



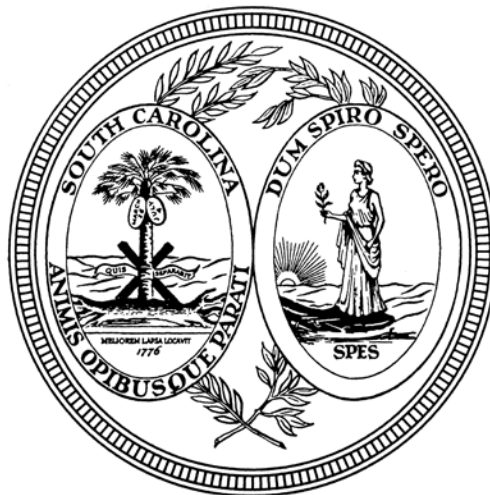
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SOUTH CAROLINA GENERAL ASSEMBLY

# Legislative Audit Council

February 2017

## A REVIEW OF THE S.C. CONSERVATION BANK



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# Legislative Audit Council

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## A REVIEW OF THE S.C. CONSERVATION BANK

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# Introduction and Background

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## Audit Objectives

Members of the General Assembly asked the Legislative Audit Council to conduct an audit of the South Carolina Conservation Bank (Bank). The members had concerns about the grant application process for conservation properties, the lack of meaningful public access, whether the Bank is overcommitting its authorized budget, and overpayment for properties conserved. Our audit objectives are listed below.

- Review whether the Bank has adequate grant application approval procedures in place.
- Review how the Bank determines grant property values and whether the Bank is overpaying for properties.
- Determine if the Bank is overcommitting its authorized budget.
- Determine how the Bank defines public access and whether the Bank achieves sufficient, enhanced public access for outdoor recreation to represent a good return on state tax dollar investment.
- Determine the allocation of grants awarded to the S.C. Department of Natural Resources (SCDNR), the S.C. Forestry Commission, the S.C. Department of Parks, Recreation and Tourism (SCPRT), municipalities of the state, and non-profit charitable corporations or trusts.

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## Scope and Methodology

The period of our review of grant files was from the inception of the agency in 2002 through mid-FY 15-16. We obtained and used other data from more current months in 2016. To conduct this audit, we used a variety of sources of evidence, including the following:

- Grant files (containing grant application, land and conservation appraisals, closing documents, environmental assessment reports, correspondence).
- Interviews with Bank employees and board members, employees of other state agencies, officials from other states' agencies, qualified applicants, non-profit conservation organizations.
- Federal and state laws and regulations.
- South Carolina Enterprise Information System (SCEIS)/Statewide Accounting System (SAP®).
- Bank budget records.
- External audits regarding Bank operations.

Criteria used to measure performance included primarily state and Federal laws, agency policies, the practices of other states, the standards of licensed real estate appraisers, and principles of good business practices and financial management. We used several non-statistical samples in testing application processes and performance by appraisers, qualified entities and non-profit conservation groups, grouped and tested commonalities among files concerning public access and threat of development, criteria related to and included in the grant applications. These are described in the report.

Our review of internal controls was limited to how the Bank collects its information and documentation through the grant application and approval process. All of the Bank's grant records are hard copy. The Bank's accounting system is through the SCEIS/SAP<sup>®</sup> system and is not in the scope of this audit. Our findings are detailed in the report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We did not conclude from this review that the S.C. Conservation Bank should be eliminated (see *Potential Merger* in Chapter 5). However, our audit includes recommendations for improvement in several areas. This might require that the Bank be consolidated with the S.C. Department of Natural Resources in order to realize the improvements. However, the mission should generally remain the same as is required by current statute and funding should be earmarked for the conservation mission.

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## Background

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The Bank, a state agency, was established in 2002 with the passage of the S.C. Conservation Act, and is governed by Chapter 59, Title 48 of the S.C. Code of Laws. The purpose of the Bank, as stated in S.C. Code §48-59-20, is:

... to fund the preservation of, and public access to, wildlife habitats, outstanding natural areas, sites of unique ecological significance, historical sites, forestlands, farmlands, watersheds, and open space, and urban parklands as an essential element in the orderly development of the State.



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## Funding and Authorization

The Bank's source of funds is 25¢ of the \$1.30 state deed recording fee, which is transferred to the agency monthly after collection. The Bank also receives revenue from investment earnings and check-off contributions through the state tax return.

The Bank is authorized to:

- Award grants to eligible trust fund recipients for the purchase of interests in land.
- Make loans to eligible trust fund recipients for the purchase of interests in land.
- Apply for and receive funding for the trust fund from Federal, private, and other sources.
- Receive charitable contributions.
- Receive contributions to the fund in satisfaction of any public or private obligation for environmental mitigation or habitat conservation whenever such obligation arises from law, equity, contract, regulation, administrative proceeding, or judicial proceeding.
- Exercise its discretion in determining what portion of trust funds shall be expended, awarded, or loaned and which portion shall remain in the trust fund.

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## Eligible Trust Fund Recipient

The eligible trust fund recipient, also referred to as the qualified entity or a land trust, makes the application to the Bank on behalf of the landowner. Application deadlines are January 31 and July 31 of each year. Applications may be made for a fee simple purchase of a property, for a conservation easement, or for obtaining a loan to purchase conservation-related land. However, our review found that only applications for fee simple purchases and conservation easements have been submitted to the Bank.

Eligible trust fund recipients include the S.C. Department of Natural Resources (SCDNR), the S.C. Forestry Commission, the S.C. Department of Parks, Recreation and Tourism (SCPRT), municipalities, and non-profits whose principle activity is acquisition and management of interests in land for conservation or historic preservation. "Interests in land" is defined as fee simple titles to lands or conservation easements.

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## Fee Simple Purchases and Conservation Easements

Fee simple purchases transfer land ownership to the grant recipient, whereas a conservation easement is a binding legal contract between a landowner and a qualified entity that ensures the conservation values on a piece of property are maintained in perpetuity. Properties encumbered with a conservation easement can be sold or transferred, but the easement restrictions and the easement holders' obligations to uphold them never expire.

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## The Bank Board

S.C. Code §48-59-40 establishes the Bank and the 14-member board. The board includes:

- The chairman of the SCDNR board; the chairman of the S.C. Forestry Commission, and the director of SCPRT. These members are ex officio and do not have voting privileges.
- Four members appointed by the Speaker of the House, one each from the third, fourth, and sixth congressional districts and one at-large member.
- Four members appointed by the President Pro Tempore of the Senate, one each from the first, second, fifth, and seventh congressional districts.
- Three members appointed by the Governor from the state at-large.

Board members' terms are four years and there is no compensation, although funds may be disbursed for mileage, subsistence, and per diem. Board members are required to recuse themselves from any votes in which they may have a conflict of interest.

The board is required to meet at least twice annually with the regular meetings to be held in April and October. The board chairman is authorized to cancel any regular meeting or call special meetings of the board.

The board must hold a public hearing on the application at which the recipient, landowners, and other interested parties may be heard. The law requires that the eligible trust fund recipient must notify the owner of the land that the interests in land purchased with trust funds will result in a permanent conveyance of such interests and that the owner may wish to retain legal counsel and seek other professional advice.

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## Conservation and Financial Criteria

As specified in Title 48, Chapter 59 of the S.C. Code of Laws, grants must be evaluated based on conservation criteria and financial criteria. The conservation criteria include the value of the proposal for:

- The conservation value of:
  - unique or important wildlife habitats;
  - rare or endangered species;
  - a relatively undisturbed or outstanding ecosystem indigenous to South Carolina;
  - wetlands, riparian habitats, water quality, watersheds of significant ecological value, critical aquifer recharge areas, estuaries, bays or beaches;
  - outstanding geologic features;
  - a site of unique historical or archaeological significance;
  - critical forestlands, farmlands, or wetlands;
  - forestlands or farmlands located on prime soils, in microclimates or having strategic geographical significance;
  - an area for public outdoor recreation, greenways, or parkland;
  - a larger area or ecosystem already containing protected lands, or as a connection between natural habitats or open space already protected.
- The amount of land protected; and
- The unique opportunity it presents to accomplish one or more of the criteria, where the same or similar opportunity is unlikely to present itself in the future.

The financial criteria include the degree to which the proposal:

- Presents a unique opportunity to protect land at a reasonable cost;
- Leverages trust funds by:
  - including funding or in-kind assets or services from other government sources;
  - including funding or in-kind assets or services from private or nonprofit sources, or charitable donations of land or conservation easements;
  - purchasing conservation easements that preserve land at a cost that is low relative to the fair market value of the fee simple title of the land reserved; and
- Has explored, applied for, secured, or exhausted other conservation incentives and means of conservation.

The board shall evaluate each proposal according to the financial criteria, conservation criteria, and the extent to which the proposal provides public access for hunting, fishing, outdoor recreation, and other forms of public access.

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## The Bank to Sunset

The sections of Title 48, Chapter 59 of the S.C. Code of Laws governing the Bank's authority to exist will be repealed effective July 1, 2018, unless reenacted or otherwise extended by the General Assembly. If repealed, the Bank would be allowed to continue to operate as if its enabling legislation had not been repealed until the trust fund is exhausted or until July 1, 2021, whichever occurs first. Bank funds remaining on July 1, 2021, if any, would revert to the general fund.

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## Conservation — How Much is Enough?

There is no consensus among experts regarding the optimal amount of conservation. Historically, there has been tension between increasing economic growth and preserving natural resources. This can be seen in the conflicting missions of the S.C. Department of Commerce, whose mission is economic development, and the Bank's conservation mission.

How much conservation is enough depends on a number of factors including geography, climate, habitat diversity, presence of species unique to a particular area, the level of conversion to development, and the perspective of individuals. One article written by an agency official with the Center for Landscape Conservation Planning at the University of Florida regarding Florida's land conservation efforts noted that anywhere from 25% to 75%, with 50% being a general benchmark, of that state's land could be in conservation for sufficient protection of natural resources and to sustain human populations. We also examined an article that discussed the concern that the cost of land may increase as the amount of property with conservation easements increases.

We found no formal model or any collective perspective for the state or any national model that either addresses the amount of conservation desired or necessary — other than conservation groups that generally agree conservation efforts are paramount. However, each conservation group has its own strategic initiative or specialty either by area or type of natural resource conservation (see *Strategic Plan* in Chapter 5).

## Conservation in Other States

We reviewed conservation efforts in 12 states in which we were able to readily identify similar conservation programs. We found that Georgia and Wyoming have state programs similar to the Bank. Wyoming is a stand-alone state agency like the Bank. The conservation programs in California, Texas, Pennsylvania, and Montana are overseen by another state agency such as the SCDNR; and in Florida, it is overseen by the Department of Environmental Protection. North Carolina, Virginia, Arizona, Nebraska, and Tennessee are operated by non-profit agencies.

**Table 1.1: State Comparisons (through FY 14-15)**

	SOUTH CAROLINA	GEORGIA	WYOMING
AGENCY & INCEPTION DATE	S.C. Conservation Bank (2002)	Georgia Land Conservation Program (2005)	Wyoming Wildlife and Natural Resource Trust (2005)
GOVERNANCE	Separate state agency governed by a 14-member board.	Land Conservation Council	Separate state agency governed by a 9-member citizen board appointed by the Governor.
APPLICATION DEADLINES	January 31 and July 31, annually	None	March 1 and September 1, annually
MATCHING FUNDS REQUIREMENT	None	None	None
LAND PROTECTED	265,666 acres	346,940 acres	300,000 acres *
PUBLIC ACCESS	Required; at least 10% of the monies credited to the trust fund during the preceding fiscal year for the acquisition of interests in land that provides public access.	Not required.	Not required, but may be considered a public benefit. Public benefit is required. **
PROJECTS APPROVED IN DOLLARS	\$136,859,740	\$258,900,000	\$18,941,951 †
STATE INCOME TAX INCENTIVES	Income tax credit equal to 25% of the value of the gift of land for conservation; cannot exceed \$52,500 per year — any unused credit may be carried forward until used.	Income tax credit equal to 25% of the appraised donation value up to \$250,000 (individual) or \$500,000 (corporation or partnership); may be claimed over 10 years or until the entire credit is used.	None

\* Approximate number of acres in a conservation easement. Projects for other types of protection total approximately seven million acres.

\*\* Public benefit is defined as continued agricultural production to maintain open space and healthy ecosystems; enhanced opportunities for outdoor recreation; enhancements to air, land, or water quality; maintenance or enhancement of wildlife habitat; preclusion of soil loss or disease; or another perceived public benefit.

† Amount of conservation easement projects approved. Total projects approved, including other conservation-related projects, amounted to \$60,880,391.

Sources: South Carolina, Georgia, and Wyoming agencies' websites and documents.

### **Georgia**

Georgia passed the Georgia Land Conservation Act in 2005 creating the Georgia Land Conservation Program (GLCP) which is governed by the Land Conservation Council. The Georgia Environmental Finance Authority, a state agency, provides staff and program resources. The GLCP offers grants and low-interest loans to incentivize the permanent protection of the state's natural resources.

Conservation easements in Georgia do not require public access. However, where the state is providing funding for a conservation easement, the state requires the right of entry, and the right to post a public-notice sign on the property stating that it is permanently-protected conservation land.

### **Wyoming**

The Wyoming Wildlife and Natural Resource Trust was created in 2005 as an independent state agency. The purpose of the program is to enhance and conserve wildlife habitat and natural resource values throughout the state. Any project designed to improve wildlife habitat or natural resource values is also eligible for funding.

Legislative oversight is guided by a select committee of six members — three each from the House and the Senate. The trust account was created with a legislative allocation of \$15 million and is anticipated to grow to \$200 million over time. In 2006, the Legislature added \$25 million to the trust account, bringing the total to \$40 million. In addition, the Legislature added \$3 million to a “challenge account,” matching any and all contributions to the trust on a dollar-for-dollar basis. Funds will be released any time contributions total \$5,000 or more.

