

Conservation Easements and Economic Incentives

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Tara Talks I- The Mississippi Delta: Land Worth Conserving

Conservation Easements

A conservation easement is a voluntary restriction on the use of land by means of a recorded deed restriction. The most popular analogy used to describe this transaction is that the rights you have associated with owning real property are like a bundle of sticks. You have mineral rights, water rights, the right to mortgage or sell your property, right to develop it, and more. By placing a conservation easement on your land you give up your development right ‘stick’ to a qualified holder- usually a land trust or government agency- but, retain the rest of your rights.



There are different benefits that can be derived from placing a conservation easement on your land. If you sell your development rights, you can get cash. If you donate your rights you can take a charitable deduction¹ on your income taxes. Other economic benefits include a lower property value assessment because the land cannot be developed (meaning lower property taxes) and an estate tax deduction² when you transfer your property to future generations.

In general, however the biggest benefit a landowner gets from placing a conservation easement on their land is the knowledge that their land and its legacy will be protected for generations to come.

The restrictions are required to last in perpetuity in order to receive federal tax benefits, which can pose problems down the line. First, the economic incentives for placing a conservation easement on a parcel of land, for the most part, only benefit the individual who granted the easement. The original landowner is the only landowner to get cash from the sale of the easement or tax deduction. The charitable tax deduction may be carried forward for a maximum of 6 years (or 16 years under the current enhanced conservation easement tax incentive, which will expire December 31st, 2013), which is only a fraction of the existence of the conservation easement.

Second, the original landowner gets to determine what restrictions they would like, which will tie the hands of future landowners forever. Conservation easements are not easily modified or terminated due to the perpetuity requirement, which makes it very difficult for future landowners to change land use practices if there is a change in technology, surrounding land use, or climate.

¹ Internal Revenue Code §170(h).

² Internal Revenue Code §2031(c).

- For example, an agricultural, ranch or forest conservation easement can contain a provision requiring the land to remain working and a management plan for how to keep the working landscape sustainable. This will preserve not only the land, but also the land use practices that can be initiated on that land.
- The National Young Farmers Coalition recently released a report urging land trusts to go further when drafting conservation easements and not just to protect farm and ranchland, but to also require that the land be kept in farming or ranching.³ This is due to the increasing trend of wealthy estate buyers purchasing conserved land around urban centers and letting it go fallow- pushing out farmers and ranchers that cannot outbid them.

Subsequent landowners do not receive an economic incentive to continue conservation of land subject to a conservation easement. They may purchase the land at a reduced value and pay lower property taxes because the land does not have development rights, but there is no continuing economic incentive or support for upholding the conservation purpose of the easement. Additionally, they must abide by the conservation vision of the previous landowner. This means that they may be restricted from implementing different or additional conservation or economic practices on their land. This can create a lot of animosity between the landowner- who doesn't understand or want to follow the conservation purposes stated in the easement- and easement holder, which can sometimes lead to a legal battle.

There are substantial costs associated with upholding a conservation easement and continuing conservation on conserved land past the original landowner that is not monetarily compensated or incentivized.

Conservation Easements and Short-Term Conservation

A conservation easement can be designed for a term of years. This operates more like a contract, where a private landowner will agree to not develop their land, farm or graze their land, or will agree to implement conservation practices on their land for a certain number of years in exchange for an economic benefit. Conservation contracts are generally administered by federal and state government programs and do not qualify for federal tax deductions.

At the federal level, the Natural Resources Conservation Service and the Farm Service Agency administer a variety of voluntary conservation programs that provide funding and technical assistance for working land conservation. They are a great tool for private landowners looking to balance natural resource conservation and economic development of their land.

The Conservation Reserve Program, Grassland Reserve Program, Wetland Reserve Program, and Healthy Forest Reserve Program are programs where private landowners agree to protect their land and restore its ecological functions in exchange for rental or cost-share payments. The Farm

³ Schwartz, S., L. Lusher Shute, S. Ackoff, and E. Kane, *Farmland Conservation 2.0: How Land Trusts Can Protect America's Working Farms*, National Young Farmers Coalition (2013).

and Ranchlands Protection Program is a similar program that provides matching funds to landowners seeking to sell their development rights to their farm or ranch.

The downside is that these federal conservation programs are under the knife. Government funds are dwindling and without a Farm Bill (which is the mandatory funding legislation for these programs) many conservation programs have already lost funding and are no longer authorized.

- Even with a Farm Bill, participation in some of these programs has dropped. This year the amount of acres enrolled in the Conservation Reserve Program hit a 26 year low and dropped well below 30 million acres (to about 26.9 million acres in total).
- One of the reasons for this is that commodity prices are so high that there is too much of an incentive to take land out of conservation, even if it means growing crops on highly erodible and fragile land.

