization that holds the easement. A conservation easement may reduce estate taxes paid by heirs. Families should consider the trade-off between the satisfaction of conservation goals, tax benefits resulting in reduced property value and permanent restrictions on land use.

What if the property is owned by more than one person?

All owners of a property must agree to the terms of the conservation easement before it can be granted legally.

Can I still build on my property?

The landowner may retain specified development rights in a conservation easement agreement. For example, a conservation easement protecting a farm or ranch may allow construction compatible with agricultural operations, as well as changes in crop selection or management practices. A conservation easement may specify the location, size and type of one or more residences or other development on a property.

What if my property is mortgaged?

In order for a donated conservation easement to qualify for an income tax deduction, the landowner must acquire a mortgage subordination agreement from the mortgage holder, which is often a bank. With this document the mortgage holder agrees to follow the terms of the conservation easement in the event of foreclosure.

What if I don't own the mineral rights to my property?

This is a complicated issue that should be discussed with professional advisors. However, a landowner who does not own the mineral rights to his or her property can qualify for income or estate tax benefits if ownership of the mineral rights was separated from the land before June 13, 1976, and remains separated today if the owner proves that the probability of surface mining occurring on the property is "so remote as to be negligible."

Where are conservation easements recorded?

Like deeds or other types of easements, conservation easement documents are recorded with other land records in the county in which the property exists.

What restrictions can be included in a conservation easement?

Conservation easements restrict future development of the property. However, they are flexible and may include or exclude almost any restricted use that is agreed to by the landowner and the conservation organization

holding the easement. For example, the easement can be so restrictive that it mandates that the land be left in its natural state. On the other hand, it is common for easements to allow for various activities such as farming, hunting and fishing, planting of food plots and, in some cases, limited structural development.

Can conservation easements be changed or revoked?

Because conservation easements qualifying under IRS regulations are designed to be permanent, landowners should assume that it will not be possible to revoke an easement. However, conservation easements may be amended if both the easement holder and the landowner agree to the terms of the change and if the IRS recognized "conservation purpose" of the conservation easement is not affected.

Can a conservation easement be donated by will?

Yes. The landowner must contact the intended easement holder before conveying the easement by will to ensure that the organization will accept the donation. If the easement qualifies under federal tax law, its value is subtracted from the landowner's taxable estate, reducing estate taxes for heirs.

Can the conservation easement be placed on just a portion of a tract of land or must it be placed on the entire property?

An easement may be applied to an entire property or to any portion of it, depending upon the character of the land. It is not uncommon to have a portion of a particular land ownership fronting a natural lake area, river front or in bottomland hardwoods with associated wetland habitats have a conservation easement on it. Generally, properties with the highest risk of development having the most desirable development characteristics carry the most advantageous tax benefit.



Forest management can be permitted on conservation easement lands. Photo by the Mississippi Land Trust.

What can a conservation easement mean to a landowner?

By placing a conservation easement on a particular parcel of land, a property owner can be assured that the land will forever remain in a natural state unaltered by humans. Paradoxically, a landowner may be rewarded personally and philosophically by the knowledge that protective covenants are in place to promote his or her specific conservation ethic while receiving immediate financial benefits through the tax advantages that accrue.

What are the financial benefits to the landowner?

The value of a conservation easement is established by a competent real estate appraiser experienced in the use of conservation easements. The appraiser will establish the value of the property without the easement then deduct the value of the property with the easement in place. The difference between the restricted and unrestricted value of the property is the amount considered to be a charitable contribution for income tax purposes. In addition, the easement may reduce the value of the property in the landowner's estate, thereby reducing the amount of estate taxes that will be paid.

CONSERVATION EASEMENT PROFILES

The 12 landowners profiled in the following pages have used conservation easements to ensure their specific land use objectives in the future. The properties described in these profiles vary from a few acres of mixed upland hardwoods and pine to several thousand acres of pristine bottomland hardwood forest.

Any tax benefit associated with the use of a conservation easement is unique to the terms of the agreement and the landowner's tax situation. Landowners should discuss the benefits of conservation easements with experienced professionals to determine their impact on specific tax situations.



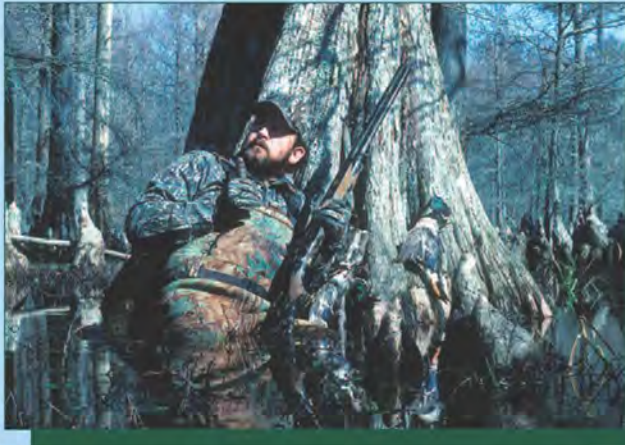
NASH BUCKINGHAM'S BEAVER DAM

Organized in 1882, Beaver Dam, a duck club, is the property of the Owen family. Nash Buckingham, one of the most renowned and best-loved outdoor writers to ever ply the trade, emerged as an authoritative source of information on topics centered on waterfowl, upland birds and the shooting tools used to hunt them, frequented Beaver Dam as an adult.

The conservation easement is approximately 159 acres located in the historic Mississippi River floodplain in Tunica County. In 1836, Tunica County was formed and named for the Tunica Indians, a small tribe that lived in the area.

Tunica County has historically been an agricultural county in terms of land use with emphasis being placed in cotton, corn, soybean and rice production.

However, Tunica County, specifically the western portion along the Mississippi River, has been subjected to significant development as a result of legalized gaming along the river and its tributaries. At present, a total



Beaver Dam and duck hunting are synonymous. Photo by Michael Kelly.

of nine casinos and associated hotel developments and other amenities are present in Tunica County, primarily in the Robinsonville area within 10 miles of the subject property.

The land base of the easement has been divided into various but separate land use and habitat/ecological complexes. The majority is in persistent forested wetlands and the balance is in open water. The majority of this standing body of water is void of vegetation due to the length of inundation. However, the area can be planted during drier periods when flood waters recede thereby enhancing the habitat quality favorable to such species as migrating waterfowl.

CAULK ISLAND LAND AND TIMBER COMPANY

The Caulk Island property is located in the southeast portion of Desha County, Arkansas on the east side (Mississippi Side) of the Mississippi River and on the unprotected (batture) side of the Mississippi River Mainline Levee System. Lake Whittington forms part of the boundary of the island.



One of several bears found on Caulk Island. Photo by the Mississippi Land Trust.

Lake Whittington, originally known as Bolivar Bend, was cut off from the main channel of the Mississippi River by the U.S. Army Corps of Engineers in 1937.

Though the property is within the boundaries of Arkansas, land access and utilization is through Mississippi. The total land base of the easement is approximately 10,712 acres and is Mississippi Land Trust's largest easement.