Since its inception, the Wyoming trust has evaluated approximately 680 applications (nearly 90 per year) and funded 538 projects in all 23 counties of the state. In comparison, as of FY 14-15, the S.C. Conservation Bank had evaluated approximately 319 applications and approved funding 251 projects in all but 3 counties of the state.

Wyoming projects are required to provide a public benefit such as:

- Continued agricultural production to maintain open space and healthy ecosystems;
- Enhanced opportunities for outdoor recreation;
- Enhancements to air, land, or water quality;
- Maintenance or enhancement of wildlife habitat;
- Preclusion of soil loss or disease; or
- Another perceived public benefit.

Projects funded under this program shall not require public access to private lands as a condition to receive grant funds. However, projects that maintain or create continued or improved public access may be considered as one type of public benefit.

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## Other Southeastern States

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Alabama has public lands divided into 4 types with around 75% of its permanent public conservation lands under Federal ownership as of FY 12-13 (acreages are approximations of Alabama's surface area):

- Federal conservation lands such as components of the National Park system or Federally-managed waterways — 911,185 acres, 2.6%.
- State conservation lands owned by state agencies and support conservation missions — 312,060 acres, 0.93%.
- State submerged lands under navigable rivers and tidal lands along the coast — 600,000 acres, 1.8%.
- Leased lands — 230,126 acres, 0.69%.

Florida has about 10 million of its 37.532 million acres, or 27%, of its land in protected public and private lands, with the majority of it in vast acreages of wetlands and Federal lands. According to an article, Florida has led the nation for more than three decades in science-based conservation planning regarding identifying the areas most important for protecting its biodiversity and ecosystems.





# Application and Grant Process

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In this chapter, we discuss the grant application process including the elements of the application, the scoring of the application, and the appraisal process, including valuation of property and conservation easements. We found:

- The application process has an ineffective criteria scoring process.
- The criteria scoring is a subjective process completed by one Bank staff member and ultimately leads to a recommendation on whether to fund the grant, regardless of the application score.
- Some applications do not provide adequate narrative or documentation for the staff member to correctly score the criteria.
- The Bank does not require the private parties who monitor the restrictions of the conservation easements to provide verification or reports of the monitoring of the property conditions.
- No evidence that the assertions in the grant application about the property's conservation criteria value and financial criteria value were verified.
- The Bank does not have criteria or a documented methodology as to how it determines the amount to award grant applicants — leading to some grantees receiving 100% of fair market value and others receiving as low as 21% of fair market value.
- The threat of development criterion listed on the application is not being properly documented in some cases, possibly leading to funding some grants to the exclusion of more deserving grants.

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## Application Process

We reviewed the application process to determine if there are adequate application approval procedures in place for the Bank to make a commitment of its funds. For our review, we examined 120 application files. After we found common issues throughout those applications, we drew a subsample out of the applications in order to focus on those issues, which are described in this chapter. The application is a 13-page document with 6 sections — general information (contact information, size of the property, etc.), information provided by the landowner, information about the qualified entity, conservation criteria, financial criteria, and public access. The application is submitted by the qualified entity, partnering with the landowner, to obtain a conservation easement or complete the fee simple transaction.

A qualified entity must be one of the following:

- One of these state agencies — S.C. Department of Natural Resources, S.C. Forestry Commission, or S.C. Department of Parks, Recreation and Tourism.
- A municipality of South Carolina or any agency, commission, or instrumentality of such a municipality.
- A not-for-profit charitable corporation or trust authorized to do business in South Carolina whose principal activity is the acquisition and management of interests in land for conservation or historic preservation purposes and which has tax-exempt status as a public charity.

The completion of the application is phase I of the process. This requires Bank staff to review the application, make a grant recommendation, and then the application is approved or denied by the Bank board. During phase II, applicants must provide required documents, such as an appraisal from an approved appraiser and an environmental assessment. After completing the environmental assessment, final appraisal, and other due diligence, the Bank will send approved funds to the qualified entity.

If applicants provide all required documents to complete phase II of the application process, the Bank sends a check to the qualified entity for the amount awarded when funds are available.

At the May 2016 board meeting, the board established a six-month timeline for applicants to submit all required documentation after which time outstanding grants would be paid on a first-come, first-served basis. After two years, a new application would have to be submitted.

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## Differences Between Conservation Easements and Fee Simple Purchases

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The Bank provides funds to qualified entities that either purchase the property outright (fee simple) or purchase a conservation easement on the property. We found that the Bank does not receive confirmation that easements purchased with bank funds are being properly monitored.

In the case of a fee simple purchase, the landowner gives up his ownership of the property entirely and the qualified entity, usually SCDNR, assumes ownership. In the case of the purchase of a conservation easement, the owner retains his property but the qualified entity owns the easement and is responsible for enforcing the easement.

There are several differences between a fee simple purchase of the property and conservation easements. With a fee simple purchase of a property, the qualified entity obtains ownership of the property and becomes responsible for the day-to-day maintenance of the property. When a qualified entity purchases a conservation easement, the owner remains responsible for the day-to-day maintenance of the property and the qualified entity is merely responsible for enforcing the easement, which involves periodically checking the owner’s adherence to the easement terms. When SCDNR purchases property fee simple with Bank funds, it becomes the owner of the property and is responsible for the day-to-day maintenance of the property. This day-to-day maintenance from a fee simple purchase would require SCDNR to expend public funds to adhere to the law regarding fee simple purchases of property with Bank funds. S.C. Code §48-59-70(H) requires that applicants for funds used to acquire fee simple title must demonstrate the resources and expertise to manage the land.

With a conservation easement, the easement holder (generally a non-profit organization) is responsible for the monitoring of the easement. Assuming that the easement holder does not receive government funds, this would result in no public funds being spent on monitoring the property once the easement is in place. It should be noted that, if a property is purchased fee simple with Bank funds, then that property must provide public access (see Chapter 4 for more information on public access).

**Table 2.1: Differences Between Fee Simple and Conservation Easement Purchases**

ELEMENT	FEE SIMPLE	CONSERVATION EASEMENT
RETENTION OF PROPERTY	Owner sells property.	Owner retains property.
DAY-TO-DAY CONTROL OF PROPERTY	Buyer has control of property day-to-day.	Easement holder does not have day-to-day control of property.
PUBLIC FUNDS	Public funds expended to maintain property when purchaser is government agency.	Public funds not expended in enforcing the easement when holder does not receive public funds.
PUBLIC ACCESS	Required.	Not necessarily required.
PUBLIC ACCOUNTABILITY	State agencies are accountable to the public.	Non-profits are not fully accountable to the public.

Sources: State law and S.C. Conservation Bank

We examined information from Georgia’s conservation easement program. We found that Georgia has similar provisions regarding its conservation easements to those in South Carolina. Additionally, Georgia’s conservation easement program also relies in part on the enforcement of the easements by private entities that purchased the easements.

A potential downside to conservation easements is a lack of public accountability. While land purchased by SCDNR is maintained by a state agency that is accountable to the public, conservation easements are monitored by private non-profits that are not necessarily accountable to the public. Once funds are spent by the Bank on a conservation easement, the sole responsibility for monitoring the easement lies with the easement holder. South Carolina law prohibits the Bank from monitoring the easement. However, the Bank should require that easement holders provide evidence of their monitoring of the easements. This will help ensure that the easements restrictions, which were purchased at least in part by public funds, are being enforced and that the conservation concerns addressed by South Carolina law are being addressed.

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## **Recommendation**

1. The S.C. General Assembly should require qualified entities who hold conservation easements purchased by funds from the S.C. Conservation Bank to periodically report on their monitoring of conservation easements to the Bank.

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## **Application Compared to S.C. Law**

We reviewed and compared the application to the law. The application requirements are found in S.C. Code §48-59-70 and §48-59-80. All criteria in these sections of law have been listed on the application. Within the application, the questions reference certain sections of the law. We reviewed the application and confirmed that all legal references are correct.

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## Criteria Scoring Process

We reviewed the application process and found that the criteria scoring stage of the process does not provide value when determining if funds should be granted. After reviewing 120 files and conducting further subsamples, we found several problems with the scoring of applications for grants.

- The scoring is always completed by the same agency official.
- The scoring is subjective.
- The purpose of scoring the application is unclear.
- An application's score does not determine whether or not the applicant receives a grant.
- Some applications do not provide narrative for the conservation and financial criteria; therefore, there is no basis for assigning a score to the criterion.
- There is no documentation provided to support the statements made under the conservation and financial criteria; therefore, the criteria cannot be scored with certainty that the information provided in the application is correct.
- The Bank board does not receive application sections related to the conservation and financial criteria, but applications are required by law to be evaluated by these criteria.

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## Approval of Applications

The criteria scoring sheet is composed of three sections — conservation criteria, financial criteria, and public access. The criteria can be found in S.C. Code §48-59-70. After an application is submitted, it is evaluated and the criteria scoring sheet is completed by one Bank official. The Bank does not have other personnel who can complete this process.

Applications for grants are approved in public Bank board meetings. Bank management sends certain parts of the application to the board prior to board meetings. Currently, the board does not receive the application sections related to the conservation and financial criteria, yet applications are required by law to be evaluated by these criteria.

In our review of board minutes in 2015 and 2016, we found during each board meeting that the board had discussions about most of the applications. However, there were a number of applications that had no discussion by the board about whether and why the applications should be approved. With only one agency official scoring the criteria to determine staff's recommendation to the board, the decision to grant funds for applications without discussion is effectively given to one agency official. To ensure there is more objectivity in the scoring process, the process could benefit by having more than one person evaluating each of the applications. This could alleviate possible concerns regarding favoritism, objectivity, and the transparency of the process.

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## Criteria Scoring Methodology

The criteria scoring sheet is a subjective scoring evaluation for the conservation and financial criteria sections with each element receiving a numerical score of 1–4 for conservation criteria and 0, 2, 3, 4, or 5 for financial criteria. It is based on one agency official's judgment of whether the criteria were met at a poor, fair, good, or excellent level.

The Bank uses a completed application, an informal appraisal, and additional narrative that may be included to score the application. An agency official indicated the Bank also uses discussions with qualified entities about the property and may also use site visit information to assist in scoring the application. We did not find in the files we reviewed any documentation of meetings with qualified entities or landowners, site visits, or conclusions drawn based on experience and general knowledge.

Without any documentation, it is unclear how the Bank official determined the score listed. After reviewing 120 files, we selected 25 files to focus on scoring criteria. We found scoring problems in 22 of those files.

For example:

- One application did not check off an option or include any narrative regarding the extent to which the parcel conserves a site of unique historical or archeological significance. However, it was scored 3 out of 4 by the Bank official for this criterion.
- In another application, the applicant did not check off an option or provide any narrative regarding outstanding geologic features located on the property, but the criterion was scored 3 out of 4.
- One application explicitly stated that the property had no outstanding geologic features. However, it was scored 3 out of 4 by the Bank official for this criterion.

We found similar instances throughout our file review. We also found that when the applicant provides narrative for each criterion, the score listed by the Bank official has no objective basis because the scorer has no baseline for making a determination. It is difficult to determine how the element was scored a 4, when it could have just as easily been scored a 3. A reviewer of the scoring process cannot determine how the scoring official assigned the score. There is no scale or rubric to assist the scorer. The decision is based solely on the judgment of the scoring official.

To provide more transparency and objectivity, there should be definitions to accompany each criterion to define what each numerical value means. For example, under the financial criteria, one of the criteria is the degree to which the proposal leverages trust funds by including funding or in-kind assets or services from other governmental sources. The numerical values could be defined as the following in Table 2.2.

**Table 2.2: Example Numerical Values for Financial Criterion Related to Governmental Leverage**

NUMERICAL SCORE	GOVERNMENTAL LEVERAGE
0	None
2	1% – 20%
3	21% – 40%
4	41% – 60%
5	Over 61%

Source: LAC

The public access section is defined more objectively. The application receives a predetermined score of 0, 5, 10, or 15 depending on the level of public access that is selected in the application.

After reviewing the files that have received grant funding or that are still actively waiting for funding, the total criteria scores ranged from 40 to 88, with 88 being the highest score possible. There is no scoring pass/fail threshold. The scoring process does not determine whether an applicant receives a grant or not, and no file had been rejected on the basis of the score. Due to the wide range of scores, the purpose of the criteria scoring process is questionable. An agency official expressed that the score is not used to approve the application and issue the grant. According to a Bank official, “the criteria score determines how well an application fits in all of the criteria the Bank considers.” Therefore, it is unclear how the scoring assists the Bank in its mission to conserve property through the grant process.

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## Lack of Evidence

We reviewed the Bank's grant files and found no evidence that the assertions in the grant application about the property's conservation criteria value and financial criteria value were verified. We also found that some files contained no narrative about the conservation and financial criteria.

State law requires that grant proposals be evaluated based upon the conservation criteria, financial criteria, and degree of public access. These criteria can be found in S.C. Code §48-59-70. Without verification of the assertions made in the grant application, which provides context for conservation and financial criteria values, the Bank is funding properties for conservation without a high degree of certainty that the conditions stated are correct.

According to Bank management, the grant application is an affidavit that attests that the information provided is accurate and true. However, there is no statement that requires the landowner or the qualified entity to attest that the information provided in the application is valid. It is also important to provide narrative for context, which provides a basis for scoring the criteria. Furthermore, the Bank should require documentation to ensure the information is correct, such as documentation of the historical significance of a property and verification of the presence of endangered species, when appropriate.

Many applications include narrative to explain the conservation and financial criteria; however, some applications do not include any narrative at all. In our review of files, we identified 24 out of 120 files (20%) that did not include any narrative in the application. Narrative provides explanation and justification for satisfying the conservation and financial criteria and provides a basis for assigning a value, scored by an agency official. If there is no narrative, Bank staff does not have adequate information to properly score the criteria, which will eventually be used to determine if staff should recommend funding the grant.