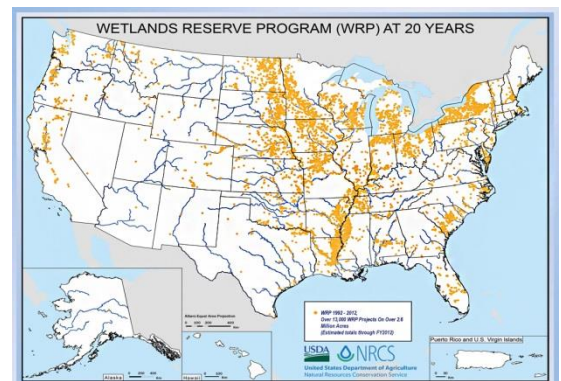
States also administer voluntary conservation programs. In California, the almost obsolete Williamson Act allows for local governments to enter into conservation contracts with private landowners to restrict land to agricultural or open space use for a property tax reduction. Many other states allow for land that is kept as open space, farm, ranch, or forestland to be assessed at a lower value for property tax purposes under state current use or use value programs.

Conservation Incentives in the Mississippi Delta

Private landowners in the Mississippi Delta have participated in conservation easement programs and have benefited from conservation easements being placed on land upstream in the Mississippi River Basin.

- According to a recent NRCS Report, farmers have reduced sediment, nutrient, and pesticide loss from farm fields through conservation practices, such as erosion control and nutrient management treatment.⁴
 - o From 2003-2006 it is estimated that there was a 30% reduction in sediment loss, 7% reduction in nitrogen loss, and a 51% reduction in phosphorus loss.
- Conservation practices being conducted by farmers (as well as drought), have been a major factor in decreasing the Gulf Hypoxic Zone.

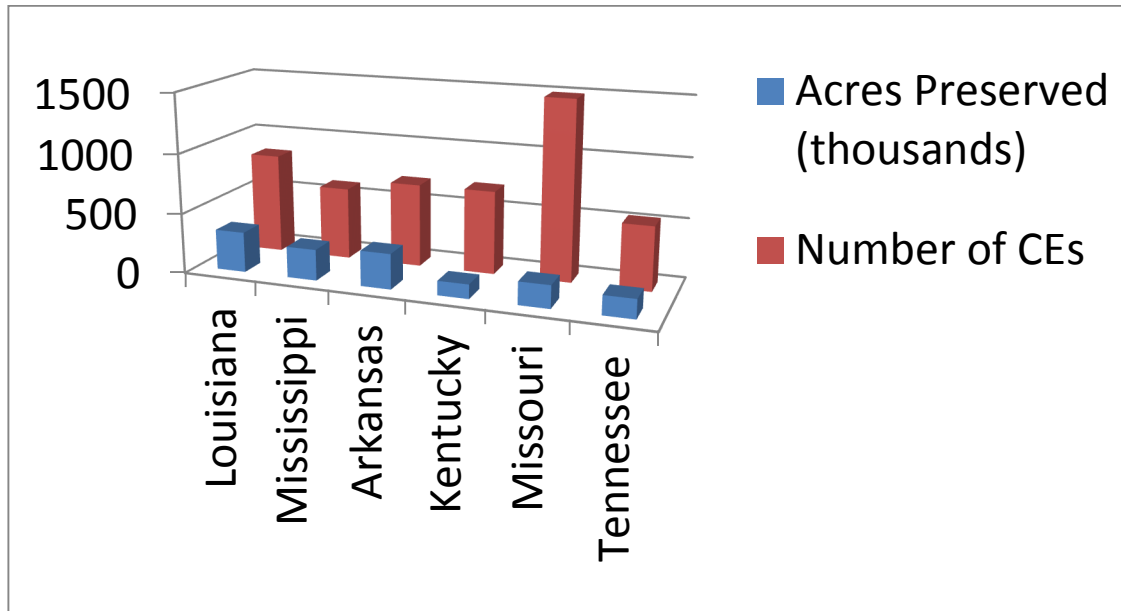
In 2012, the NRCS through the WRP granted \$32 million to five water quality and wetland improvement projects in seven Mississippi River Basin states. Of that, over \$20 million was granted to the Mississippi River Trust for hardwood forest and wetlands restoration.



⁴ Conservation Effects Assessment Project (CEAP) Cropland Modeling Team, *Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Lower Mississippi River Basin*, USDA (2013).

Finally, according to the National Conservation Easement Database, in Mississippi alone there are 602 conservation easements permanently protecting over 257,000 acres of land.

Conservation Easements in the Mississippi River Basin



It's Time to Get Creative with Conservation Easements

We are going to have to get creative for conservation easements to remain a sustainable and viable tool for land conservation. We can no longer rely on governments and land trusts to purchase development rights, the existence of Farm Bill programs, or placing the burden of maintaining conserved land on non-profits and private landowners who are not receiving economic support.