This property consists of bottomland hardwood forestland (45 percent), emergent forest/shrub/scrub (21 percent), open water (13 percent), hardwood restoration (8 percent), cottonwood plantation with hardwood under-planting (6 percent), open field (3 percent), out parcels (2 percent) and pine forestations (2 percent).

The Caulk Island ownership has been consistent in its application of silviculture. Reforestation, under-planting, timber-stand improvement, herbicide treatment of undesirable forest competitors and installation of tree shelters have all been applied to enhance the forest. A monument has been placed to commemorate the reforestation efforts by Caulk Island.

Hunting on Caulk Island is promoted as a method of providing recreational opportunity, owner equity and wildlife population control, via sustainable harvest. A high-quality white-tailed deer population is currently found on the property.

Caulk Island is also home to nesting bald eagles and a black bear population.

COLES CREEK LAND AND TIMBER COMPANY

Coles Creek Land and Timber Company is located approximately 10 miles north of Natchez, Mississippi. This 1,355-acre tract is located in a strategic area of the Mississippi Flyway. Approximately 500 acres were reforested to bottomland hardwoods in 2001. The owners of Coles Creek are striving to

provide a diversity of habitat types to ensure the needs of all animals, not just waterfowl, are met. Their restoration is providing for the habitat needs of threatened and endangered species like the least tern and Louisiana black bear, migratory bird species such as the prothonotary warbler and resident wildlife species including turkey, squirrel and white-tailed deer.

One natural moist-soil impoundment and one deep-water area are maintained on the Coles Creek property. The shallow-water impoundment provides habitat for a variety of shorebirds, waterfowl and aquatic species. This management will benefit a variety of shore and wading birds as well as waterfowl. The deep-water area offers alligators complete protection from human depredation and disturbance. In 2001, the landowners undertook an extensive nest box program for wood ducks and prothonotary warblers.

The easement prohibits clearcutting trees or draining wetlands on the property, but oil and gas exploration, drilling and production are permitted. The members may build hunting blinds and maintain roads to reach them, but any other development is restricted.

Coles Creek Land and Timber Company donated the easement to benefit their property's bottomlands for wildlife and future members. Jeff Clark, a member of the club, says, "We gave the easement because we love Coles Creek. We know that areas of this type tend to disappear if they are not protected. This is one of the few bottomland hardwood areas of its size and quality in Southwest Mississippi."



The swamps of Southwest Mississippi are home to some of the largest alligators in the Southeast. Photo by Michael Kelly.

DEAD TIGER MITIGATION BANK

The Dead Tiger Mitigation Bank was organized to provide compensatory mitigation for U.S. Army Corps of Engineers permits for unavoidable impacts to wetlands and streams.

The Bank is located within the buffer zone of the Stennis Space Center. The buffer zone that restricts residential/commercial development will contribute to the long-term success of the bank.

This mitigation bank consists of approximately 1,387 acres with a diversity of sectors that includes a longleaf/slash pine savanna, a cypress/pine savanna and land along the Dead Tiger Creek.

Historically, longleaf covered approximately 90 million acres with longleaf being the dominant species over 60 million of these acres. Today, residual stands of longleaf occupy less than 3 million acres of its original range. This mitigation bank will protect and restore this highly degraded ecosystem.

Although the Mississippi Land Trust does not administer the mitigation bank nor own the credits, the perpetual conservation easement placed on the Bank by the Trust ensures that the mitigation will last in perpetuity. The Bank is restoring pine savanna habitat through planting and fire management techniques.

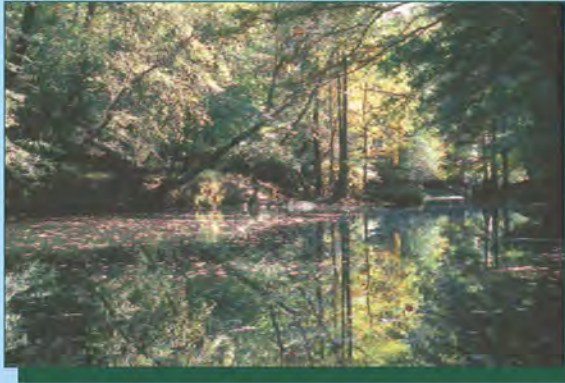


Longleaf pine savanna was restored on the Dead Tiger Mitigation Bank. Photo by Wildlife Mississippi - Randy Browning.

FERRIS FARMS

The late Grey Ferris of Vicksburg donated a conservation easement that includes bottomland hardwoods and a small portion of pasture on the farm covering approximately 2,114 acres.

The Mississippi Land Trust and Ferris negotiated the terms of the conservation easement together. This binding agreement prohibits any development not compatible with a relatively natural preserve. The property's roads, walking paths and a small shed can be maintained. A camp



The Big Black River is one of the few remaining unaltered rivers in North America. Photo by Michael Kelly.

house can be built, but no commercial structures can be built. The terms of the conservation easement protecting the property reduced its appraised value and its property taxes by more than 60 percent.

Ferris once said, "Those of us who are blessed with the ownership of natural resources have a responsibility of being good stewards of the land. We should all strive to ensure that we leave our lands in better shape than we found them."

Ferris Farms has a very colorful history. The land was purchased in 1918 by E.B. Ferris, the founding director of Mississippi's Agricultural Experiment Stations. He employed his vast knowledge of diversified agricultural practices in the management of his farm. The Ferris family was a pioneer in the region in employing agricultural conservation techniques. They terraced the fields and provided other erosion control measures to protect the farm. Their son, Grey Ferris, left his law practice in Vicksburg in 1974, to return to the farm where he worked and lived with his family.

Today, Ferris Farms has grown to over 10,000 acres. Over the years, all cropland has been converted to pasture, bottomland hardwoods and pine. There are more than 1,000 cows on the property.

"If you are a landowner in Mississippi and care about fish and wildlife resources, you need to consider a conservation easement," concluded Ferris.

FIGHTING BAYOU

Fighting Bayou is one of the finest duck hunting clubs in America and is located 17 miles northeast of Greenwood.

Fighting Bayou is part of a major flyway for migrating ducks and geese. Its wetlands, some of which consist of seasonally-flooded rice fields, are a favorite stop for

wintering waterfowl. "We became involved in the farming business because the ducks on this property were extraordinary," stated W.A. Van Devender, a member of the club. Working and operating a farm was a lot of work, but Van Devender and the other members enjoyed taking care of the property and hunting ducks on cool winter days. In 1997, the club applied for the Wetlands Reserve Program (WRP). Although the stewardship has been a blessing for migrating birds each winter, the program's value to ducks and geese could be improved.

The members of Fighting Bayou recognized that this land would be a good candidate for the WRP. The NRCS can pay Mississippi landowners for a perpetual conservation easement. WRP participants also receive technical and financial assistance for habitat restoration and improvement projects. The club enrolled the 80 acres of soybean land in the WRP.

The WRP requires the NRCS and the landowner to agree on a management plan for WRP property. Fighting Bayou's plan divides the property into shallow wetlands, green tree reservoirs and bottomland hardwood forests. Financial assistance from the WRP paid for the reforestation and wetland restoration. "We're excited that we can keep the property as long as we want without putting more money into it. Without the WRP we would not have as good of a habitat," explains Van Devender.



Fighting Bayou is one of the finest duck hunting clubs in America. Photo by Michael Kelly.