Below are some examples of what we found in the applications:

- The applicant checked off that the property contained a Carolina bay, which is a geological formation unique to South Carolina. There is no narrative on how much of the property contains a Carolina bay, yet the application received 3 out of 4 for this conservation criterion.
- The applicant checked off that the property adjoins or is close to a state park and a county park and it borders a scenic highway or river. This is no narrative explaining which parks and scenic highway it is referring to or how close the parks are to the property. The application received 4 out of 4 for this conservation criterion.
- The applicant checked off that the property is available at a low cost per acre and at a reasonable price. There is no narrative that provides justification for checking these boxes. There is no information on what comparable properties are selling for on the market or what the seller is willing to accept to conclude the fee simple purchase is at a reasonable price. The application received 5 out of 5 for this financial criterion.

Without any narrative, Bank staff will not be able to properly determine if the property meets the criterion at a poor, fair, good, or excellent level. The burden should be on the applicant to provide adequate justification of how the property under review satisfies the conservation and financial criteria stated in the law.

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## Conservation Criteria

We also found examples in applications of weak justifications for certain conservation criteria. Some of the examples are listed below:

### THE VALUE OF THE PROPOSAL FOR PUBLIC OUTDOOR RECREATION, GREENWAYS, OR PARKLAND.

One application stated that the landowner may develop an arrangement for educational institutions to visit the property to perform archaeological studies and digs. The landowner may also consider working with SCDNR to permit organized wildlife observation and hunting activities. The application is listed as minimal access, but the proposed public access is just a possibility (see *Bank Public Access Policies* in Chapter 4).

### THE VALUE OF THE PROPOSAL FOR THE CONSERVATION OF RARE OR ENDANGERED SPECIES.

One application stated that no flora or wildlife survey had been performed on the property, but that there have been two state endangered species sighted on the neighboring property. This statement was not verified. If applicants are going to state that there are endangered, threatened, or rare species on their properties, there should be a formal study conducted or other means of verification.

### THE VALUE OF THE PROPOSAL FOR THE CONSERVATION OF A SITE OF UNIQUE HISTORICAL OR ARCHAEOLOGICAL SIGNIFICANCE.

One application stated that the property may have had Native American camps, was located near Revolutionary and Civil War activity, and could have been part of a plantation system in the 17th and 18th centuries. For the historical or archeological significance, the applicant claimed historical significance, but there is no historical survey to confirm that there is any such significance.

### THE VALUE OF THE PROPOSAL FOR THE UNIQUE OPPORTUNITY IT PRESENTS TO ACCOMPLISH ONE OR MORE OF THE CRITERIA CONTAINED IN THIS SUBSECTION, WHERE THE SAME OR A SIMILAR OPPORTUNITY IS UNLIKELY TO PRESENT ITSELF IN THE FUTURE.

One application stated that if this property is not protected, it may remain in its current state for years. Alternatively, it is indicated that the landowner may have to subdivide and sell portions of the property. A third possibility listed is that the property is sold to someone who has no intention of protecting the property or managing it for wildlife. Therefore, there is no real threat of development, but development may occur in the future, which is an opinion without a proper basis upon which to score the criterion.

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## Financial Criteria

For the financial criteria, there is no verification of applicants securing funding from other sources, such as the Federal government or other non-profit conservation groups. While obtaining other sources of funding is not a requirement by law or by the Bank to be approved for a grant, it does carry leverage when scoring the financial criteria.

The financial criteria involve the financial leverage by the landowner through a landowner donation and the financial leverage gained through funding from other sources. The landowner donation is the difference between the appraised conservation easement value of the property and the amount of money the landowner receives for the easement. The landowner's donation can be a Federal tax deduction and a state tax credit on the landowner's income tax returns (see *Income Tax Advantages* in Chapter 5).

When scoring the financial criteria, obtaining funding, in-kind assets, or services from other governmental, private, or non-profit sources would increase the overall total conservation benefit score that is used to determine staff's recommendation for funding. According to the Bank's strategic plan, applications with the best leverage, which includes obtaining matching funds from other sources, will often be selected over a similar application without any leverage, all other things being equal.

By obtaining multiple sources of funding, it minimizes the financial commitment by the state and indicates that the applicant exhausted other available resources. It also allows Bank funds to be spread further for more land conservation. If there is no verification of applicants securing funding from other sources, the Bank is unable to score the application with certainty that the financial criteria in the law are being met and that applications with the better financial leverage are being selected. The Bank claims that it has paid \$135 million for grants and received \$144 million in matching funds back into the state as a result of the Bank grants. However, we have not been provided documentation of this claim.

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## Rejected Files

During our review of the files, we found that only six files had been rejected by the Bank. The low number of rejections may be the result of a process that is not a very competitive one due to an ineffective criteria scoring process.

While reviewing the files, we concluded that a vast majority of the files received a grant or were in the process of receiving a grant. The files that did not receive a grant were typically withdrawn by the applicant or were incomplete for various reasons and could not be evaluated. According to Bank management, qualified entities propose applications the entities know will be approved. The qualified entities know the process well and know the requirements, which helps ensure a good application is submitted.

We identified six files that had been rejected from 2004–2015. Within those six files:

- One file was rejected because it was not a prudent investment due to a lack of distinguishable features, no public access, and development was not imminent.
- Two files were rejected because there were easements already on the property.
- One file was rejected because the applicant did not submit an application but wanted the Bank to pledge support for a project.
- One file was rejected because the board did not feel that the property was the best use of the agency's funds. We could not identify reasons for this rationale in the file.
- The last file was rejected because the grant request was very high and the Bank's staff did not think it was the best use of the Bank's funds.

We also interviewed executive officials from the four qualified entities that received the most grants awarded by the Bank. Three out of four entities stated that their files had not been rejected and the remaining entity was unsure, but the official stated it might have had one or two files rejected.

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## Recommendations

2. The S.C. Conservation Bank should provide to the Bank board information regarding the conservation and financial criteria for approval of the grants.
3. The S.C. Conservation Bank should develop a criteria scoring process that defines the numerical values for each conservation and financial criterion listed in S.C. Code §48-59-70.
4. The S. C. Conservation Bank should enlist the assistance of a selected panel of Bank board members in scoring applications for grant approval.
5. The S.C. Conservation Bank should create a minimum total score an application must receive to be considered for a grant.
6. The S.C. Conservation Bank should amend the application to require the landowner and qualified entity to attest that the information provided in the application is accurate and true.
7. The S.C. Conservation Bank should require applicants to provide an explanation for all boxes checked under the conservation and financial criteria sections of the grant application.
8. The S.C. Conservation Bank should require documentation and verification for the statements made under the conservation and financial criteria sections of the grant application.

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## **Baseline and Monitoring Reports**

We selected and reviewed a sample of 38 easement application files that were awarded Bank grants and tested for proper baseline reporting and monitoring of conservation easement conditions and restrictions. We determined that all of the sampled property had a baseline report and had been adequately monitored by the qualified entities enforcing the conservation easement. The monitoring reports found no easement violations.

According to the Land Trust Accreditation Commission, a baseline report must be completed by the closing transaction date to establish the condition of the property when the conservation easement was granted. The baseline report documents the conservation values and conditions of the property at the time the easement was granted, which allows the entity to monitor and enforce the easement restrictions. After the easement is placed on the property, the property must be monitored at least once a year to document changes or identify any issues.

Qualified entities provided us with baseline reports and subsequent annual monitoring reports. The qualified entities are responsible for enforcing the terms of the easement. Therefore, the Bank does not maintain a copy of the baseline report or annual monitoring reports for the properties that received a grant.

If the easement terms have been violated, the qualified entity should have a remediation policy to respond and correct the violation, if possible. According to executive officials of multiple land trusts, there are very few violations of easements. Examples of violations that qualified entities have found include a neighboring landowner cutting trees on the protected property and an easement being placed on top of a current easement.

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## **Landowner Costs and Proceeds**

We selected a judgmental sample of 40 closing statements from 2004 to 2015 from four major grant recipients based on grant size to determine if the grant funding issued to the qualified entity was being properly paid to the landowner. According to S.C. Code §48-59-110, Bank grant funding can only be used for the purchase of the easement or the property, including any closing costs. Bank grant funding cannot be used to pay the qualified entity's general operating expenses or the management or maintenance of the property. In most cases, we found that the amount due to the landowner before any expenses are deducted was the Bank grant amount. In other cases, the gross amount due to the seller was greater than the Bank grant because there were other sources of funding obtained.

When landowners partner with a qualified entity to obtain an easement on their respective property, there are several fees associated with the process. The landowner is responsible for an administration fee paid to the qualified entity, an appraisal fee, a baseline report fee, title insurance fee, and legal fees. In addition, qualified entities request a stewardship donation from the landowner. This donation goes towards the long-term costs for the entity to monitor the property after acquisition of the conservation easement. According to the Land Trust Alliance, a national organization that provides a reputable accreditation to land trusts, a stewardship donation request is an acceptable practice for funding long-term costs associated with managing easements.

According to a management official of a land trust, landowners typically pay the stewardship donation request. In our review, some closing statements included the stewardship donation as a deduction from the grant amount. Although the full grant amount in these cases was not provided to the landowner, the netting of the expenses has the same effect as if the landowner received the full grant and subsequently paid for the expenses.

These donations ranged from \$7,200 to \$21,749. Entities have varying inputs and formulas to determine the size of the suggested donation. Some factors that are considered are the property acreage and the proximity to the entity's offices, both factors that affect the cost of monitoring the property.

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## Valuation of Properties

We reviewed available appraisals of every project approved by the Bank since July 2014 (40 in total). The appraisals we reviewed appear to have been conducted in a uniform and reasonable manner for the purpose of determining the value of properties and conservation easements. However, the Bank does not have criteria to determine the amount to award applicants. Also, the Bank's appraiser qualification requirements regarding expertise in valuing conservation easements is unclear.

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## Review of Value Determinations

Since 2014, the Bank has approved appraisers to value properties that have been the subject of applications from land trusts for fee simple purchases of land and easement values. The appraisers, approved by the Bank, are part of a list of qualified appraisers. These appraisers are qualified based on their expertise in appraising properties that are sold for conservation purposes and conservation easements. However, it is unclear how much and what kind of experience is needed to have the requisite experience as an appraiser of conservation easements. Bank board policy requires the appraiser to meet the S.C. Department of Labor, Licensing and Regulation's requirements, and only licensed appraisers can conduct Bank appraisals. The appraisers are made aware that the appraisal is being made for the use of the Bank as well as the landowner.

The appraisers value the properties in two ways. In instances in which the Bank is providing funds for the outright purchase of properties (fee simple), the appraiser conducts a standard valuation of the property's value. This valuation looks at several factors, including the type of land being appraised, potential uses of the land, the location of the land, the value of similar properties, surrounding properties, and zoning. From these and other factors, the appraiser determines the value of the property.

In addition to conducting a valuation of the property for fee simple purchases, appraisers also calculate the value of conservation easements in situations in which the land trust has applied for a conservation easement. As noted earlier in this report, a conservation easement places permanent restrictions on the owner's property in order to ensure that the property is conserved in the future.



To value a conservation easement, the appraiser determines the value of the property without the easement and then determines the value of the property with the easement. The difference between the value of the property without the conservation easement and the value of the property with the easement is how the easement value is determined. For example, if the appraiser determines that the value of a piece of property is \$100,000 without the easement and \$80,000 with the easement, the value of the conservation easement value is \$20,000.

In determining the difference between the value of the property and the value of the property with a conservation easement, the appraisers examine a draft of the proposed conservation easement to see what types of rights are being given up through the conservation easement. In giving up rights in the conservation easement, the owner's potential use of the property and the use of the property of future owners is restricted, thus reducing the value of the property.

Examples commonly cited by the appraisers as lowering the value of the properties include restrictions on:

- The ability of the landowners to subdivide properties.
- The ability to open a business on the property.
- The size and number of buildings allowed on the property, including homes.
- Resource management of the property, such as farming, timber, and ore extraction.

We did not find an instance in which an appraiser determined that the value of the property decreased due to concerns about public access to the property. However, as noted in Chapter 4, an official at a land trust stated that the organization writes public access into conservation easements "as broadly as possible." Thus, public access may be hard to value in many circumstances. If public access is increased and more clearly explained in the easements, it could increase the value of the conservation easements if the appraisers determine that it further lowers the property value. This could result in more money being spent on easements by the Bank.

In our review of the valuation of the conservation easements, the appraisers used similar methods of appraisals. These methods include determining the “highest and best use” of the subject property. This method determines what the best use of the property given the following factors:

- Physically possible use of the property.
- Legally permissible use of the property.
- Financially feasible use of the property.
- Maximally productive use of the property.

Additionally, the appraisers used standard approaches to valuation. These approaches include the sales comparison approach, in which the property being appraised is compared to similar properties that have been sold recently, the cost approach, which looks at the fair market value of the property “as is” and adds the value of improvements to the properties, and the income capitalization approach, which looks at the potential net income to the property.

Additionally, all appraisers had proper professional certifications attached to their appraisals. In order to ensure that the appraisers arrive at their valuations objectively, the appraisers attested to not having a conflict of interest regarding the properties that they are valuing. We could not find instances in which there was a conflict of interest regarding the appraiser and his client.

By law, the transaction in which the easements or fee simples are purchased must be at or below the fair market (i.e. appraised) value of the properties. However, besides this legal requirement, the Bank does not have criteria to determine how much to award each applicant. We examined the last 20 transactions in which Bank funds were released to qualified entities for their respective purchases.

In our judgmentally selected sample, we found that, on average, the amount paid for the property (which includes the Bank funds) was \$274,933 below the fair market value of the property. The total transaction costs averaged 50% below the fair market value of the property. There were four properties in which the amount paid was equal to the fair market value (see Table 2.3). For conservation easements, the land owners received an average of 40% fair market value of the conservation easements. These results might not be representative of the entire population.

