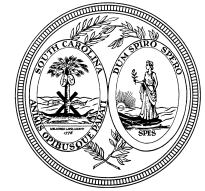




SUMMARY



S.C. DEPARTMENT OF COMMERCE

A Review of the Economic Development Bond for Wetlands Mitigation at the Boeing Manufacturing Site

INTRODUCTION

Members of the General Assembly asked the Legislative Audit Council to conduct an audit of the economic development bonds approved for \$5 million for the purpose of wetlands mitigation concerning the project to bring Vought Aircraft Industries, an aircraft manufacturer, to South Carolina — now the site of the Boeing operation in North Charleston.

The S.C. Department of Commerce (DOC) is the economic development and business recruiting arm of the state and initiated the issuance of the bond in 2004 to incentivize Vought to locate in South Carolina.

BACKGROUND

The \$5 million bond for wetlands mitigation was part of a larger general obligation economic development bond, approved for up to \$160 million as part of an incentive package. The bond proceeds provided the enticement for Vought to locate to the selected site. In addition to the wetlands mitigation, the bond funded a manufacturing facility, road improvements, airport improvements, site preparation, and a multipurpose center.

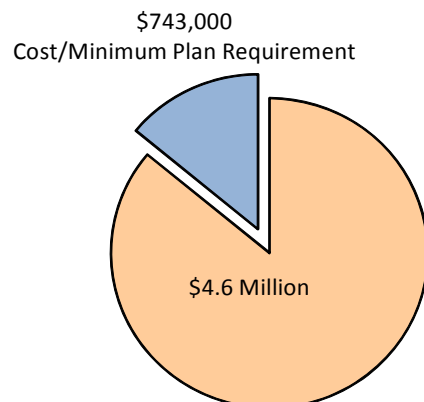
ISSUES RELATED TO THE \$5 MILLION BOND FOR WETLANDS MITIGATION

- HOW THE BOND FOR WETLANDS MITIGATION WAS SPENT.
- THE TYPE AND NUMBER OF PROPERTIES ACQUIRED.
- HOW THE MITIGATION OF WETLANDS WAS ACCOMPLISHED RELATIVE TO THE MITIGATION CREDITS REQUIRED BY THE U.S. ARMY CORPS OF ENGINEERS (THE CORPS) AS A PART OF THE FEDERAL 404 PERMIT REQUIREMENT.
- THE COASTAL ZONE CONSISTENCY AND WATER QUALITY CERTIFICATION PROCESSES IN SOUTH CAROLINA AND COMPARISONS TO OTHER SOUTHEASTERN COASTAL STATES.

BOND SUMMARY

A memorandum of agreement (MOA) between the DOC and the S.C. Coastal Conservation League (the League) enabled the creation of the Ashley-Cooper Rivers Environmental Trust (ACRET), a non-profit company and trust set up to disburse \$4.75 million from bond proceeds for the acquisition of conservation easements and other acquisitions to mitigate the fill of wetlands at the Vought manufacturing site. The remaining \$250,000 of approved bond funds was used for legal expenses incurred in setting up and operating ACRET and activities related to obtaining the required wetlands certifications and permit.

\$5.3 MILLION TOTAL BOND SPENT COMPARED TO MINIMUM COST REQUIRED FOR 404 WETLANDS PERMIT



TOTAL AVAILABLE TO SPEND

\$5,000,000	Wetlands Mitigation Bond
299,756	Interest Earned on Bond
<u>\$5,299,756</u>	TOTAL

APRIL 2015

- ACRET spent approximately \$4.6 million more than the Corps' minimum for meeting the wetlands permit requirement (just over \$743,000). The entire bond was spent, including approximately \$300,000 in interest earned on the bond, for a total of approximately \$5.3 million.

- According to a DOC official, the \$5 million allocated for the wetlands mitigation portion of the bond was arbitrarily determined.
- There is an expenditure overdraw in the amount of \$21,942 over the \$5 million amount of the allocation approved for the wetlands mitigation.