JEHAM PROPERTIES, LLC

The Jeham Properties, LLC, owned by John and Hayley Lundy, contains approximately 207 acres. It is specifically located within the Big Black River Drainage Basin. It is bordered to the north by Bear Creek, a principal tributary of the Big Black River. Bear Creek provides a substantial portion of the storm water drainage from the central and northern portions of the country.

The Jeham property has a diverse ecological complex. There is bottomland hardwood forest, loblolly pine, open field/wildlife food plots, a bottomland hardwood reforestation/restoration area and a cemetery with grave markers indicating that the cemetery has been present on the property since the 1800s.

The mixed bottomland hardwood forest is adjacent to and includes the riparian zones along Bear Creek and its tributaries. The open field/wildlife food plot areas are positioned next to the mixed bottomland hardwoods and loblolly complexes so that they enhance the management flexibility and diversity of the property.

The bottomland hardwood reforestation/restoration complex is basically a fallow field left to grow and propagate naturally with indigenous species of primarily loblolly pine and various oak species. The pre-existing condition of this complex was open agricultural fields once planted in row crops or small grains. The current condition lends itself as an example of the rich habitat diversity found within the easement area.

The property is rich in both plant and animal diversity. Good populations of white-tailed deer and wild turkey inhabit the property. Both resident wildlife and migratory waterfowl are available to hunt.

The streams that intersect the Jeham property drain into the Big Black River. This river supports two state-listed mussel species, pyramid pigtoe and rabbitfoot.



Bottomland hardwood forests are one of the major components of the Jeham property. Photo by the Mississippi Land Trust.

RAY MABUS

Ray Mabus of Ackerman donated a conservation easement on land in Choctaw County, which is located in East-Central Mississippi. The county is bordered on the north by the Big Black River. The conservation easement donated by Mabus is located within the Sand Creek drainage basin, a tributary of the Noxubee River and is adjacent to the Yockanookany River drainage basin, which is a tributary of the Pearl River.

This property, formerly termed the E.E. Mabus Nature Area Property, contains

approximately 43 total acres. The property is a portion of what was acquired, via fee purchase, by John Rhinehart Mabus during the late 1800s. The property left the family sometime during the period between 1913 and the mid 1930s when Raymond E. Mabus, Sr. purchased it. Raymond E.

Mabus, Jr. acquired the property through his father's will in 1987.

The Mabus Property is situated in an upland site, with its natural drainage-ways/cove areas largely intact. Oak-hickory is the climax forest type in this physiographic region. Nevertheless, the ecological nature of the Mabus property is such that a variety of successional features exist, including mixed hardwood/pine, upland hardwood and cove hardwood.

The upland hardwood and mixed hardwood/pine habitat that this conservation easement comprises is in need of protection because of the conversion of large acreages to loblolly pine plantations in Mississippi.



The conservation easement donated by Ray Mabus helps protect the water quality of the Noxubee River. Photo by the Mississippi Land Trust.

CHARLES / MARGARET PICKERING

This property is owned by Charles W. Pickering, Sr. and his wife, Margaret Ann Pickering. It is approximately 390 acres and contains three primary habitat types. They are loblolly pine plantations, mixed bottomland hardwood forests and food plots/wildlife openings.

Approximately 227 acres of the Pickering property are within the loblolly pine plantation area. Fish ponds that were previously located in one area have been drained and re-forested.

Approximately 142 acres of the property is mixed bottomland hardwood forestland and is included within the historic Leaf River floodplain area.

The balance of approximately 21 acres is utilized as food plots and wildlife openings. The food plots/wildlife openings provide multiple

functions as wildlife attractants, wildlife observation features, fire breaks and open space. A multitude of plants are sown within these openings on an annual or more often basis. No commercial crop occurs and wildlife is the predominant beneficiary.

There are several wetland areas that exist which maintain

a transitional wetland character throughout the year. Seasonal backwater flooding is common and occurs via overland flow and through existing depressions, borrow sites and old meander channels.

Parts of this property are along the Leaf River and this easement helps protect the river and the wildlife and fisheries resources associated with it.

With the diversity of the property, also comes a diversity of wildlife. The following species could be found on the property: the threatened gopher tortoise, the endangered red-cockaded woodpecker, the endangered Louisiana quillwort plant, the threatened yellow-blotched map turtle, the threatened Gulf sturgeon, the black pine snake, the pearl darter and the bald eagle.



The Pickering easement will help protect a significant portion of the Leaf River. Photo by Wildlife Mississippi - Randy Browning.

TARA WILDLIFE

The Tara Wildlife easement, specifically Willow Point South, is approximately 6,488 acres in size and is located within the Mississippi River floodplain with portions of the property being subject to annual inundation due to high flows on the Mississippi River. Most of the property lies on the



Tara Wildlife is world renowned for its trophy white-tailed deer. Photo provided by Tara Wildlife.

unprotected side (batture) of the Mainline Mississippi River Levee System.

The mission of Tara Wildlife is to manage its natural resources in an ecologically and economically sustainable manner while promoting conservation awareness and the wise use of those natural resources within a framework of both consumptive and non-consumptive opportunities. Through its partnerships with numerous conservation groups, Tara is active in black bear restoration, management of neotropical bird habitat, protection of nesting bald eagles, wildlife and wetlands habitat management and the preservation and restoration of bottomland hardwood forests.

Tara's philosophy is founded on a strong commitment to the management, development and sustainable use of a broad spectrum of natural resources. Tara recognizes the importance of wildlife, timber, water, wetlands, agriculture and recreation in maintaining a high quality of life for current as well as future generations. Tara's long standing experience with conservation issues allows its expertise to be generously shared with others who seek assistance in wildlife and habitat management while promoting an appreciation of the environment through educational and direct-performance activities that conserve land and protect the wildlife that inhabit it. Tara is a model center for the study of habitat and the animals that are part of the ecosystem.

Tara Wildlife is rich in both plant and animal diversity. Excellent populations of white-tailed deer inhabit the properties. Live weights of up to 320 pounds have been recorded and bucks in excess of 200 pounds are common.

WETLANDS SOLUTIONS MITIGATION BANK

The Wetlands Solutions Mitigation Bank in George County was developed to provide mitigation for U.S. Army Corps of Engineers permits for unavoidable impacts to wetlands.

Had the George County site not been purchased for the purpose of habitat restoration, enhancement and preservation to bottomland hardwoods and wetlands, it would likely have been broken up and sold in smaller parcels for residential development.

Restoration, enhancement and preservation activities performed are intended to generate wetland credits that can be sold to individuals and entities that are required to offset unavoidable wetland impacts within the geographic service area. Perpetual preservation is secured by a conservation easement.

Historically, this site has been a bottomland hardwood system in the Pascagoula River floodplain. The Bank's objective is to restore and replicate the historic bottomland hardwood conditions. All credits are bottomland hardwood wetland credits and will be used to offset impacts to similar habitat in the area.

Although there are 149 acres of uplands, there are no available credits for non-wetland acres. The ecology and function of the wetlands on the site are, however, linked to their association with the surrounding uplands. The intricate upland/wetland mosaic that exists on portions of the site provides the types of variable conditions that increase the overall biological diversity of the site. The interdependent nature of the uplands and wetlands render it impossible to separate the health and function of the uplands from the wetland mitigation functions.