**Table 2.3: Number of Properties Sold at or Below Fair Market Value, by Percentage**

NUMBER OF PROPERTIES	PERCENTAGE OF TRANSACTION OF FAIR MARKET VALUE
4	100%
2	84% – 94%
3	50% – 60%
11	21% – 39%

Sources: S.C. Conservation Bank and LAC

The properties we examined were sold from 21% to 100% of their appraised fair market value. Although the Bank awards varying amounts to different applicants, we could not find criteria used by the Bank to determine the award amounts. Criteria for award amounts could help ensure that the Bank’s limited funds are spent optimally.

The properties for which the Bank paid 100% fair market value were for fee simple, which suggests that property owners are more willing to donate a percentage of the fair market easement value (which allows them to retain property) than donate a percentage of the fee simple value (which does not allow the retention of property). Additionally, easement holders can donate the remaining fair market value of the easement for a tax deduction (see Chapter 5).

In their preliminary response to our report, the Bank stated that they will often accept the percentage of fair market value proposed in the application. By accepting the percentage of fair market value proposed by the applicant without negotiating the price, the Bank could be overpaying for some properties. This could be seen as favoritism due to the variation in percentage of fair market value asked for in the applications (see Table 2.3).

In addition to variation regarding percentage paid below fair market value, we found examples in which one qualified entity was paid \$350 per acre for its properties, another qualified entity was paid \$499 per acre for its properties, and another qualified entity was paid \$713 per acre for its properties despite those properties having similar features and uses.

The Bank should consider negotiation strategies regarding the proposals set forth in the applications, and also consider publishing the average below fair market value it pays for conservation easements. This could allow for a better baseline for negotiating the amount paid for properties and increase transparency.

If the Bank creates award criteria and determines a need to deviate from the criteria, it should explain its rationale for doing so. For example, in its response to our initial draft, the Bank noted that certain land trusts have standardized their requests through local focus areas and expressed concern that potential Bank criteria might exceed the price that these land trusts propose. In this situation, the Bank could deviate from its criteria and provide a written explanation for doing so.

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## Threat of Development

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In Bank applications, qualified entities are required to describe the threat of development facing the land under question. The threat of development is described in the following portion of the application.

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### Table 2.4: Threat of Development Application Question

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>12. The extent the parcel presents a unique opportunity to accomplish one or more of the criteria in Items 1-11, where the same of similar opportunity is unlikely to present itself in the Future. For example parcel:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> is in danger of conversion to non-traditional use within 10 years.</li><li><input type="checkbox"/> is currently for sale on the open market.</li><li><input type="checkbox"/> may remain as is, but will become further subdivided within 10 years.</li><li><input type="checkbox"/> is located where infrastructure extensions and improvements are imminent.</li><li><input type="checkbox"/> may remain as is, but is in danger of non-sustainable management.</li><li><input type="checkbox"/> other (Please attach description)</li></ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Section 4, Page 3

Source: S.C. Conservation Bank

As shown in the application excerpt above, the application boxes show different time frames and threats of development. For example, a property for sale on the open market is under a more imminent threat of development than a property that is in danger of conversion to another use within 10 years. Although the threat of development of land is an important factor in determining the funding of applicants' projects, the Bank does not verify claims of threats of development in the application or require specifics regarding potential threats. Additionally, we found instances in which a claimed threat of development in an application was not supported by the conclusions of the appraiser of the property.

The applications for funding from the Bank require qualified entities to describe whether potential threats of development exist regarding the properties for which Bank funds are being applied. A threat of development might be higher for land located near high population growth areas and land located on desirable property. In contrast, land located in areas of South Carolina with lower population growth rates and on less desirable property might have a lower threat of development.

In our file review, we found that the applications did not have sufficient information regarding claims of threats of development. Of 57 files reviewed, approximately 37% did not contain a narrative regarding the threat of development. The applicants simply checked the box on the application as seen above and did not provide any substantive information regarding threats of development. Most of the files had some narrative explaining a threat of development, but did not contain any in-depth explanation.

Examples of applications with such insufficient information include the following:

- One application noted that the property was in danger of conversion to non-traditional use within 10 years and that the tract was currently for sale on the open market. However, there was no documentary evidence that the property was for sale or in danger of non-traditional use.
- One application checked that the property “may remain as is, but will become further subdivided within 10 years.” However, there was no evidence of this claim elsewhere in the application.
- Several applications stated that conserving the property in question could encourage neighboring property owners to also put their properties under an easement. However, there was no evidence in the applications supporting these claims.

In addition to files with insufficient documentation of potential threats of development, other files described threats that were not supported by the claims of the appraiser. Some examples in which the opinion of the appraiser differed with that of the applicant include:

- A 2015 application checked that the subject property may remain as is but will become further subdivided within 10 years. It also stated that it is located where infrastructure extensions and improvements are imminent and that it may remain as is, but is in danger of non-sustainable management. However, the appraisal concluded that the property was "...being used in a maximally productive manner as of the date of the appraisal" and that the market for the subject property "...is likely to stay relatively unchanged for the foreseeable future."
- A 2015 application checked that the subject property may remain as is, but will become further subdivided within 10 years. However, the appraiser concluded that "Subdivision and development is not feasible" on the subject property due to the subject property's remote location and lack of growth in its home county.
- A 2015 application had subject property that consisted of duck impoundments for hunting. The application checked that the property was in danger of non-traditional use within 10 years and is located where infrastructure extensions and improvements are imminent. However, the appraiser concluded that the property's best and highest use was to remain a hunting preserve.

This last example is particularly problematic because not only could the funds spent on this property have been used to secure conservation on another property, this application noted that there would be no public access allowed (see *Hunt Clubs* in Chapter 4).

Although these examples showed a difference in opinion between the appraiser and the applicant, we could not find evidence that this difference of opinion was resolved in the application.

South Carolina law requires that one of the conservation criteria include some information regarding the opportunity to conserve land which might not exist in the future. This information, which is on the application as a threat of development, is an important aspect regarding the conservation of land. Land that is particularly threatened with development is potentially more of a priority than land that is not under the immediate threat of development. Due to the greater conservation threat posed to properties under a real threat of development, the Bank should consider increasing the weight of the threat of development criterion on the application scoring or otherwise increase its focus on the threat of development criterion.

However, a large number of the applications do not adequately document the threat of development (or lack thereof) or contradict some of the findings of the appraiser.

The Bank should ensure that proper documentation exists in applications to verify claims of potential threats of development and to resolve differences in opinion between the applicant and appraiser.

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## **Recommendations**

9. The S.C. Conservation Bank should ensure that threats of development claimed by applicants for funding from the S.C. Conservation Bank are adequately documented in the applications.
10. The S.C. Conservation Bank should clarify its appraiser qualification guidelines to define the experience required for an appraiser in valuing conservation easements.
11. The S.C. Conservation Bank should require an explanation by the applicant regarding a difference of opinion between the applicant and the appraiser regarding threat of development.
12. The S.C. Conservation Bank should require a resolution of differences of opinion regarding threat of development before the application is scored and approved.
13. The S.C. Conservation Bank should consider increasing the weight of the threat of development criterion on the application scoring or otherwise increase its focus on the threat of development criterion.
14. The S.C. Conservation Bank should adopt criteria for determining the amounts it awards applicants.





# Budgeting and Grant Awards

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We reviewed agency board minutes and agency grant and financial information and found instances of the agency awarding grants without sufficient revenues, based upon future expected revenue. This could lead to the Bank being unable or untimely able to fund grants already awarded.

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## Revenue

Should state revenues decrease sufficiently to trigger a reduction in funding to one-half of state agencies in South Carolina, as happened during the Great Recession of 2007–2009, it will, by law, result in the Bank having its main revenue source from deed stamps stopped. This could result in the Bank being unable to fund its grant awards.

It could also result in landowners applying for grants, incurring expenses during the application process but receiving no grant; or having the grant closing date delayed considerably. Each applicant must pay for an appraisal, a phase I environmental hazard assessment, and possibly other expenses during the application process.

As a result of the Great Recession which began in December 2007 and ended in June 2009, the Bank's funding from deed stamp recording fees was stopped by the General Assembly for three years from FY 09-10 through FY 11-12. Due to a provision in S.C. Code §48-59-75, which directs that when more than half of the state agencies receive budget cuts, the Bank receives no deed recording revenue. This caused the Bank to be unable to timely honor the grant award commitments it had made. Economic uncertainty could cause the Bank to again be unable to honor the grant award commitments in the future.

We reviewed the cash-on-hand balance when the board approved 19 grants totaling \$7.3 million on April 30, 2014. We also found applications for grants approved prior to the April 30, 2014 meeting but not paid by that date in the amount of \$8.8 million. This brought the total outstanding grants to \$16 million for which the Bank was committed. We reviewed the cash-on-hand and anticipated revenue amounts and found the total overcommitted funding as of that date to be \$7.8 million as depicted in Table 3.1.

**Table 3.1: Overcommitted Revenues**

OUTSTANDING GRANTS AS OF APRIL 30, 2014	AMOUNT
<b>GRANTS OUTSTANDING</b>	
Prior to November 2013 *	\$4,742,753
From November 2013 Board Meeting	\$4,107,590
Grants Approved at the April 30, 2014 Board Meeting	\$7,318,710
<b>TOTAL Grants Outstanding</b>	<b>\$16,169,053</b>
<b>REVENUE</b>	
Cash-on-Hand Balance as of April 30, 2014	\$5,480,708
Estimated Appropriations to be Received for April – June 2014	\$2,861,308
<b>TOTAL Funds Available</b>	<b>\$8,342,016</b>
<b>TOTAL Grants Outstanding Less Total Funds Available (Amount Overcommitted)</b>	<b>\$7,827,037</b>

\* We reviewed grants awarded between July 2012 through April 2014. Other grants may have been outstanding prior to July 2012.

Sources: S.C. Conservation Bank and SCEIS/ SAP®

## Budgeting

The Bank receives its funding primarily from the state’s deed stamp recording fees, which is collected by the clerk of court or register of deeds and sent to the Bank monthly by the S.C. Department of Revenue. Other revenue sources include investment earnings and check-off contributions from state tax returns, generally less than \$150,000 annually, but has included provisos of \$1.5 to \$2 million when the General Assembly funded the Bank through provisos. These deed stamp recording fees are the source of the annual appropriation amount of “other funds” from the General Assembly specified in the appropriations bill.

The Bureau of Economic Advisors (BEA) provides estimates of deed stamp recording fee revenue, which forms the basis of the appropriation amount. When the Governor signs off on the appropriations bill, the agency knows what its actual budget authority will be for that fiscal year. However, the revenue is not certain, as it is collected monthly when the deed stamp fees are collected and the proper portion is distributed to the Bank. The monthly revenue the Bank receives from deed stamp collections may be less than the estimated appropriation amount and could cause the Bank to be unable to meet its grant award commitments.

Revenues and Grants  
Approved

Revenues and grants approved for FY 04-05 through FY 15-16 are presented in Table 3.2.

**Table 3.2: Revenues and Grants  
Approved by the Bank**

FISCAL YEAR	ACTUAL REVENUE	GRANTS APPROVED	
		AMOUNT	NUMBER
04-05	\$12,737,193	\$9,050,446	14
05-06	\$21,155,192	\$31,715,581	29
06-07	\$19,745,978	\$16,909,351	8
07-08	\$15,249,354	\$27,643,855	68
08-09	\$3,673,824	-	0
09-10 *	\$1,932,937	-	0
10-11 *	\$1,524,291	-	0
11-12 *	\$28,253	-	0
12-13	\$9,542,466	\$17,293,132	42
13-14	\$12,678,267	\$11,896,186	31
14-15	\$13,325,634	\$11,331,780	25
15-16	\$15,218,445	\$20,453,619	51
<b>TOTAL</b>	<b>\$126,811,834</b>	<b>\$146,293,950</b>	<b>268</b>

\* During this year, funds were diverted to the general fund; the agency had no funding from deed stamp fees, but received small amounts of donations from state income tax returns (checkoff the block) and other miscellaneous revenue.

Source: S.C. Conservation Bank

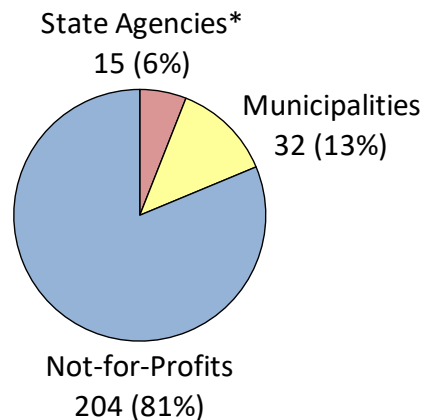
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## Grant Recipients

We were asked to provide the number of grants awarded to the eligible state agencies, municipalities, and not-for-profit charitable corporations or trusts. Chart 3.3 reflects the recipients of the grants at the time our review began and shows that the vast majority of the grants were awarded to not-for-profits, such as Ducks Unlimited and The Nature Conservancy. Since that time, the not-for-profit owners of the land may have transferred some properties to SCDNR, SCPRT, or the S.C. Forestry Commission.

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**Chart 3.3: Grant Recipients for Grants Awarded from 2004–2015**



\*SCDNR received 14 grants and SCPRT received 1 grant.

Sources: S.C. Conservation Bank and LAC

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## Payments Beyond Current Fiscal Year

We found that the Bank intended to make multiple payments extending into the next fiscal year for six grants it approved for funding (Table 3.4). The Bank did not have the funds to pay the full amounts of the grants. This demonstrates the Bank is committing itself to pay the grants without assurance the funds will be available. Table 3.4 demonstrates that the Bank approved grants in the current year with a portion to be paid in the current year and the remainder to be paid in the next fiscal year.