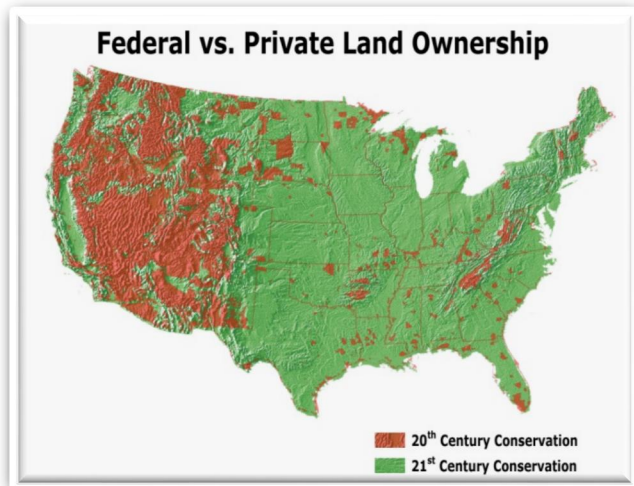
Instead, we have to empower private landowners with a variety of funding and incentive options to encourage their engagement in land conservation.

Resources First Foundation recognizes the importance of private landowners and has created the Private Landowner Network⁵, a website that contains a wide array of public and private sector conservation programs, organizations, resources, and informational articles in one place. RFF's Conservation Tax Center⁶ hosts information and resources for private landowners on conservation tax incentives, such as conservation easements and current use programs, and estate planning information to help ensure working landscapes are successfully passed to future generations without having to face the threat of development.

⁵ www.privatelandownernetwork.org

⁶ www.conservationtaxcenter.org

RFF also hosts the Mississippi⁷ and Arkansas⁸ Conservation Centers and the soon to be launched Louisiana Conservation Connection to help private landowners conserve their working landscapes in the Mississippi River Basin.



What are Some Options to Fund Private Land Conservation?

Just as a house cannot be built with just a hammer, we need to ensure that private landowners have all of the tools they need to conserve their land, including access to information and resources from both the public and private sectors.

For example, an alternative funding approach for conservation on private land is for private landowners to engage in supplemental income activities: such as

leasing their conserved land for hunting, recreational, or agricultural purposes. They might also engage in agricultural tourism by creating corn mazes and hayrides. Or they could create a management plan for selective harvesting, grazing, or energy development to strike a balance between conservation and economic development.

An emerging idea for funding large scale conservation is to monetize ecosystem services through ecosystem services credit trading programs. One of the major obstacles in perpetuating land conservation through this kind of economic incentive is determining what the value of preserved land is, and then subsequently, who should pay for it.⁹

Stephen Small in his new book *“The Business of Open Space: What’s Next?”* posits that the future of land conservation may require that landowners disaggregate their bundle of rights and sell not only development rights, but all of the ecosystem services produced through land conservation. Through ecosystem services credit trading programs, private landowners would be able to sell carbon credits to polluters, sell habitat credits to developers, and sell watershed credits to agricultural producers in order to fund the conservation of their land as a whole.

Once a market is created for selling ecosystem credits, private landowners who place a conservation easement on their land will have perpetual economic incentives and support for keeping their land in conservation.

⁷ <http://www.stateconservation.org/mississippi/>

⁸ <http://www.stateconservation.org/arkansas/>

⁹ Because our society is based on a Lockean labor theory of property, we have not developed a technique for valuing natural resources in their natural state.

Preserving Land after the Graying Tsunami

One of my final points is that all of the conservation being done today can disappear if private landowners do not plan for the future of their land after they are gone.

Currently, there is a graying tsunami in rural America. The average age of private landowners is almost 60 years old and increasing, which will result in the country's largest transfer of land over the next few decades. How private landowners choose to transfer their land will greatly shape the way rural landscapes function and look.

Source: USDA Forest Service, Brett J. Butler, 2008, [Family Forest Owners of the United States, 2006](#)

Estates that contain working lands especially need an estate plan that dictates how it will be split up and who will manage the land because they tend to be land rich and cash

poor. Without liquid assets it can be difficult to pay estate taxes or compensate multiple heirs equally. Moreover, managing a farm, ranch, or forestland is hard work and some heirs may not be interested in participating in the daily management of the land. If a landowner does not plan for these issues, they risk that their land will be subdivided and developed due to taxes, fighting heirs, and partition lawsuits.

Conservation easements are a valuable tool in estate planning because they prevent subdivision and development of the land and provide heirs with an estate tax deduction. Conservation easements can be granted during life, or at the landowner's death, which can create a wide array of options. For instance, a landowner can use money from the sale of the development rights to compensate non-land managing heirs.

Other estate planning tools that a private landowner can use are: set up the farm, ranch, or forestland as a business, such as a Family Limited Partnership or Limited Liability Company, and grant equal shares to all heirs or purchase life insurance against the land to create a liquid asset.

I encourage you to visit the RFF suite of websites, especially the Conservation Tax Center, to see how many options private landowners have to conserve and fund conservation on their land.