Bottomland hardwood trees were restored on the Wetlands Solutions Mitigation Bank. Photo by Wildlife Mississippi - Rob Ballinger.

WRENWOODE NATURAL AREA

In 1945, the Presbytery of Mississippi determined to provide a place for summer camps and a conference center. The Presbytery purchased property, which consists of approximately 177 acres about 11 miles east of Okolona, Mississippi, and 4 miles west of Amory, Mississippi. A lake was constructed and other improvements were made.

In 2000, the Presbytery of Mississippi donated the property to the Wrenwoode Trust and donated a perpetual conservation easement to the Mississippi Land Trust.

The Wrenwoode property has some very significant conservation values. The maximum elevation is approximately 300 feet. The site supports one of the tallest bluffs (70 feet) in Mississippi. Several plant communities are found within this area of high biodiversity. Twenty plants that are on the Mississippi Natural Heritage Program's Special Plant List are found there.

In addition American ginseng, three birds orchid, shadow witch orchid and climbing milkweed are found on the area.

The relatively old growth forest of the Wrenwoode Natural Area is of exceptional ecological quality.

Undisturbed for over 60 years, the site is unique. Trees of special interest are an American beech of approximately 48 inches in diameter and four Canadian hemlocks about 50 feet tall, the largest of this species in Mississippi.

The area provides choice wildlife habitat because of its rough topography and isolation. It provides excellent recreational opportunities including hiking, wildlife viewing, fishing, limited hunting and nature study. Few areas in Mississippi provide a view like the bluff across the floodplain.

The conservation easement on Wrenwoode prohibits most commercial activities on the property. The camp facilities can be rebuilt and added to, but they cannot be significantly enlarged. The desires of the Presbytery are preserved in perpetuity.



The conservation easement on the Wrenwoode property protects some of Mississippi's most unique upland plants. Photo by the Mississippi Land Trust.

FINANCIAL BENEFITS OF CONSERVATION EASEMENTS

Both federal and Mississippi laws provide tax benefits to landowners who protect natural or historic land with qualifying conservation easements. Conservation easements are not suited for every situation. It is important that landowners consult tax professionals for more specific information.

A conservation easement donation can qualify as a charitable contribution if:

1. it is granted in perpetuity;
2. it is granted to a qualified organization, either
 - A. a non-profit, 501(c)(3) charitable organization (i.e., a land trust) with a conservation purpose and the means to enforce the easement; or
 - B. a local, state or federal public agency; and
3. it achieves at least one of the following:
 - A. preserves land for public outdoor recreation or education;
 - B. protects relatively natural habitats of fish, wildlife or plants;
 - C. preserves open space including farms, ranches or forests either for scenic enjoyment or in keeping with an adopted public policy (such as a local open space plan); or
 - D. preserves historically important land or certified historic structures.

Furthermore, the IRS requires that a conservation easement donation protecting natural habitat be significant. This includes land within the Black Prairie, Coastal Plain, Lower Mississippi River Alluvial Plain, land that is beneficial to the North American Wetlands Conservation Act, the North American Waterfowl Management Plan, the Environmental Monitoring and Assessment Program, the Partners in Flight Program, the Clean Water Act, the Endangered Species Act, the conservation provisions of the Farm Bill and Mississippi's Comprehensive Wildlife Conservation Strategy.

A tax deduction for a donated conservation easement cannot be taken if the conservation easement was donated as part of a quid pro quo agreement. For example, if a conservation easement was required to be placed on an area that was to be utilized for wetlands mitigation, a tax deduction could not be taken.

For a conservation easement donation to qualify for a federal income tax deduction, the following instruments usually need to be prepared:

1. the conservation easement document;
2. an inventory (including photographs) of the property's condition at the time of donation listing man-made structures, water resources, agricultural and significant ecological features;

3. a qualified appraisal of the conservation easement prepared by an independent real estate appraiser working for the donor, completed no more than 60 days prior to the donation and no later than the time the tax return claiming the deduction is filed;
4. title report, copy of the deed and copies of any mortgages with subordination agreements from the mortgage holder;
5. a legal land survey; and
6. IRS Form 8283 (an attachment to the federal income tax return of anyone claiming charitable contributions of more than \$5,000).



Federal Income Taxes

The federal income tax benefits of donating a conservation easement are similar to those of other charitable contributions. A landowner may deduct up to the full value of the conservation easement from his or her federal income taxes.

Tax laws require that the value of the conservation easement be determined by a qualified appraiser. Appraisers need to demonstrate to donors that they are qualified under the law and any Treasury Regulations or guidance that may exist. The qualified appraiser must demonstrate verifiable education and experience in valuing the type of property subject to the appraisal.

A conservation easement donation value is greater in areas where development pressure is intense and lower in remote areas. Likewise, a conservation easement that prohibits any development will have a higher value than an easement that permits a property to be divided or developed.

A tract of land may be worth \$120,000 as a potential residential development, but worth only \$20,000 as open space or recreational property. If a landowner donates a conservation easement to a land trust that prohibits new construction on his or her property, he or she makes a charitable contribution of \$100,000. The landowner may then be eligible for up to \$100,000 in federal income tax deductions.

If the conservation easement meets IRS criteria, the landowner may deduct the full value of the conservation easement donation from his or her adjusted gross income, up to 50 percent of the landowner's income for the year of the gift. If the donation exceeds this amount in the year of the donation, the balance of the donation may be deducted for up to 15 succeeding years, subject to the same 50 percent limitation. However, qualifying farmers and ranchers can deduct up to 100 percent of their income.

A farmer or rancher is someone who receives more than 50 percent of his or her income from the trade or business of farming. The law references an estate tax provision (Internal Revenue Code (IRC) 2032A(e)(5)) to define activities that count as farming. Specifically, those activities include:

- cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training and management of animals) on a farm;
- handling, drying, packing, grading or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant or operator of the farm regularly produces more than one half of the commodity so treated; and

- the planting, cultivating, caring for or cutting of trees, or the preparation (other than milling) of trees for market.

The qualified farmer or rancher provision also applies to farmers who are organized as C corporations. For an easement to qualify for the special treatment, it must contain a restriction requiring that the land remain available for agriculture or silviculture.

A landowner with a \$100,000 adjusted annual income might donate a conservation easement worth \$575,000 to a land trust. The landowner could deduct 50 percent of his \$100,000 income, or \$50,000, in each of years 1 through 11 and the remaining \$25,000 in year 12. One can never deduct more than the fair market value of the gift.

Conservation easements may be phased on portions of a property over time, should the value of the charitable donation exceed a landowner's ability to use the income tax deduction over the allowed 16 years. Subject to certain limitations some of the expenses incurred by a landowner in the donation process, including the costs for appraisals, baselines, surveys, legal review and title insurance, can also be tax deductible.