**Table 3.4: Schedule for Multi-Year Payments**

DATE OF BOARD MEETING	GRANT/ LAND TRACT	TOTAL AMOUNT AWARDED	PLANNED PAYMENT	
			CURRENT YEAR	NEXT YEAR
<b>FY 10-11</b>				
July 1, 2010	Middleton/Edmondston	\$1,000,000	\$500,000	\$500,000
TOTAL Planned Payment For Next Fiscal Year — FY 11-12				\$500,000
<b>FY 13-14</b>				
November 6, 2013	Angel Oak	\$890,000	\$445,000	\$445,000
November 6, 2013	Featherhorn Farms	\$1,206,000	\$603,000	\$603,000
April 30, 2014	Rocky Point Landing	\$1,150,000	\$575,000	\$575,000
April 30, 2014	Santee River	\$2,175,500	\$1,087,750	\$1,807,750
TOTAL Planned Payments For Next Fiscal Year — FY 14-15				\$3,430,750
<b>FY 14-15</b>				
November 5, 2014	Westervelt	\$2,483,600	\$1,241,800	\$1,241,800
TOTAL Planned Payment For Next Fiscal Year — FY 15-16				\$1,241,800

Source: Minutes from the S.C. Conservation Bank board meetings.

The board approved and planned payments as shown in Table 3.4. The actual payment details are listed below for each of the grants.

**MIDDLETON/EDMONDSTON-ALSTON GRANT**

The Bank did not make the first payment in the same fiscal year as the board approved and planned (FY 10-11), but paid \$500,000 in November 2011 (FY 11-12). The applicant had reduced the total amount requested to \$825,000; the second payment of \$325,000 was paid by the Bank in August 2012 (FY 12-13). The applicant reimbursed the Bank \$5,000 due to reduced costs.

**ANGEL OAK GRANT**

The board approved and planned two payments; one in the current fiscal year (FY 13-14) and one in the following fiscal year (FY 14-15). However, the Bank paid two payments of \$445,000 in the same fiscal year (FY 13-14); \$445,000 in March 2014 and \$445,000 in June 2014.

**FEATHERHORN FARMS GRANT**

The board approved and planned two payments of \$603,000 in two funding cycles, but the Bank made two payments of \$603,000 in the same fiscal year (FY 14-15); \$603,000 in October 2014 and \$603,000 in January 2015.

**ROCKY POINT LANDING GRANT**

The board approved and planned two payments of \$575,000 each, but made only one payment of \$1,109,669.88 in October 2015 (FY 15-16). The acreage was reduced and the grant award was reduced accordingly.

**SANTEE RIVER GRANT**

The board approved payment of \$1,087,750 for two cycles for a total of \$2,175,500 in April 2014 (FY 13-14). The Bank made one payment of \$958,000 in December 2014 (FY 14-15), and made the second payment of \$1,173,750 the following fiscal year, September 2015 (FY 15-16). The acreage was reduced and the grant award was reduced accordingly.

**WESTERVELT GRANT**

The Bank made the first payment of \$1,241,500 in June 2015, the same fiscal year as the board approved the payment (FY 14-15), and the second payment of \$1,242,100 the next fiscal year, September 2015 (FY 15-16).

The Bank continued to over-commit itself for grants awarded without sufficient funds that could pay for the grants in the current fiscal year. The November 2015 (FY 15-16) Bank board meeting minutes note:

- The board approved 33 grants totaling \$9,504,419 and carried over 16 applications to the next board meeting with 3 applications having been withdrawn. None of the applications were rejected.
- Due to potential budget forecasts, none of the 33 grants that were awarded would have funding available until after July 1, 2016 (FY 16-17).

This demonstrates the Bank acknowledged it was overextending grant awards by \$9.5 million.

Although the board approved grants based on the contingency that there would be funding for the Bank, it is possible that in doing so the Bank may not be able to fund those grants. The Bank provides a disclaimer in its award letter to the grant applicants that indicates funds are contingent on the Bank having the funds available stating, "...it will be necessary that you contact me to plan a closing date so that I will know the funds are available."

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## Recommendations

15. The S.C. General Assembly should appropriate funding for the S.C. Conservation Bank in the same manner as it appropriates funding for other state agencies from general funds instead of from deed stamp revenues.
16. The S.C. Conservation Bank should approve no grants without first accumulating the funds from the deed stamp revenues if the General Assembly does not fund the agency from general funds.
17. The S.C. Conservation Bank should not approve grant award funding beyond the current year's appropriations.





# Public Access

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The Bank does not have policies in place to maximize the amount of public access with regard to the public dollars spent providing grants to landowners to conserve their property through conservation easements. Although the Bank exceeds the public access requirements currently required by state law, there are certain types of conservation easements that have little or no public access.

In our review we found:

- Approximately one-third of the grants have no public access.
- In most cases we sampled the public access requirements in the Bank's conservation easements are broad or vague; they do not include specific information on what public access is to be allowed on the property. Generally, the conservation easement is agreed to by the qualified entity and the landowner.
- The Bank awards grants to some hunt clubs which are particularly problematic because: the clubs allow no or minimal public access, there is often no credible threat of development listed on the application, and the awards to these properties exceed the average grant award of other types of land by more than \$250,000.

We found that more can be done to increase public access for the citizens of South Carolina. This includes changing state laws, strengthening Bank process requirements, writing conservation easements with more specificity regarding public access, and increasing SCDNR's funding.

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## Public Access Laws

State law places an emphasis on public access when awarding S.C. Conservation Bank grants. State law requires that any fee simple title to land (which is a purchase of land outright) made through the use of Bank funds has to include public access.

S.C. Code §48-59-80(K) states:

Where a trust fund grant is used to acquire fee simple title to land, public access, and use of the land must be permitted, with this access and use being subject only to those rules, regulations, permits, or fees as are reasonable and consistent with the conservation purposes for which the land was acquired.

In addition, state law mentions public access several more times:

S.C. Code §48-59-20(1) and (4) states:

South Carolina is experiencing rapid land development and economic growth which...has also led to the loss of forestlands, farmlands...beaches and public areas for outdoor recreation...

and

There is a critical need to fund the preservation of, and public access to, wildlife habitats ... forestlands, farmlands, watersheds, and open space....

S.C. Code §48-59-50(B) states:

To carry out its functions, the bank shall:

...

(b) briefly describe[] applications submitted to the bank, and in greater detail describe[] grants and loans...and the public benefits, including public access,...

S.C. Code §48-59-70(C) and (D) states:

Grants and loans from the trust fund must be awarded based upon the conservation criteria contained in subsection (D)...

and

For the purposes of this chapter, conservation criteria include:

...

(9) the value of the proposal for the conservation of an area for public outdoor recreation, greenways, or parkland.

Finally, S.C. Code §48-59-70(F) states:

The board shall evaluate each proposal according to...the extent to which the proposal provides public access for hunting, fishing, outdoor recreational activities, and other forms of public access.

The number of times that public access is specifically mentioned underscores the General Assembly's interest in, and support of, public access. The General Assembly places a greater priority on public access than other criteria (which are not repeated in statute in the same way).

The Bank's current scoring process awards up to 48 possible points for conservation criteria, 25 possible points for financial criteria (i.e., how good of a deal the purchase is), and 15 possible points for public access, for a total of 88 possible points. Given the emphasis placed on public access by the General Assembly, indicated by how often it is mentioned in state law, the Bank should increase the total possible points available for public access in its scoring process. While the total possible score given for public access should not be increased to more than the total possible score given to conservation criteria or financial criteria, it should be increased to more than the limit of 15; perhaps 20 or 25 points. Also, the Bank should award higher public access scores for properties that allow hunting by the public, since that is an important issue in South Carolina.

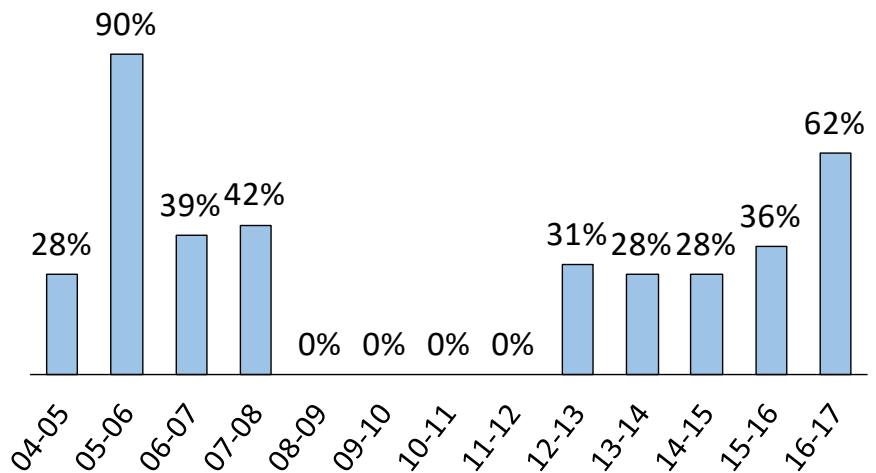
## Possible Public Access Law Changes

S.C. Code §48-59-70(L)(2) states:

The board shall authorize at least ten percent of the monies credited to the trust fund during the preceding fiscal year for the acquisition of interests in land that provides public access. To the extent the ten percent authorization required by this item is not met in any particular year, the balance must be carried over and used for acquisition of interests in land that provide public access in ensuing years.

Chart 4.1 shows the percentage of Bank grants that had full public access. The Bank met the 10% requirement in state law every year it received funding, and in many years, greatly exceeded the 10% requirement.

Chart 4.1: Grants with Full Public Access



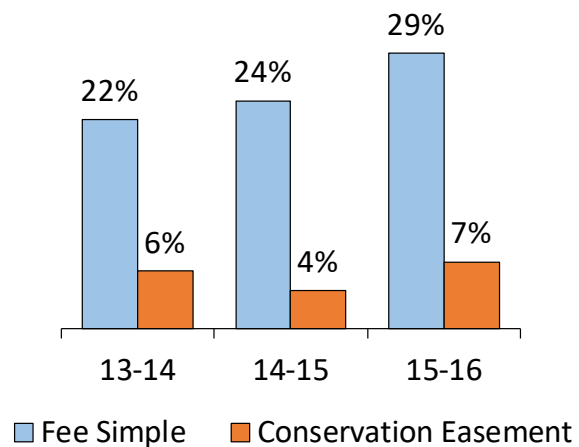
The Bank did not receive any funds for new grants FY 08-09 through FY 11-12.

Source: S.C. Conservation Bank

When the Bank uses the term full public access, the agency generally means a level of access similar to a public park (i.e., it is open to anybody that wishes to go, but there might be certain days and hours that it is open).

The percentage of grants with full public access ranges from 28% to 36% in the last three completed fiscal years. However, if fee simple purchase is factored out of the data, leaving the type of grant the Bank has some measure of control over in terms of how much public access is required, conservation easements with full public access account for a range of only 4% – 7% of total awards over the last 3 completed fiscal years, as seen in Chart 4.2.

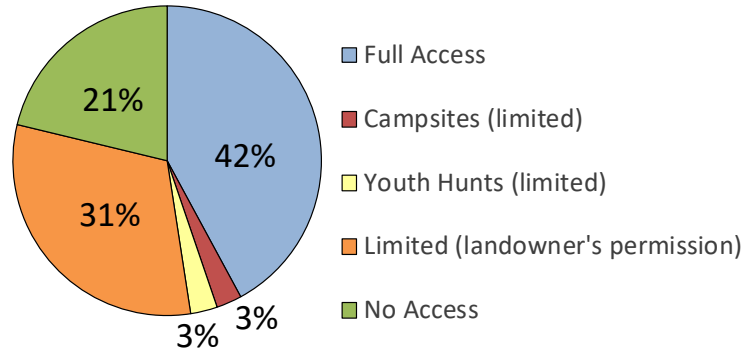
**Chart 4.2: Fee Simple Compared to Conservation Easement Grants with Full Public Access, as a Percentage of Total Grants**



Sources: S.C. Conservation Bank and LAC

Chart 4.3 shows the percentage of grant funds spent by level of public access for the Bank's grants since the Bank's inception.

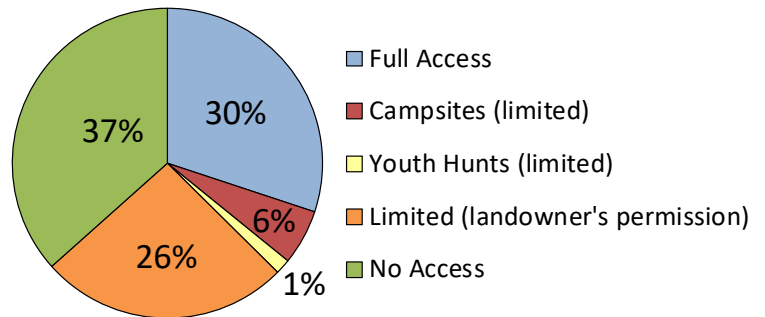
**Chart 4.3: Bank Awards' Level of Public Access**



Source: S.C. Conservation Bank

Chart 4.4 shows the Bank's level of public access in percent by the number of acres since the Bank's inception.

**Chart 4.4: Public Access by Acreage**



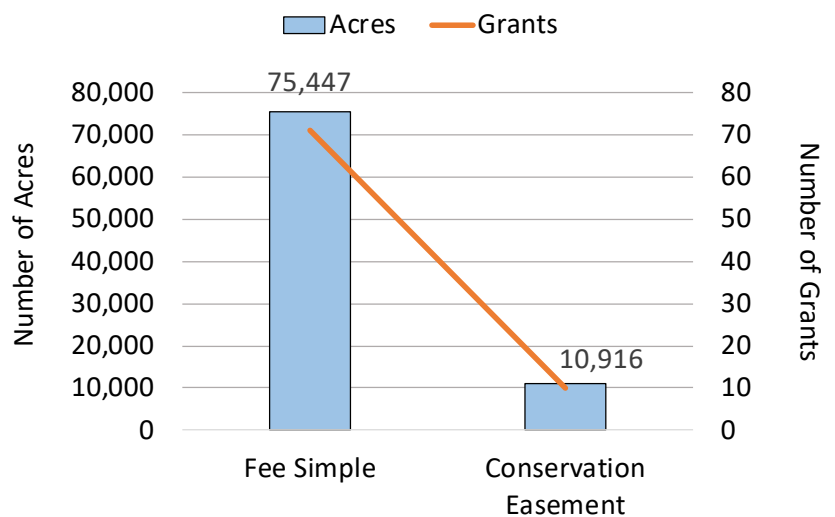
Source: S.C. Conservation Bank

The Bank's records for the categorization of limited public access do not reflect the various levels or degrees of limited public access and thus can be more precise. We reviewed and tested the Bank's reported levels of public access shown in the charts above and found a few errors, but the errors were not material enough where the Bank's data could not be used for our report. However, we noted that the Bank's summary information listed on Bank reports is categorized as full, limited, and no public access. However, the Bank's application provides for limited access to be more precisely described as minimal, moderate, high, or very high public access within the limited category. These various levels of limited access are not reflected in the Bank's reports used to summarize the grants awarded by type of public access.