- The DOC did not include any oversight monitoring provisions for the nonprofit's spending in the formal agreement it had with the League.
- The DOC had no provision in the MOA for returning any of the bond proceeds to the state should the cost to mitigate the fill of the wetlands at the impact site be less than the bond allocation.
- The DOC issued the MOA without instruction on how the interest on the bond should be expended. The state issued the bond for "wetlands mitigation"; however, ACRET spent approximately \$51,000 on operating expenses.
- The state's general fund is used to repay the bond debt service, which includes the bond principal and interest — structured to be repaid over a 15-year repayment schedule that will total approximately \$6.9 million.
- According to a former League official, the League might have considered appealing the permit if the state had taken the position that it would only pay to meet the minimum government mitigation requirements.

ACRET REVENUES AND EXPENDITURES

REVENUES FOR MITIGATION CREDITS	
Bond proceeds	\$4,750,000
Interest earned	<u>\$299,756</u>
TOTAL Revenue	<u>\$5,049,756</u>
EXPENDITURES	
Conservation easements, covenants, fee simple	\$4,644,005
Mitigation banks	<u>354,823</u>
Subtotal mitigation purchases	4,998,828
Operating expenses	30,919
Final legal expenses	<u>20,009</u>
TOTAL Expenditures	<u>\$5,049,756</u>

MITIGATION CREDITS

When a company comes to South Carolina and wants to build a plant or other structure, some wetlands might be impacted or destroyed in the process of construction.

According to federal law, when wetlands are destroyed, the company must generate mitigation credits to offset the impacts to the land where the plant or structures were built.

WE FOUND THAT TWO PURCHASES MADE BY ACRET COST \$743,255 AND MET THE CORPS' TOTAL MITIGATION REQUIREMENT OF 450 MITIGATION CREDITS. MOST OF ACRET'S OTHER PURCHASES MADE WITH THE \$4.6 MILLION WERE NOT NEEDED TO SATISFY THE CORPS' REQUIREMENTS.

The Corps' mitigation requirement is measured in terms of "mitigation credits," obtained by the Corps' evaluation of the wetlands value of the property acquired.

Also, ACRET was expected to expend all of the money within three years. In actuality, it took ACRET over six years to expend all of the funds.

ENVIRONMENTAL CONSULTING GROUP'S PLAN

MITIGATION	CREDITS GENERATED	ACRES*	AMOUNT
Millbrook Plantation Upland Buffer	74.9	53.5	\$462,005
Millbrook Plantation Wetlands	312.2	276.5	
Pigeon Pond Mitigation Bank	112.5	37.5	\$281,250
TOTAL	499.6	367.5	\$743,255

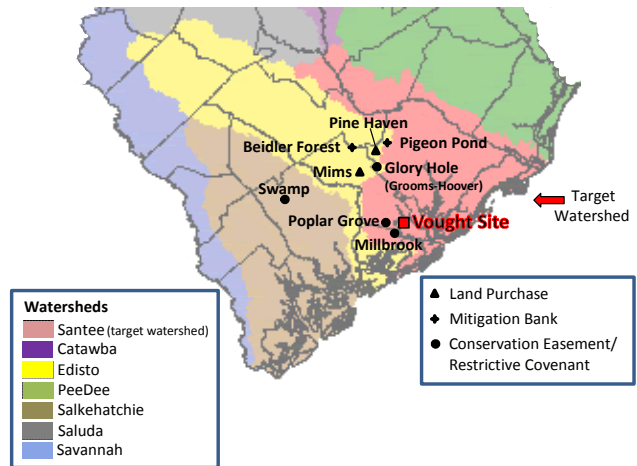
* This was the amount of acres that was originally planned to be purchased.

ACRET GRANTEE ACQUISITIONS AND GOVERNANCE

We reviewed purchases made with ACRET distributions. ACRET provided funding to two grantees, Duck's Unlimited and Audubon Society, to protect 6 tracts, either through purchase of land, restrictive covenants, or purchase of conservation easements over land. In addition, ACRET distributed funds to each organization to purchase mitigation bank credits. Some of these purchases were inconsistent with Corps' standards for wetlands mitigation and the purpose for which the trust was created. Some acquisitions were:

- Not wetlands.
- Out of the target watershed.
- A substantial distance from the Vought site.
- Protected with less stringent easements.