Estate Taxes

ESTIMATED FEDERAL ESTATE TAXES FOR AN INDIVIDUAL:

Value of the Estate	Total Estate Taxes Paid (2011)
\$ 1,000,000	\$ 0
\$ 2,000,000	\$ 0
\$ 3,000,000	\$ 0
\$ 4,000,000	\$ 0
\$ 5,000,000	\$ 0
\$ 6,000,000	\$ 350,000
\$ 7,000,000	\$ 700,000
\$ 8,000,000	\$ 1,050,000
\$ 9,000,000	\$ 1,400,000
\$10,000,000	\$ 1,750,000

To calculate the value of inherited property for estate tax purposes, federal law requires that the value of the land be based on that property's "highest and best use," instead of actual use. For example, a landowner might own a small family ranch near a growing city which might be more valuable as a residential development. When the landowner dies, taxes on the property will be based on the land's value as potential home sites, even if the heirs do not intend to develop the land for home sites.

A conservation easement can place restrictions on the use of a property that limit its "highest and best use." Because the property's "highest and

best use” is restricted, its value and the estate taxes are reduced accordingly. As noted earlier, there are limits on the income tax deduction for a conservation easement donation, but there are no such limits for estate tax purposes. Therefore, the savings on estate taxes can be substantial.

To realize estate tax benefits, a landowner must donate the conservation easement during his or her lifetime or in a legal will. Heirs cannot donate easements to avoid payment of estate taxes. A landowner intending to convey a conservation easement by a will must contact the potential holder to ensure that the organization will accept the donation.

To calculate the value of inherited property for estate tax purposes, federal law requires that the value of the land be based on that property's "highest and best use," instead of actual use.

Example of the Effects of a Conservation Easement on 2011-2012 Estate Taxes

A widowed landowner purchased a property 30 years ago that has appreciated significantly. The property, which is located near a growing suburban community, has a current fair market value of \$5,000,000. The landowner donates a conservation easement to a local land trust that reduces the property's value to \$2,000,000. Assuming the landowner has \$500,000 in taxable assets in addition to the property and that no prior taxable gifts have been made, the effect of the conservation easement on estate taxes for heirs would be as follows:

	WITHOUT EASEMENT Donation	WITH EASEMENT Donation
Value of Land	\$ 5,000,000	\$ 2,000,000
Value of Other Assets	\$ 500,000	\$ 500,000
Total Taxable Estate	\$ 5,500,000	\$ 2,500,000
Total Federal Estate Tax	\$ 175,000	\$ 0

*This example is accurate for currently enacted Estate Tax rates through December 31, 2012. The rate and exemption amounts included herein are subject to change due to congressional action. At the time of this publication, no legislation is pending. Under present law, the exemption for 2013 is \$1,000,000 and the tax rate is 55 percent.

Federal Filing Requirements

Depending on the circumstances, persons or organizations making donations of property or conservation easements may need to include with their tax return a qualified appraisal of the conservation easement.

A qualified appraisal is one that: 1) relates to an appraisal that is made no earlier than 60 days prior to the date of donation of the conservation easement and not later than the due date (including extensions) of the return on which a deduction for the conservation easement is first claimed; 2) is prepared, signed and dated by a qualified appraiser; and 3) includes a description of the property appraised, the fair market value of the property on the date of the donation of the conservation easement and the specific basis for the valuation, a statement that such appraisal was prepared for income tax purposes, the qualifications of the appraiser and the signature and taxpayer identification number of the appraiser.

State Income Taxes

In addition to a landowner being able to deduct up to the full value of the conservation easement from his or her state income taxes, Section 27 7 22.21 of the Mississippi Code of 1972 provides for a state income tax credit for donations of land or interest in land considered a priority site by the Mississippi Natural Heritage Program or lands along or adjacent to streams listed on the Mississippi Scenic Streams Stewardship Program. The credit is to assist landowners with the costs associated with the placement of a conservation easement on their properties. Allowable costs include costs for the appraisal, the baseline survey of the flora and fauna located on the site, engineering and surveying fees, maintenance fees, monitoring fees and legal fees. A landowner may use the tax credit to cover up to 50 percent of the allowable transaction costs (not to exceed to \$10,000) associated with the donation of the conservation easement for the tax year in which the allowable transaction costs occurred. Any unused credit may be carried forward for 10 succeeding tax years.

Local Property Taxes

Conservation easements may reduce property taxes. However, property taxes on agricultural land in Mississippi are reduced because they are based on a property's productivity rather than fair market value. Conservation easements on land not classified as agricultural may reduce property taxes to the extent the value of the land is reduced. But it is important to remember that property taxes are determined by the county tax assessor/collector.

LAND TRUSTS

To qualify for tax benefits, easements must be granted to either a government agency or a publicly supported tax-exempt conservation organization, commonly called a land trust. A land trust is a local, regional or national non-profit organization that protects land for its natural, recreational, scenic, historic or productive value. Land trusts have varying conservation objectives; some work in specific geographic areas and some concentrate on protecting different natural or cultural features.

Initially, the land trust works with the landowner to tailor the terms of the easement to protect the land's conservation value and meet their personal and financial goals. Land trusts can also connect landowners with legal, tax or natural resource professionals familiar with conservation easements.

Land trusts that accept conservation easements are responsible for monitoring that property and ensuring that the terms of the easement are followed. Representatives from the land trust make scheduled, usually annual, visits to the property to document the condition of the property and notify the landowner of any potential violation of the conservation easement. If the terms of the conservation easement are violated, the land trust can take legal steps to stop or correct the violation.

Land trusts that accept conservation easements are responsible for monitoring that property and ensuring that the terms of the easement are followed.

The land trust is responsible for stewardship of the conservation easement for as long as the easement exists. It is important that a landowner select an organization that can demonstrate that it has the financial resources and staying power to handle these responsibilities over the long-term. Most land trusts request financial contributions (also tax deductible) to help defray some of the costs involved in administering a conservation easement.

A land trust may also work with a landowner to develop a management plan to include flexible goals and objectives relating to conservation of the property's natural and cultural features. Management plans, which should be updated periodically, are especially important for productive agricultural or recreational property or for property susceptible to invasive species.

SIGNIFICANT HABITAT NEEDING PROTECTION

Mississippi has significant and unique habitat types that are in need of protection. They are:

1. Wetlands and Bottomland Hardwoods
2. Native Prairie
3. Coastal Savannas
4. Longleaf Pine Forests
5. Upland Hardwoods and Mixed Upland Hardwoods/Pine
6. Scenic Rivers and Streams
7. Areas That Can Improve Water Quality

Wetlands and Bottomland Hardwoods

Wetlands are valuable to different people for different reasons. Some individuals prize wetlands for the rich wildlife and fish resources found there. Others see wetlands as important areas for sediment retention, ground water recharge and flood control. Three-fourths of the wetlands in the United States are controlled by private landowners. These remaining wetlands provide essential habitat for waterfowl and other wetland-dependent wildlife, and if we are to increase their populations, incentives such as the Wetlands Reserve Program will not only enable interested landowners to develop habitat, but will help compensate them for



Bottomland hardwoods provide important needs to a diversity of species of wildlife. Photo by Michael Kelly.

removing their land from agricultural production.

It may have been naturalist Thomas Nuttall, for whom the Nuttall oak is named, in the early 1800s who gave us our first look at the timber resource of Mississippi's lowlands. Nuttall described Mississippi's lowlands as being "vast, trackless wilderness of trees, a dead solemnity...All is rude nature as it sprang into existence still

preserving its primeval type, unclaimed exuberance."