Also, the data presented in Chart 4.3 and Chart 4.4 uses the public access requirements pulled from the application, but not the actual requirements in the final conservation easement. The Bank's records match the public access levels on its application, while the public access level should reflect what is in the actual final, signed conservation easement.

Chart 4.5 shows the number of Bank grants and acres with full public access by grant type from the Bank's inception until the present. Fee simple grants are required to have full public access by law.

**Chart 4.5: Number of Grants and Acres with Full Public Access by Grant Type from the Bank's Inception to Present**



Source: S.C. Conservation Bank

As Charts 4.1, 4.3, and 4.4 show, the Bank is well above the 10% required by state law. However, future new Bank management may not fund grants allowing public access at the same percentage as has been achieved by the Bank's current management. However, it may be difficult to establish an increased percentage without further research. This is because:

- Grant applicants are not required to provide a reason for not allowing full public access, so the Bank may not have the necessary data to determine why nearly one-third of the grants have no public access, or how much more public access could have been allowed.
- It is unclear how much more available land there is in South Carolina for possible conservation and public access (see *Strategic Planning* in Chapter 5).
- It is difficult to predict landowner demand for conservation easements.
- It is unclear how much of an effect a higher requirement for more public access would have on the demand for conservation easements. As with the economics of supply and demand, as price goes up (in this case the requirement of more public access), demand goes down. Therefore, unintended consequences should be considered regarding a possible change in the required percentage.

There is no requirement in the law and no Bank policy that states that there should be variation in the percentage of public access on different types of properties. Some land is more conducive to public access than other types. A way to increase the percentage of public access is to encourage a higher percentage of public access on certain types of land. For example, a lower percentage of public access on farmland, but a higher percentage of public access on non-wetland forests. Farmland has agricultural processes ongoing, which could be nearly year-round, whereas forestland generally, has no such activity; therefore, it is easier to allow public access and is more reasonable for the Bank to expect more public access to be allowed on tracts such as forestland. This will also help ensure that the Bank continues to provide grants to applicants that are willing to allow the public access at the highest levels possible, given the type of land being protected.

Currently, full public access and limited public access are not defined within state law. The various levels of limited public access (minimal, moderate, high, and very high), as listed on the Bank's application, are not assigned a percentage of access for each category.



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## Public Access Policies

The Bank's application, used to apply for funding, has a section in which the applicant indicates if public access will be allowed (yes or no). If public access will be allowed, then the application breaks it down into minimal, moderate, high, or very high public access. Our review of Bank files discovered:

- Several of the files we reviewed had no explanation about public access at all, such as a reason why no public access was allowed.
- If public access was to be allowed, many of the files did not list specific details about exactly what types of public access would be allowed, how often, etc.
- The Bank does not have written policies regarding how it handles public access. Clear, written policies outlining how the Bank views and scores public access on applications can increase transparency in the application process.
- The Bank has no real requirement or penalty if an applicant does not include public access. The only way that the Bank rewards an applicant for allowing public access is through a higher score. However, as we have indicated earlier in our report, the Bank's current scoring does not really serve a legitimate purpose (see Chapter 2, *Criteria Scoring Process*).

While the total possible score given for public access should not be increased to more than the total possible score given to conservation criteria or financial criteria, it should be increased to more than the current maximum of 15; perhaps 20 or 25.

If applicants cannot or do not wish to allow public access on the property, then the Bank should require applicants to list legitimate reasons as to why the landowner cannot allow or does not wish to allow at least a minimal level of public access on the property, or on certain areas of the property. For example, applicants should be strongly encouraged to participate in the pilot program discussed below.

The Bank currently has a pilot program whereby willing landowners can provide hunting opportunities on their land through drawings conducted by private organizations. The Bank should strongly encourage landowners seeking Bank funding to participate in this program.

Public access, in some cases, is not specifically required when written into the conservation easement and is mentioned on the application without specifics and definitive statements as to how much public access will take place. Although the Bank has identified that nearly 80% of the grants it has awarded have public access, there are instances where it is unclear just how much public access is actually going to be allowed.

One application example states that the landowner may develop an arrangement for educational institutions to visit the property to perform archaeological studies and digs. The landowner may also consider working with SCDNR to permit organized wildlife observation and hunting activities. The application is listed as minimal access, but the proposed public access is just a possibility. The compilation of information by the Bank comes largely from the grantee applications which may list intent, but may not be reflective of actual public access in practice.

We randomly sampled 20 conservation easements that were awarded grants by the Bank. We found:

- 5 of the 20 conservation easements did not clearly identify the level of public access (minimal, moderate, high, or very high) on the application.
- 1 of the 20 did not have any narrative regarding public access.
- 6 of the 20 had no public access.
- 15 of the 20 had broad or vague discussion regarding public access in the final signed easement, but no specific information (such as the number of public access events, the number of individuals that would be allowed to attend such events, etc.).

How much public access is granted in the conservation easements seems to be mostly left to the qualified entity and the landowner. The qualified entity assists the landowner with and throughout the grant application process and will be the organization that will own and manage the conservation easement. One such qualified entity stated it writes public access into its conservation easements as broadly as possible. This approach makes it unclear what obligation the landowner has regarding allowing public access and makes it difficult and impractical for the qualified entity in charge of the easement to enforce the requirement.

More public access means more opportunities for the citizens of South Carolina to hunt, fish, watch wildlife, etc. The Bank should take any and all steps available to it to encourage public access to the properties it funds through its grants.

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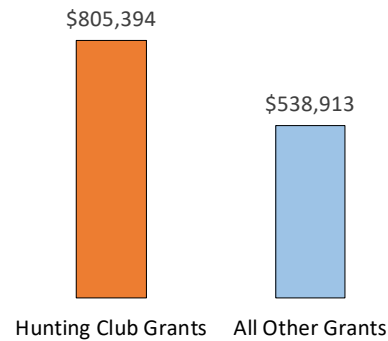
## Hunting Clubs

Hunting clubs have a combination of factors that bring into question the propriety of awarding these clubs grants in the current manner. These grants are funded by deed stamp funds, which are paid by many South Carolina companies and citizens, yet these same citizens often do not have access to enjoy the property. The hunting club factors are:

- Hunting clubs and owners of the conservation easements often allow no or very minimal public access. The hunting clubs we reviewed had a higher percentage of both no public access and limited public access compared to all other classifications (farmland, forestland, wetlands, etc.) The hunting clubs also had a lower percentage of full public access than any of the other classifications.
- The threat of development, as listed on the grant application, is often not a credible one and the bank does not require sufficient documentation to support the claim.
- Generally, the members of these hunting clubs spend a lot of money preparing and maintaining the hunting lands and it is doubtful if these clubs would sell their hunting club land even if there were a legitimate threat of development (see Chapter 2, *Threat of Development*). For example, some of the hunting clubs we reviewed had such items as hunting lodges, several cabins used for hunting, a mess hall, various shooting ranges, a boat house, numerous duck blinds, extensive systems of ditches and water control structures (including electricity to power water pumps), as well as the waterfowl impoundments themselves, which are fairly expensive.
- The average grant amount for hunting club conservation easements exceeds the average grant award of other types of land by approximately \$250,000.

Chart 4.6 shows the average amount the Bank spent on hunting club grants we reviewed versus all other Bank grants through May 2016.

**Chart 4.6: Average Amount Spent on Hunting Club Grants versus all Other Grants**



Sources: S.C. Conservation Bank and LAC

However, we note there are some less apparent benefits from such property being in conservation that may benefit South Carolina and its citizens, such as conserved green space, protection of adjacent streams and waterways, etc.

Regarding hunting clubs, we also found the Bank:

- Does not have policies or procedures in place to ensure that the threat of development is credible, or regarding which actions to take to verify the claims.
- Has no policy to perform any analysis on the amount of the grants awarded to the hunting clubs versus other types of easements, and has no policy in place as to how much to pay for such conservation easements to try to bring them in line with other types of properties (see *Valuation of Properties* in Chapter 2).
- Has no policy to encourage hunting clubs to allow others to hunt on its property with, or in place of, club members, even though the property is already set-up for recreation.
- Has no policy to encourage hunting clubs to allow other forms of recreation, such as bird watching, hiking, camping, etc., either safely away from hunting activities or in that particular club's off-season from its usual hunting activities.

We have not prescribed a course of action as to how much hunting to allow regarding frequency, duration, who the participants are, supervision of the activity, etc., preferring to leave that to the Bank and its discretion as to how to best improve public access for hunting purposes and other non-hunting recreation on hunting clubs, lands and to do so safely. The Bank and the General Assembly may wish to consider if legislation can provide mitigation of legal exposure for those landowners and conservation easement holders who choose to allow public access for hunting on their property. As an alternative, the Bank and General Assembly may wish to consider a premium payment in proportion to the amount of public hunting allowed (out of current funds) for those landowners allowing public access for hunting on their property.

Also, several of the applications to the Bank by hunting clubs did not specifically state that the property was a hunting club. We only identified several of the hunting clubs through reading the application's narrative or through other means. It is possible that we did not identify other hunting clubs for this reason. The Bank should require applicants applying for a Bank grant to specifically state the primary use(s) of the land in its current state.

The Bank should be cautious when awarding funding to a hunting club to ensure that the hunting club is really interested in conservation, that there is a real threat of development, and that it is not just a method for the hunting club to acquire an extra source of funding.

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## Other Funding Available to Applicants

Another funding source that some Bank applicants use comes through the United States Department of Agriculture (USDA). The USDA Natural Resources Conservation Service (NRCS) provides conservation easements on agricultural land and wetlands. According to a USDA official, the USDA-NRCS gives 100% of the funding to winning wetlands landowners. In addition, through its Agricultural Conservation Easement Program (ACEP), the USDA-NRCS gives funding directly to winning agricultural landowners. ACEP pays 50% of the cost of a conservation easement for agricultural land; the other 50% has to be matched by another funding source, such as the Bank. If there is no matching funds source for the ACEP program, the USDA-NRCS office in South Carolina will lose the funding to another state.

According to a USDA official, since 2012 South Carolina has obtained \$3,543,282 through the ACEP program by using Bank matching funds. According to the official, without the matching funds provided by the Bank, South Carolina would have lost out on the \$3,543,282 from the ACEP program. The ACEP program generally only awards funding to two or three landowners in South Carolina a year, so it is a highly competitive process.

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## S.C. Department of Natural Resources Land Management Funding

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During the course of our audit, we spoke with several officials at SCDNR. One of the key points raised by our discussions with SCDNR is that the agency could allow more hunting, fishing, bird watching, etc., if it had more funding to operate the lands it already owns and leases. According to an SCDNR official, historically SCDNR receives approximately 75% of its funding for managing its lands from the Federal government. SCDNR has to match the approximate 25% remaining. However, South Carolina state government does not give SCDNR any direct funding for land management.

Table 4.7 shows SCDNR's expenditures for FY 15-16 for the land it has obtained through Bank grants over the course of the Bank's existence.

**Table 4.7: SCDNR Expenditures for Land Obtained through Bank Grants, FY 15-16**

SCDNR LAND AREA	COST TO SCDNR TO MANAGE THE LAND*
Alewine Tract	\$2,552
Crescent-Heritage Tract	\$26,331
Marsh Furniture Tract	\$111,670
Floyd Tract	\$19,754
Forty-Acre Rock	\$35,874
Blakely South Saluda	\$2,187
Hamilton Ridge Tract	\$267,477
Woodbury Tract	\$385,788
McDowell Creek Tract	\$35,308
Belfast Plantation	\$168,468
Liberty Hill Phase I	\$83,856
Liberty Hill Phase II	\$82,748
Hanahan Tract	\$1,554
South Fenwick Island Tract	\$10,859
Chestnut Ridge Extension	\$3,094
Ashmore HP Extension (Whaley)	\$3,051
Stumphouse Mountain HP	\$9,223
<b>TOTAL</b>	<b>\$1,249,794</b>

\*Does not include any facilities maintenance or insurance costs.

Source: S.C. Department of Natural Resources

SCDNR’s current land management budget for all of its owned and leased lands is slightly over \$11,000,000. According to SCDNR, the agency could do much more if the agency had more funding. For example, the agency could more than double the number of dove fields that it operates if the agency had the funding to manage the land. SCDNR has the land already but does not have the funding to manage the land (maintaining trails and roads, having employees present, etc.). SCDNR estimates it would cost an additional \$736,834 to expand public recreational opportunities on SCDNR properties obtained through the Bank. During the course of our audit, the Bank transferred \$3 million to SCDNR for this fiscal year for Federal matching funds.