COUNTY AND WATERSHED LOCATION OF PROTECTED PROPERTIES



IT WAS UNUSUAL FOR ACRET TO PROVIDE A GRANT OF ALMOST HALF OF THE TRUST TO PURCHASE AN EASEMENT FOR WHICH THE GRANTEE, DUCKS UNLIMITED, HAD ALREADY PURCHASED AND FOR WHICH IT WAS OBLIGATED. IN ADDITION, THE MINIMALLY-RESTRICTIVE EASEMENT ON THE PROPERTY CONTRIBUTED NOTHING TO THE MITIGATION CREDITS REQUIREMENT.

We could not determine the benefit of creating a nonprofit entity to accomplish this particular purpose. Although ACRET brought together a variety of stakeholders, we found several significant issues:

- One board member implied that this structure made the process less efficient.
- A Corps official referred to this method of wetlands mitigation as “unique.”
- A DOC official characterized the process as an expensive way to accomplish this goal.
- The DOC did not provide oversight.

WETLAND ISSUES

Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged or fill material into the waters of the United States, including wetlands. Proposed activities are regulated through a permit review process. Applicants must show that steps have been taken to avoid impacts to wetlands, streams, and other aquatic resources, that potential impacts have been minimized, and that compensation will be provided for all remaining unavoidable impacts.

Five million dollars in bond proceeds were allocated for wetlands mitigation for the Vought project in 2004 to provide for the required compensatory mitigation.

However, those funds, as noted earlier, greatly exceeded the cost of the wetlands mitigation. The spending of those funds was determined by an agreement between the DOC and the League.

In a more recent economic development effort, a similar amount and use of state funds, in the amount of \$5 million, has been allocated to an environmental group, the Lowcountry Open Land Trust (LOLT), with the intent to purchase real property as a part of the effort to deepen the port at Charleston. This agreement was entered into by and between the LOLT, the League, and the South Carolina State Ports Authority. The agreement resulted in the LOLT having access to \$5 million and the LOLT and the League agreeing not to sue for any claim arising from the project.

SOUTH CAROLINA AND OTHER SOUTHEASTERN STATES CERTIFICATION PROCESS

FOR MORE INFORMATION

Our full report, including comments from relevant agencies, is published on the Internet. Copies can also be obtained by contacting our office.

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Independence, Reliability, Integrity

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We reviewed the state water quality and coastal zone consistency certification process and found that state regulation requires the Department of Health and Environmental Control (DHEC) to issue a certification decision within 180 days; however, when 20 or more people request a public hearing, the 180-day clock temporarily stops for a maximum of 60 days. After a certification is issued, a person may also challenge the decision administratively and then judicially.

Administratively, the challenge occurs at the DHEC board, lasting as long as 90 days. A subsequent challenge occurs with the Administrative Law Court (ALC) for which there is no set timeframe for case resolution. Judicial appeals of the ALC's decision also do not have a set timeframe for resolution and can last for several years.

We also reviewed the certification and appeals processes in other states and found, that in 2013, North Carolina removed the automatic stay requirement from the law, allowing certified persons to conduct work on projects despite potential challenges and appeals. However, the proposed removal of the automatic stay in North Carolina has yet been tested in court, and there have been no noticeable results reported. The following table outlines the use of the automatic stay with regard to environmental agency orders in South Carolina, North Carolina, Georgia, and Alabama.

	STAY OF PERMIT DECISION
SOUTH CAROLINA	Automatic stay (water quality & coastal zone certifications)
NORTH CAROLINA	No automatic stay (coastal zone certification) Judicial discretion (water quality certification)
GEORGIA	Automatic stay (water quality & coastal zone certifications)
ALABAMA	Commission discretion (water quality & coastal zone certifications)

During the 2015–2016 legislative session, H. 4011 was introduced as the companion bill to the originally-filed S. 165 to amend S.C. Code §1-23-600. If passed, the legislation would amend the current statute from an automatic stay to a 30-day temporary stay of an agency order. The legislation also states that a party may move for injunctive relief; however, the court may require a bond or security for the cost of the litigation and project delay.