In 1884, C.S. Sargeant, in his report on the forests of the United States, said the lowlands of Mississippi "possessed a wealth of timber of the most valuable kinds in a surprising variety." As he spoke about this land, he stated, "Along the elevated ridges from the streams, the white oak, the willow oak, the shell-bar (sic) and mocker-hickories, the black walnut in

great numbers, the yellow poplar and the sassafras large enough to furnish canoes of great size, the mulberry, the Spanish oak, the sweet and black gums are the principal forest trees, with an undergrowth in the openings of dogwoods, various haws, crabapples, wild grapes, buck thorns, etc. In the forest covering the lower lands, which sloped back everywhere in the more or less saturated soil, here the sweet gum reaches its greatest size, and here grows in great perfection the bitter-nut, the elms, hornbeans, white ash, box-elder and red maples of enormous size. The honey locust, water oaks and red and Spanish oaks are equally common. Here, among the smaller trees, the holly obtains its greatest development, with hornbeans and wahoo elms, while papaws, haws and privets from the massive and dense undergrowth which interspersed with dense cane-brakes (sic), covers the ground under the large trees."

Beginning with Nuttall's generation and continuing with varying intensity until the present time, the clearing of these low-lying forested lands has changed the landscape. In recent years it has become apparent that some of this land can produce a successful crop only in relatively dry years. In some cases, these lands are better suited for timber production. Consequently, many landowners have become interested in planting these lands with bottomland hardwoods, as well as protecting them.

Areas which are currently growing bottomland hardwoods or are wetlands, or areas where the landowner desires to convert the area to bottomland hardwoods and wetlands, qualify for conservation easements.

Native Prairie

The Mississippi Land Trust's native prairie initiative is to help reverse the disappearance of native grasslands. Grasslands are important both for the forage they provide for farming operations and for the habitat they provide for plant and animal communities.

The Trust is interested in the restoration of native grasslands which is particularly important in the Black Belt Prairie of Northeast Mississippi and the Jackson Prairie in East-central Mississippi. These grasslands once supported vast populations of bobwhite quail, wild turkey and a variety of species of songbirds.

The initiative will permit grazing on the easement property. Haying is permitted after the nesting season for birds in the local



Native grasslands are Mississippi's most degraded habitat type. Photo by the Mississippi Land Trust.

area. Prohibitions are intended to prevent cultivation of the soil for row crops, and otherwise to break the soil for production of agricultural commodities.

Coastal Savannas

The Mississippi Land Trust has also placed an emphasis on protecting pine savannas and their associated pine scrub, forested swamps and tidal marshes of South Mississippi.

According to the U.S. Fish and Wildlife Service, the original presettlement vegetation of the Mississippi Gulf Coast consisted mostly of pine savannas.

Ecological characteristics contributing to these communities include high rainfall, low flat topography, clay soil with a hard subsurface pan leading to an infertile, acidic, waterlogged soil. The high natural fire frequency kept the areas open, with grasses like wiregrass providing much of the fuel. Fire suppression allowed pines and shrubs to invade and out compete the native savanna plants. In the 1960s and 1970s, much of the remaining open savanna was converted to pine plantation by planting and ditching, the latter disrupted the natural water regime. Less than 5 percent of the original acreage of this habitat remains in the Atlantic/Gulf Coastal Plain making it one of the most endangered ecosystems in the country.



Coastal savannas are one of the most endangered ecosystems in the United States. Photo by the U.S. Fish and Wildlife Service.

The savannas are large wet prairies with numerous species of low-growing grasses, sedges and herbaceous wildflowers, with occasional longleaf pines, pond cypresses or low-growing shrubs. The tree cover only ranges between 1 and 5 percent. The diversity of species of plants is large, one of the highest in North America, particularly those of the ground cover species. Of special interest are the orchids and many carnivorous plants. The wetter areas are also referred to by other names such as pitcher plant bogs.

Forested swamps are forested wetlands found in low drains through the pine savannas and include cypress/tupelo drains and forested bayheads. They are characterized by trees in the mid-story and over-story with a shrub layer and sparse herbaceous ground layer. Common trees include cypress, slash pine, bays, buckwheat, red maple, swamp tupelo, sweetgum and swamp oaks. Shrubs include gallberry and other hollies and wax myrtle. Peat moss is sometimes found in large mats. Ferns, sedges and rushes are common in the herbaceous layer. Swamps burn infrequently

because of the high humidity, standing water, moist fuel and shelter from wind.

Pine scrub is a “mixed-bag” classification that includes natural pine flatwoods and former pine savannas now overgrown with slash pine. It also includes numerous shrubs because of the effects of long-term fire suppression and pine plantations. Very few of the native wildflowers and sedges remain, having been choked out by these woody plants that were formerly kept at bay by frequent surface fires.

Tidal marshes are covered by vast areas of sawgrass with herbaceous species intermixed along the edges. All these species are adapted to the saturated soils caused by incoming tides. Closer to the coast where the salinity gets higher, sawgrass is replaced with saltmeadow cordgrass and needlegrass rush.

Longleaf Pine Forests

The Mississippi Land Trust’s longleaf pine initiative focuses on the southernmost third of the state.

According to the U.S. Department of Agriculture, the historic range of longleaf pine has declined from over 90 million acres to less than 40 million acres during the past 2 centuries. This vital ecosystem provides valuable habitat to a wide array of wildlife. For instance, over 30 threatened and endangered species, such as the red-cockaded woodpecker, are dependent on longleaf pine habitat for their existence.

Establishment of this initiative is an important step in the effort to re-establish this threatened habitat.

Areas where a landowner has established or desires to establish longleaf pine are desirable for conservation easements.

Upland Hardwoods and Mixed Upland Hardwoods/Pine

Upland hardwoods and mixed upland hardwoods/pine have nurtured the economy and culture of Mississippi for generations. In recent years Mississippians have witnessed the conversion of these forest types to plantation pine. Furthermore, with today’s growing population, high estate taxes, sprawling communities and



Longleaf pine can be managed on a sustainable basis to yield both economic and environmental benefits. Photo by the U.S. Fish and Wildlife Service.



Protecting mixed stands of upland hardwoods and pine is a priority of the Mississippi Land Trust. Photo by the Mississippi Land Trust.

other development activities, upland hardwoods and mixed upland hardwoods/pine forests are being clear-cut, divided up and converted to non-forest and non-farm uses.

Land that will protect, restore or enhance the integrity of upland hardwoods and mixed upland hardwoods/pine forests are desirable for conservation easements.

Scenic Rivers and Streams

In 1999, the Mississippi Legislature passed a non-regulatory Scenic Rivers and Streams Program to work with landowners to promote buffers along stream banks.

There are 11 streams in Mississippi. They include: Wolf River, Tangipahoa River, Magee’s Creek, Chunky River, Black Creek, Pascagoula River, Bear Creek, Red Creek, Tombigbee River, Noxubee River and Escatawpa River. Currently, only Black Creek, a national wild and scenic river has federal protection.