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## Recommendations

18. The S.C. Conservation Bank should increase the total possible points for public access in its scoring process.
19. The S.C. Conservation Bank should award higher public access scores to properties that allow public hunting opportunities on the property.
20. The S.C. Conservation Bank should record its grant public access level in the same categories as indicated on the Bank's application.
21. The S.C. Conservation Bank should record the level of public access based on the actual conservation easement and not the application.
22. The General Assembly should amend S.C. Code §48-59-70(L)(2) to increase the 10% public access requirement regarding Bank funds.
23. The General Assembly should amend S.C. Code §48-59-70(L)(2) to require specific public access percentage requirements by the type of land being protected.
24. The General Assembly should define full public access and limited public access and decide the appropriate percentages of public access for each level in state law.
25. The S.C. Conservation Bank should create clear, written policies regarding the priority of public access and how it will be scored in applications to the Bank.
26. S.C. Conservation Bank applicants should be required to list legitimate reasons for why they do not wish to, or cannot, allow at least a minimal level of public access on the land, or on areas of the land.
27. The S.C. Conservation Bank pilot program of hunting draws that are conducted by private organizations should be expanded.
28. The S.C. Conservation Bank should require that every conservation easement clearly state whether public access is allowed, how many individuals are allowed on the property, the frequency of access, and the duration of access.
29. The S.C. Conservation Bank should strongly encourage public access on any applications to the Bank by hunting clubs.
30. The S.C. Conservation Bank should require all applicants for Bank grants to list the primary use(s) of the land in its current state.



# Administrative and Miscellaneous Issues

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## Board Minutes

We reviewed the minutes of the Bank board meetings from June 2007 through May 2016. We did not find evidence that the Bank board violated provisions of the Freedom of Information Act regarding notification of board meetings. However, we found:

- One board member did not consistently recuse himself from voting on applications when there was a conflict of interest.
- We found the board has no policies in place regarding recusal and disclosure, and recusal is voluntary.
- The board minutes did not contain a list of the names of all of the properties being recommended for grant approval.
- The board minutes did not include a cash availability analysis, including annual appropriation, in order to demonstrate to the board the Bank is operating within its appropriated funds.

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## Conflicts of Interest

Four board members consistently recused themselves from voting on applications when there was a conflict of interest; however, one board member recused himself at times, but did not consistently do so.

At the November 2014 board meeting, there were four applications which had been submitted by a land trust on which a Bank board member served. The affiliated board member motioned for grant approval for two of the applications, seconded the approval motion for one application, voted for approval for all of the applications, and made a special request that the board look favorably on one of the applications.

S.C. Code §48-59-40(C) states that board members must recuse themselves from any vote in which they have a conflict of interest:

- On land owned or controlled by the board member, the board member's immediate family, or an entity the board member represents, works for, or in which the member has a voting or ownership interest.
- On land contiguous to land described in the bullet above.
- By an eligible trust fund recipient that the board member represents, works for, or in which the member has a voting or ownership interest.

Having board members recuse themselves during conflicts of interest leads to more public confidence in the board's decision-making process.

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## Policy for Conflict of Interest

We found that the Bank has no agency policy and appears to rely on state law that requires board members to disclose interests in or with entities receiving grants. The Bank has not taken steps to inform board members of the issue. When a conflict of interest exists, board members should recuse themselves from voting to avoid any appearance of impropriety or bias.

The Bank should require board members to sign a form acknowledging awareness of state law so that it is clear board members know to recuse themselves from voting on applications when there is a conflict of interest. Without a policy in place outlining the actions a board member should take when a conflict of interest is present, it may appear that the applicant was given preferential treatment.

Additionally, we found that the official who scores the applications for the Bank is involved with a qualified entity that applies for grant funding. This could create an appearance of impropriety regarding the scoring process, if not an actual conflict of interest. When there is only one person responsible for an area, as is the case with scoring the applications, recusal may not be possible and should be resolved by having additional people handling the duties.

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## Board Minutes

The minutes of the Bank board meetings do not include a summarized list of the properties recommended and approved for grants. The minutes are lengthy and note the discussions and decisions regarding the properties, but the entire document, which may be 20 pages, must be read to determine the number and amount of approved grants. The minutes also do not consistently indicate the financial status of the Bank, including annual appropriations in order to demonstrate to the board the Bank is operating within its appropriated funds. Documenting, in all board minutes, a cash availability analysis, a summarized list of the properties presented, and the decisions made would help the agency to be more transparent to the public on how its funds are being spent. The Bank provides copies of board minutes upon request, but having the minutes available on the Bank website would further enhance transparency to the public.

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## Recommendations

31. The S.C. Conservation Bank board should institute a policy requiring members to sign a form acknowledging the law regarding recusal, and members should recuse themselves from voting on grant proposals from applicants who may present a conflict of interest for the board member.
  32. The S.C. Conservation Bank should record in its board meeting minutes a summary of the names and amounts of all grants approved.
  33. The S.C. Conservation Bank should include in its board meeting minutes the cash availability analysis, as approved by the board, that demonstrates the Bank's spending is within its appropriated funds.
  34. The S.C. Conservation Bank should have the minutes from the board meetings accessible on its website.
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## Missing Documentation

At the end of Bank grant transactions, the Bank requires the qualified entity to submit a copy of the final signed fee simple purchase or conservation easement, as well as the final closing/settlement statement. We randomly selected 30 files to determine if this information was in the files. Of the 30 files, 8 were either withdrawn or still pending completion. With regard to the remaining files, 5 of 22 (23%) did not have a copy of the final signed fee simple purchase or conservation easement and 16 of 22 (73%) did not have copies of the final closing/settlement statements in the file.

By not ensuring that these documents are received, the Bank cannot be assured that all transactions are completed appropriately. Also, it is not clear how the Bank would be aware of any potential changes from a draft fee simple or conservation easement document to the final signed document without receiving a copy of the final signed document. Finally, the Bank would need a copy of the final signed conservation easement for comparison if the Bank was made aware that a landowner may not be meeting the requirements of their conservation easement.

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## Recommendation

35. The S.C. Conservation Bank should ensure that all grant recipients send the Bank a copy of the final signed fee simple purchase or conservation easement and the final closing/settlement statement.

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## Strategic Planning

We reviewed the Bank's strategic plan and interviewed different qualified entities to better understand the entities' strategic plans regarding conservation goals. We found there is no measurable statewide conservation goal. The qualified entities have geographic focus areas that are targeted and the Bank partners with these entities to support conservation efforts in the state.

The Bank's strategic plan is based on four strategic initiatives.

### DEVELOP A LONG-TERM CONSERVATION VISION FOR SOUTH CAROLINA

The purpose is to create a public-private partnership with qualified entities to ensure geographic coverage of the state and environmental diversity of conservation efforts. The Bank hopes to contribute to statewide and regional conservation efforts by the qualified entities, including conservation core areas and protection corridors of the state.

### LEVERAGE FUNDING OPPORTUNITIES FOR CONSERVATION

The Bank's goal is to obtain the best conservation value for the amount of funds granted by leveraging funding opportunities from other sources.

### PUBLIC ACCESS TO CONSERVATION LANDS

The Bank aims to support grants that provide public access to conservation lands.

### SPONSORED ACTIVITIES AND PUBLIC OUTREACH

The Bank's purpose for public outreach and education is to inform the public of the benefits of land conservation through its website, events, and presentations.

According to Bank management, the Bank cannot develop a strategic plan that provides measurable goals such as an annual increase in acreage under a conservation easement. This is because the Bank does not seek out particular lands to be conserved, but instead partners with qualified entities. The qualified entities determine where and what types of land are important for conservation. The Bank does claim that it has developed a "Conservation Vision for South Carolina" that targets preserving unique habitats in South Carolina and developing corridors between these habitats.

After interviewing several qualified entities, we concluded that each entity has different focus area(s) across the state. Some focus areas are the COWASEE Basin (Congaree/Wateree/Upper Santee River System), the Savannah River, and the ACE Basin (Ashepoo, Combahee, and Edisto Rivers). These qualified entities either have a strategic plan or are currently working on developing a strategic plan.

In order to connect the efforts of the Bank and the qualified entities, the Bank should gather the strategic plans of major land trusts in South Carolina to identify the geographical areas that are being targeted and the areas that lack conservation efforts. This would allow the Bank to better understand the overall conservation efforts in the state and identify priority areas. This would also promote a collaborative effort between the land trusts, SCDNR, and the Bank in order to have a long-term goal for the conservation of lands in South Carolina.

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## Recommendation

36. The S.C. Conservation Bank should develop a collaborative initiative with qualified entities to create a statewide conservation strategic plan that includes measurable goals and strategies to achieve those goals.

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## Real Property Taxes

We found that property encumbered with a conservation easement and property purchased fee simple by tax-exempt agencies reduced real property tax collections.

Real property tax includes all land and buildings, structures, or improvements on that land. The county assessor where the property is located appraises all properties at fair market value and places them on the tax rolls to generate revenue. Fair market value is the amount at which property can reasonably be expected to sell on the open market with a willing buyer and a willing seller. Property tax represents about 20% of all state and local taxes and continues to be a main source of revenue for the state's public schools. Property tax is collected by local governments to provide for many services such as schools, police and fire protection, and public libraries.

The property tax is determined by multiplying the fair market value by the assessment ratio by the millage rate. The millage rate is the amount of mills levied in order to meet the budget of a school district, county, city, or other political subdivision. One mill equals 1/1000 of a dollar or 1/10 of a cent. If the tax rate is 256 mills, multiply 0.256 by the assessed value to determine the amount of property tax due. The total property tax due would be dependent upon the millage rates for the county in which the property is located.

The assessment ratios related to real property are:

- 4% Home (legal residence)
- 6% Second home (or any residential property where you do not live)
- 4% Agricultural real property (privately owned)
- 6% Agricultural real property (corporately owned)
- 10.5% Commercial real property
- 10.5% Manufacturing real and personal property
- 10.5% Utility real and personal property

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## Reduced Property Taxes for Land with Conservation Easements

S.C. Code §27-8-70 states that real property burdened by a conservation easement must be assessed and taxed on a basis that reflects the existence of the easement. When a landowner encumbers property with a conservation easement, the landowner gives up specific development rights which are detailed in the easement document. Therefore, the land value is reduced. Since property is generally assessed at its fair market value based on its highest economic use and the easement removes some of the most valuable development rights, local assessors may reduce the assessed value of the property for property tax purposes. Thus, property encumbered with a conservation easement reduces the amount of real property tax collected in the county where the property is located.

From inception through FY 14-15, the Bank awarded grants for 189 conservation easements, which reduced the fair market values of the applicable properties by \$386,143,204. With a 4% assessment ratio, the reduction in fair market values reduced the assessed values of properties encumbered by a conservation easement by \$15,442,728.

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## Fee Simple Purchases Removed from Tax Rolls

From inception through FY 14-15, the Bank awarded grants to assist in 61 fee simple purchases by tax-exempt entities which removed the properties from the tax rolls.

Organizations that qualify for Federal tax-exempt status are, by law, exempt from paying property taxes in all 50 states. Since organizations that qualify for Federal tax-exempt status are exempt from paying property taxes in South Carolina, properties purchased fee simple by state and non-profit agencies with assistance from the Bank would be exempt from paying real property taxes in the county where the property is located.

Fee simple grants for which the Bank assisted state agencies or non-profit agencies with the purchase of property totaled \$48,451,889. With a 4% assessment ratio, the total reduction in assessed value was \$1,938,076. Only the portion the Bank granted to assist with the purchase was included in the above calculation; not the total purchase price of the property.

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## Recommendations

37. The General Assembly should take into account the effect of lower real property tax collections of properties with conservation easements when determining the future of the S.C. Conservation Bank.
  38. The S.C. Conservation Bank should consider the effect of lower real property tax collections when determining the number of applications to approve.
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## Income Tax Advantages

We found that a Federal income tax deduction for a charitable donation is allowed by landowners who have encumbered property with a conservation easement or sold property below fair market value for conservation purposes. A South Carolina state income tax credit equal to 25% of the value of the gift of land for conservation is allowed by a taxpayer who is entitled to and claims a Federal charitable donation for a gift of land for conservation or for a qualified conservation contribution on a qualified real property interest located in South Carolina. We found that tax collections are reduced as a result of the transactions funded by the Bank.

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## Tax Credits vs. Tax Deductions

Tax credits and tax deductions are not the same. The main difference is that tax credits are subtracted directly from the amount of tax owed, while tax deductions are subtracted from gross income. Tax credits provide a dollar-for-dollar reduction of an individual's income tax liability while tax deductions lower an individual's taxable income and are calculated using the percentage of one's marginal tax bracket. For example:

### TAX CREDIT (*subtracted from tax owed*)

A \$1,000 tax credit saves an individual \$1,000 in taxes.

### TAX DEDUCTION (*subtracted from gross income*)

If one is in the 25% tax bracket, a \$1,000 deduction saves \$250 in taxes ( $\$1,000 \times 0.25 = \$250$ ). There are two main types of Federal tax deductions — the standard deduction and itemized deductions.

A taxpayer must use one or the other, but not both.

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## Federal Income Taxes

According to the Internal Revenue Service (IRS), a qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization to be used only for conservation purposes.

The contribution must be made only for one of the following conservation purposes:

- Preserving land areas for outdoor recreation by, or for the education of, the general public.
- Protecting a relatively natural habitat of fish, wildlife, or plants, or a similar ecosystem.
- Preserving open space, including farmland and forest land, if it yields significant public benefit. The open space must be preserved either for the scenic enjoyment of the general public or under a clearly defined Federal, state, or local governmental conservation policy.
- Preserving a historically important land area or a certified historic structure.

An additional IRS requirement is that records must also include the fair market value (FMV) of the underlying property before and after the contribution.



### Conservation Easement

When a landowner donates an easement to a land trust or public agency, the landowner is giving away some of the rights associated with the land. The easement permanently limits uses of the donated property in order to protect its conservation values, as specified in the Internal Revenue Code (IRC) 170(h).

If a conservation easement is voluntarily donated to a qualified organization and benefits the public by permanently protecting important conservation resources, it can qualify as a charitable tax deduction on the donor's Federal income tax return. Tax deductions lower taxable income and are calculated using the percentage of an individual's marginal tax bracket.

First enacted in 2006, the Federal tax incentive was made permanent in 2015 and allows a donor of a conservation easement to take a tax deduction up to 50% of an individual's adjusted gross income minus the deduction for other charitable contributions. The unused amount for the conservation donation has a carry-forward period of 15 years.