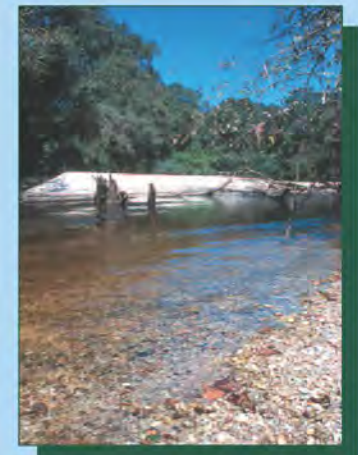
The goal of the Scenic Rivers and Streams Program is to preserve at least a part of the natural beauty and aesthetic values of some of Mississippi’s rivers and streams. According to the bill, “To qualify as eligible, the stream must possess unique or outstanding, scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values.” In addition, the stream must be a public waterway and not have been channelized in the past 5 years.

Land that will protect, restore or enhance the integrity of the river or stream will probably include conservation buffer strips, riparian corridors, wetland enhancement and restoration, bottomland hardwood tree planting and a variety of erosion control practices that are desirable for conservation easements.

Nominations for streams must be made to the Mississippi Department of Wildlife, Fisheries and Parks and an advisory council which consists of farmers, landowners, business people, government officials, conservationists and groups with recreational interests, such as canoeing and fishing groups.

Areas That Can Improve Water Quality

The goal of this initiative is to improve water quality by restoring and

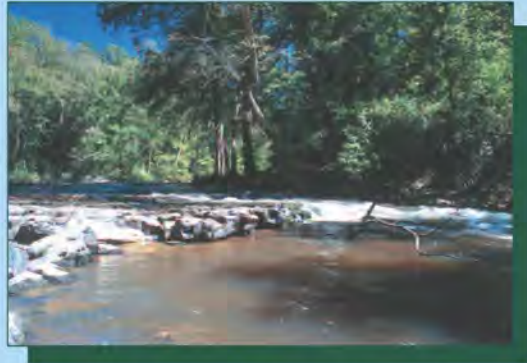


The Mississippi Land Trust works in partnership with the Scenic Rivers and Streams Program to preserve the natural beauty and aesthetic values of the state’s unique rivers and streams. Photo by Michael Kelly.

permanently protecting wetland and riparian land. This will be accomplished through the reduction of non-point source (NPS) pollution by placing conservation easements on privately owned lands.

Conservation easements are being used throughout the nation in watersheds to support the Best Management Practices (BMPs) of wetland and riparian area restoration and protection. Emphasis is on areas where intense population pressure creates many competing land uses. In this area, the preservation of fish and wildlife habitat and undeveloped corridors along streambeds is an extremely valuable by-product of easements acquired primarily to improve water quality.

The objectives of NPS wetland and riparian area restoration and protection easements are complementary to other state and federal programs. Wetlands in Mississippi are fairly-well protected from development through statewide zoning but are less protected from agricultural impacts. The easement program provides an economically viable alternative to agricultural use of wetland areas.



Conservation easements are effective in using best management practices for sustainable forestry operations. Photo by Michael Kelly.

Mississippi has abundant rainfall, finely textured soils and intensive agricultural or forest production which has resulted in substantial NPS problems. Relatively high levels of nutrients, siltation and organic enrichment (low dissolved oxygen), originating primarily from agricultural and forest production NPS, are believed to be present in most Mississippi water bodies.

Soil erosion on poorly-managed fields and forests generates runoff that may transport sediments, organic residues, herbicides, pesticides and fertilizer residues to downstream water resources. Pollutants from agricultural and forest production entrained in surface runoff negatively impact riparian and wetland systems through siltation, seasonal turbidity, toxicity to organisms, dissolved oxygen depletion and eutrophication. Such suspended, fine-textured sediments result in prolonged turbidity problems and impair life processes associated with photosynthesis and the food webs that originate in aquatic productivity cycles within streams of the basins of Mississippi.

Sediments, entrained in overland runoff, absorb and transport most of the pesticides, plant nutrients, organic carbon residues and heavy metals removed from eroding agricultural and forest lands. The nutrient phosphorus, in many cases, has been shown to be the significant factor in the eutrophication of surface waters within the basins of Mississippi.

The wide variation in total movement of pollutants from eroding fields and forests is attributed to the degree of soil disturbance, the presence of nutrient and pesticide residues on the soil surface and the strength and duration of rainfall and runoff events that occur when soils are exposed from excess tillage or timber harvesting operations. Conclusively, soil losses and movement of other runoff-borne pollutants are major reasons for the degradation of riparian and wetland systems in the basins of Mississippi.

Easements may support wetland and riparian restoration when eligible as a BMP for controlling NPS pollution. Wetland and riparian area restoration are eligible BMPs in the following situations: 1) cultivated organic soils with channel drainage systems discharging to a stream or tributary; 2) pastured wetlands adjacent to streams or tributaries; and 3) prior converted wetlands or farmed wetlands down slope or up slope from fields identified as critical upland sediment sources.

Conservation easements using BMPs for forestry practices are also desirable. Eligible BMPs will be based on the following principles as described in the "BMPs For Forestry" by the Mississippi Forestry Association. They include: 1) do not allow surface water runoff from any type of soil disturbance to run directly into a watercourse; 2) maintain the integrity of all streambeds and banks; 3) do not leave debris of any type in streambeds; 4) do not spray chemicals directly into the water or allow chemicals to degrade surface or groundwater; 5) leave streamside management zones along watercourses; and 6) provide for rapid revegetation of all denuded areas through natural processes supplemented by artificial revegetation where necessary.

Conservation easements are typically placed on native prairie, upland pine, upland hardwoods, mixed hardwoods and pine, longleaf pine or bottomland hardwoods according to the native species occurring in the area in question. Conservation easements will not be placed on lands where more than 50 percent of the easement area will remain in agricultural production and, even then, no-till or minimum-till system alternatives to more conventional tillage systems that result in greater soil erosion and sediment discharge will be required and incorporated in the easement document.

This initiative will address the significant surface water pollution problems in Mississippi's basins by restoring and protecting wetlands and riparian areas. Ample opportunities for this activity exist in Mississippi.

REQUIREMENTS

Qualification

The easement must meet a definite, significant conservation purpose. For example, the easement may protect rich history, prairies, red clay hills, bottomlands and bayous, coastal savannas, longleaf pine forests and scenic rivers and streams.

Appraisal

The value of a conservation easement is established by a competent real estate appraiser experienced in the use of conservation easements. The appraiser will establish the value of the property without the easement then deduct the value of the property with the easement in place. The difference between the restricted and unrestricted value of the property is the amount considered to be a charitable contribution for income tax purposes. In addition, the easement may reduce the value of the property in the landowner's estate, thereby reducing the amount of estate taxes that will be paid.

Baseline

An essential aspect of the conservation easement process called for in the Uniform Conservation Easement Act is the development of a baseline ecological assessment. This assessment is usually conducted by resource professionals experienced in ecological progression and associated plant, animal and physiographic details. It is an "ecological snapshot" of the property at the time of the conveyance. The baseline ecological assessment establishes and records the condition of the property as well as the land uses that exist when the conservation easement is established. The baseline document is then used in monitoring by the conservation organization which serves as the easement holder of the property.

Survey

A legal survey of the easement area is required.

Monitoring

When the Mississippi Land Trust accepts an easement, it is responsible for monitoring that property and ensuring that the terms of the easement are followed. Representatives from the Trust make scheduled, usually annual, visits to the property to document the condition of the property and notify the landowner of any potential violation of the conservation easement. If the terms of the conservation easement are violated, the Trust

can take legal steps to stop or correct the violation.

The Trust is responsible for stewardship of the conservation easement for as long as the easement exists. The Trust requests financial contributions (also tax deductible) to help defray some of the costs involved in administering a conservation easement agreement.

For the easements held to date, an endowment of approximately \$1,500,000 has been established for monitoring. Each landowner with an easement on their property will be required to donate to the endowment. All contributed funds will remain in the endowment. The interest generated by the endowment, minus inflation, helps pay the cost of monitoring the easement for compliance.



Conservation easements protect the future of Mississippi. Photo by Michael Kelly.

SUPPORT

The Mississippi Land Trust, a charitable 501(c)(3) organization, is Mississippi's largest land trust. It works exclusively to preserve Mississippi's vast fish and wildlife habitat, working cooperatively with landowners, government agencies and the public.

The Trust is not alone in its efforts to protect lands. The Trust is primarily funded by charitable donations made by individuals and foundations that support our work. These generous donations are enabling the Trust to:

1. Conserve tens of thousands of acres of private fish and wildlife habitat throughout Mississippi.

2. Encourage sustainable forestry.

3. Promote policy initiatives that offer private landowners opportunities to practice good land stewardship such as the conservation provisions of the 2008 Farm Bill.



Protecting areas for outdoor recreation is an important component of economic growth. Photo by Michael Kelly.

The success and achievements of the Mississippi Land Trust will be determined by your participation.

Make a tax-deductible donation today or contact the Mississippi Land Trust for additional information on philanthropic options that can maximize tax benefits through gifts of appreciated stock or land.

Be part of something great for Mississippi! Future generations will be proud of your role. Contributions from sportsmen, individuals, corporations, foundations and the conservation community are essential to the success of the Trust's conservation initiatives. These efforts affect the health and well-being of all citizens in Mississippi by improving the quality of life through protecting, restoring and enhancing this great state's fish, wildlife and plant resources.

Make a tax-deductible donation today. Contact the Mississippi Land Trust for additional information on philanthropic options that can maximize tax benefits by giving through bequests, charitable gift annuities, charitable lead trusts, charitable remainder trusts, gifts of stock, gifts of life insurance or retirement assets, gifts of real estate/timber or monetary contributions.

MORE INFORMATION

Landowners interested in learning more about conservation easements have several resources to assist them:

1. The Mississippi Land Trust can answer questions about conservation easements.

**Mississippi Land Trust
Main Office**
P.O. Box 23
Stoneville, MS 38776
Phone: (662) 686-3375
Fax: (662) 686-4780

**Northeast Mississippi
Field Office**
P.O. Box 187
Amory, MS 38821
Phone: (662) 256-4486
Fax: (662) 257-9710

**South Mississippi
Field Office**
P.O. Box 16537
Hattiesburg, MS 39404
Phone: (601) 264-6010
Fax: (601) 264-6314

Web: www.misslandtrust.org

2. The Mississippi Department of Wildlife, Fisheries and Parks can answer additional questions about conservation easements.

**Mississippi Department of Wildlife, Fisheries and Parks
Conservation Resources Coordinator**

2148 Riverside Drive
Jackson, MS 39202
Phone: (601) 354-7303
Fax: (601) 354-7227
Web: www.mdwfp.state.ms.us/museum

3. The Land Trust Alliance, a national organization for land trusts, publishes books and other materials related to private land conservation. A description of several of these publications is listed in the appendices.

The Land Trust Alliance

1660 L Street NW, Suite 1100
Washington DC 20036
Phone: (202) 638-4725
Fax: (202) 638-4730
Web: www.landtrustalliance.org

4. Landowners should discuss the potential advantages and disadvantages of conservation easements with their own legal and tax advisors.

APPENDICES

I. Content of a Conservation Easement

Parties: Grantor (landowner) and Grantee (easement holder)

Date of Conveyance

Recitals (“whereas” clauses)

Title representation (assures that grantor owns the property)

Conservation values of the property

Legal description of property

Documentation of “pre-easement characteristics” of property

Continuation of existing uses

Conveyance of rights to protect conservation values to grantee

Qualifications of grantee to hold the easement

Grant (transfer of property interest)

Consideration: nominal dollar amount or gift language

Citation of statutory authority

Duration: perpetual

Provisions

1. Purpose (only uses consistent with protection of conservation values are permitted)
2. Ingress and Egress (access to property by grantee)
3. Prohibited Land Uses
The three methods for defining prohibited land use are:
Exclusive (any land use not expressly prohibited is permitted)
Unreserved (any land use not expressly reserved is prohibited)
Inconsistent (any land use inconsistent with the easement’s purpose is prohibited)
4. Reserved Rights (the landowner’s rights which are reserved for possible future use)
5. Access (public is typically denied access)
6. Amendment (if mutually agreeable between easement holder and landowner at the time, certain provisions of easement may be modified in the future as long as original intent is achieved)
7. Assignment (grantee retains right to transfer easement to another eligible holder)
8. Subordination (if property is mortgaged, the mortgage holder must guarantee that it will uphold easement provisions in the event of foreclosure)

9. Subsequent transfers (easement “runs with the land,” i.e., provisions bind all future landowners in perpetuity, even if the property is sold to another)
10. Recordation (easement documents recorded in county in which the property is located)
11. Successors (easement “runs with the land,” i.e., provisions bind all future landowners in perpetuity, even if property is inherited by another)

II. Books On Conservation Easements

Available from Preserving Family Lands, P.O. Box 961241, Boston, Massachusetts 02196-1241, Ph: (617) 357-1644:

Preserving Family Lands: Essential Tax Strategies for the Landowner by Stephen Small

Preserving Family Lands: Book II, More Planning Strategies for the Future by Stephen Small

Preserving Family Lands: Book III, New Tax Rules and Strategies and a Checklist by Stephen Small

Available from the Land Trust Alliance, 1660 L Street NW, Suite 1100, Washington D.C. 20036, Ph: (202) 638-4725:

The Federal Tax Law of Conservation Easements by Stephen Small

The Conservation Easement Handbook (with model conservation and historic easements) by Elizabeth Byers and Karin Marchetti Ponte

A Tax Guide to Conservation Easements by C. Timothy Lindstrom



"If you are a landowner in Mississippi and care about fish and wildlife resources, you need to consider a conservation easement."

Grey Ferris

"To me, one of the great wonders of the universe is the balance of nature. It's the reason I became involved in trying to do something about preserving it."

Jimmy Buffett

"The more our young people can take advantage of the outdoors, the more they grow up to be well rounded citizens, have an appreciation for fish and wildlife resources and have less of a chance of being involved with drugs and crime."

Haley Barbour

"All of the animals except man know that the principal business of life is to enjoy it."

Anonymous

"Conservation will ultimately boil down to rewarding the private landowner who conserves the public trust."

Aldo Leopold



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