Qualifying farmers and ranchers, someone who receives more than 50% of their gross income from "the trade or business of farming," donating a conservation easement are allowed to deduct up to 100% of their adjusted gross income minus other charitable contributions and may carry-forward 15 years. For an easement to qualify for a farmer or rancher, it must contain a restriction requiring that the land remain "available for agriculture." Table 5.1 summarizes the tax incentives.

**Table 5.1: Federal Tax Incentive**

DONOR OF CONSERVATION EASEMENT	FEDERAL TAX DEDUCTION ALLOWED	
	% OF INCOME FOR FIRST YEAR	ADDITIONAL YEARS
Non-Farmers/Ranchers	50%	15
Farmers and Ranchers	100%	15

Source: Internal Revenue Service

### **Federal Bargain Sale**

The IRS allows a charitable contribution for a bargain sale of property for less than the property's FMV. A bargain sale of property is a sale or like exchange for less than the property's FMV. A bargain sale to a qualified organization is partly a charitable contribution and partly a sale or exchange. The part of the bargain sale that is a sale or exchange may result in a taxable gain — a profit on the sale of an asset that is subject to taxation.

The amount one can deduct for charitable contributions cannot be more than 50% of an individual's adjusted gross income, but a carryover of a qualified conservation contribution can be carried forward for 15 years.

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## **State Income Taxes**

S.C. Code §12-6-3515 allows a taxpayer who is entitled to and claims a Federal charitable donation for a gift of land for conservation or for a qualified conservation contribution on a qualified real property interest located in South Carolina to claim a state income tax credit equal to 25% of the value of the gift of land for conservation. The credit cannot exceed \$250 per acre of property to which the qualified conservation contribution or gift of land for conservation applies and the total credit claimed by a single taxpayer cannot exceed \$52,500 per year. The tax credit cannot reduce a taxpayer's liability below zero, but any unused credit may be carried forward until used.

Unused credit may be transferred, devised (willed), or distributed, with or without consideration, by an individual, partnership, limited liability company, corporation, trust, or estate.

Annual reports from the S.C. Department of Revenue for the past five years indicate that 1,500 qualified conservation credits totaling \$36,768,431 were claimed in South Carolina from FY 10-11 through FY 14-15 as shown in Table 5.2.

**Table 5.2: S.C. State Income  
Qualified Conservation Credits**

CALENDAR YEAR	QUALIFIED CONSERVATION CREDITS CLAIMED	
	NUMBER	TOTAL AMOUNT
2010	331	\$7,636,450
2011	291	7,462,021
2012	302	7,466,531
2013	259	6,996,856
2014	317	7,206,573
TOTAL	1,500	\$36,768,431

Source: S.C. Department of Revenue

Because Federal tax deductions and the state income tax credit are allowed for landowners encumbering property with a conservation easement or for selling property below fair market value for conservation purposes, state income tax collections have been reduced.

## Recommendations

39. The General Assembly should consider the effect of lower state income tax collections when determining the extent to which conservation efforts should continue.
40. The S.C. Conservation Bank should consider the effect of lower state income tax collections when determining the number of applications to approve annually and within its master plan.

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## Land Loss Report

The Bank does not have the resources or expertise to complete the land loss report as required by S.C. Code §27-8-90, which states:

The Board of the Conservation Bank shall perform a biennial review of the plight of land loss by small landowners and holders of heirs' property. The results of this review, upon completion, must be published in an official board report and submitted to the South Carolina General Assembly for its use.

Heirs' property refers to real property titled in the name of a person who has been deceased for more than 10 years and who did not have an estate plan identifying how family land was to be passed down. According to Bank staff, the agency does not have the resources or expertise to complete this report. Most counties have no formal process for tracking or documenting heirs' property. The Bank made an attempt at completing the report in 2006. That year the Bank paid a contractor with expertise in this area (according to the Bank) to complete the report on the Bank's behalf. The group could not identify all holders of heirs' property and made recommendations to the Bank on methods to try and identify the amount of heirs' property in the state and ways to possibly protect it. However, the Bank board stated that the Bank did not have the resources or expertise to complete these recommendations, so nothing else has been done in regards to completing this report since 2006.

However, the General Assembly passed Act 153, the Clementa C. Pinckney Uniform Partition of Heirs' Property Act in March of 2016, which went into effect on January 1, 2017. This new law gives judges new powers in dealing with heirs' property that will decrease the need for the Bank to complete the plight of land loss report.

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## Recommendation

41. The General Assembly should amend S.C. Code §27-8-90 to remove the requirement for the S.C. Conservation Bank to complete the plight of land loss report every two years.

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## Relocation Expenses

In June 2015, the Bank moved to its current location in the Capitol Center and became responsible for additional expenses which had not been incurred at its former location. Prior to June 2015, the Bank was located in the Dennis Building and was provided office space and IT services by SCDNR without cost to the Bank. A Bank official stated the Bank relocated to gain more space.

When the Bank relocated to the Capitol Center, it became responsible for paying additional expenses such as rent, parking, and IT services. The Bank's monthly rent is \$1,950.75 in the Capitol Center, amounting to \$23,409 annually.

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## Charges to the Bank by SCDNR

SCDNR provided a listing of the charges to the Bank for the last two fiscal years the Bank was located in the Dennis Building which showed charges only for postage and graphics reimbursement. The charges are listed in Table 5.3.

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**Table 5.3: FY 13-14 and FY 14-15  
Charges to the Bank by SCDNR**

FISCAL YEAR	AMOUNT CHARGED TO THE BANK BY SCDNR
13-14	\$675.98
14-15	2,728.27
TOTAL	\$3,404.25

Source: S.C. Department of Natural Resources

A Bank official provided documentation for a voluntary, one-time reimbursement of \$14,502.15 the Bank made in October 2008 to SCDNR for IT and graphic services.

The Bank had additional expenses of \$41,058 for FY 15-16 after relocating as shown in Table 5.4.

**Table 5.4: FY 15-16 Additional Expenses Due to Relocation**

TYPE OF EXPENSE	AMOUNT
Rent	\$23,409
IT Related	15,598
Parking	2,051
<b>TOTAL</b>	<b>\$41,058</b>

Source: S.C. Conservation Bank

## Potential Merger

As a result of our audit, we determined consideration should be given to having the Bank operate from within SCDNR and report to its director. We found evidence that it may be advantageous to consolidate the Bank with SCDNR.

The Bank mission should continue, as required by current statute, until and if the General Assembly determines a change is in order. Under this new structure, the Bank should expect the same funding, earmarked for its legislatively-mandated mission, less amounts provided to SCDNR as described below.

SCDNR has demonstrated it can allow more public access on lands it now operates, should it be provided funding, in proportion to the additional public access it can provide (see *S.C. Department of Natural Resources Land Management Funding* in Chapter 4).

The Bank's appropriations have increased from \$9.5 million to \$15 million in the last four years, with funds increasing from \$1– \$2 million a year, suggesting that funds are available to shift to SCDNR (see Table 5.5). Should the Bank be merged with SCDNR and SCDNR receive appropriations that formerly went to the Bank, SCDNR could:

- Support the Bank's administrative functions.
- Support core functions, such as scoring and approving applications for grants.
- Increase public access to state-owned lands.

**Table 5.5: Bank Appropriations/  
Authorizations**

FISCAL YEAR	APPROPRIATIONS/ AUTHORIZATIONS
12-13	\$9,523,899
13-14	\$11,445,233
14-15	\$13,060,233
15-16	\$15,000,000

Source: S.C. Conservation Bank

During our audit, we found that the Bank and SCDNR have similar missions:

- The Bank’s mission is to improve the quality of life in South Carolina through the conservation of significant natural resource lands, wetlands, historical properties, archeological sites, and urban parks.
- SCDNR’s mission is to serve as the principal advocate for and steward of South Carolina’s natural resources.

We also found:

- The Bank and a department within SCDNR, the Heritage Trust program, have similar functions. Therefore, SCDNR has personnel trained in conservation efforts who could assist the Bank in operating the Bank’s conservation efforts.
- The Bank currently incurs operational expenses of \$41,058 per year as a result of relocating outside of SCDNR. When the Bank was housed inside of SCDNR, it incurred expenses of \$675.98 in FY 13-14 and \$2,728.27 in FY 14-15 (see *Bank Relocation Expenses*).
- There is only one Bank official who is able to score the criteria scoring sheet to determine staff’s recommendation for funding, which restricts the Bank to a single opinion for grant staff recommendations to the Bank board. Under SCDNR, the Bank may have additional SCDNR employees with the qualifications to score the criteria scoring sheet to allow for a more objective scoring process (see *Criteria Scoring Process* in Chapter 2).

- By integrating the Bank within SCDNR, the shared mission of conservation could provide personnel to the Bank to assist in administrative activities (such as legal assistance, IT management, etc.).
- The Bank would have easier access to a large conference room (at SCDNR) to hold its public meetings, which are now held in various venues in Columbia, S.C. and other cities around the state, as their availability is discovered by the Bank. This can make it difficult for the public to keep up with where and when the public meetings are held.

Due diligence regarding a potential merger would need to be addressed by the General Assembly before enacting legislation if a merger is contemplated.

As an alternative to the merger, in the event the merger is not feasible, the Bank could enlist the assistance of several Bank board members in the application scoring process in order to have multiple people scoring the applications.

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## Recommendations

42. The General Assembly should consider merging the S.C. Conservation Bank with the S.C. Department of Natural Resources.
43. The General Assembly should provide funds, from Bank funding, to the S.C. Department of Natural Resources in order to allow SCDNR to allow more public access on the lands already owned and operated by SCDNR.
44. The General Assembly should require the S.C. Department of Natural Resources to provide it with an annual report to demonstrate the agency has increased operating hours and public access in proportion to the additional funding it receives.
45. The General Assembly should continue to fund the S.C. Conservation Bank's conservation mission less funds provided to the S.C. Department of Natural Resources for increasing public access on properties it currently owns.
46. The General Assembly should consider shifting additional S.C. Conservation Bank funding to the S.C. Department of Natural Resources in the future as SCDNR acquires more property proportionate to the cost of allowing the most public access possible.



# Agency Comments

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Appendix  
Agency Comments

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**SOUTH CAROLINA CONSERVATION BANK**  
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**Marvin N. Davant**  
Executive Director  
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**Board of Directors**

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Chairman

Michael G. McShane  
Vice-Chairman

Andrea Clark  
Elliott Close

C. Douglass Harper  
D. Clinch Heyward

Charles G. Lane  
W. Thomas Lavender, Jr.  
William L. Snow, Sr.

**Ex-Officio Members**

Cary L. Chastain  
Dr. Walt McPhail  
Duane N. Parrish

February 14, 2017

E. Bradshaw Hanley, Jr.  
Audit Manager  
SC General Assembly  
Legislative Audit Council  
1331 Elmwood Ave., Ste 315  
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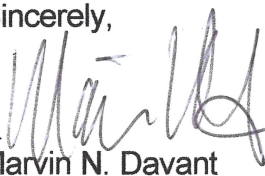
RE: LAC Report Responses

Dear Brad:

Please find enclosed/attached the South Carolina Conservation Bank comments to the LAC Final Audit Report. It is my understanding that these comments will be added to your Final report for publication. I would have preferred to have more extensive answers as was provided in the Draft Report reply to such an extensive Final Report issued by the LAC but the ten page restriction placed on the Bank's comments would not allow for additional information to be included.

If you have any questions or need additional information please let me know.

Sincerely,



Marvin N. Davant

Enclosure



SUMMARY OF THE SOUTH CAROLINA CONSERVATION BANK COMMENTS  
TO THE LAC REVIEW OF THE S.C. CONSERVATION BANK

**Application Issues:** **1.** We do not agree that the scoring sheet is ineffective. The Enabling Act does not mandate a criteria-based scoring process. The Board directed the staff to develop this process as a guideline as part of several factors considered for grant approval. The Board does agree that the process can be improved and will be considering scoring changes.

**2. Criteria.** See explanation above. The scoring process is only one factor and is as objective as possible based on numerous other factors. Percentage amounts of grants will vary depending on the appraised fair market value of the property and the amount of the appraised value that the applicant is seeking. To standardize this percentage amount would mean that the Bank in many cases would pay more than the requested amount of the easement which would be poor business as those funds could be used elsewhere. If an application received 100% of FMV, it is most likely a fee transfer based on the sales price to a State Agency. **3.**

**Documentation of the Threat of Development.** The threat of development is only one of 20 factors that the Bank considers. This threat is covered by consideration given by the appraiser in determining the appraised value of a property. Considering that South Carolina is a small State and that we have gained over 1 million people in the last 25 years, it is not beyond consideration that most properties in this State are subject to some level of development threat. The Bank believes that the knowledge of the applicant and the information given with the sworn affidavit on the application is more than sufficient to make a grant approval. **4.**

**Application Score.** The application score is just one factor used by the staff to determine whether the grant fits our mission. It does have a value and is used in that capacity but it is not the sole determining factor.

**Budget Limits:** The Bank has **NEVER** exceeded its authorized budget. As explained in the LAC Draft Report Reply, the Bank budget is regulated by the SCEIS accounting system and cannot exceed its authorized budget without Legislative approval. The Bank Budget, like all State agencies, is based on the next fiscal year revenue stream as determined by the BEA which is the same source the General Assembly uses to forecast State revenues. It is noted that the BEA estimate has always exceeded the amount the Bank has prioritized for ensuing fiscal year grants. The Senate Finance ruled in 2008 that Bank grant prioritizations were not contracts and were not enforceable. The Bank prioritizes its grants and makes up its budget as required by the Governor and the Legislature for the ensuing fiscal year based on the grant prioritizations. All applicants are notified in person and in writing on the Bank Application Form and Award Letter that all grants are subject to budget authorization and the Bank actually receiving the requested funding. Although the Bank takes these prioritizations very seriously, there is no legal obligation to the State to pay them due to poor economic conditions as was shown in the 2008 Budget Recession that affected three consecutive Fiscal Year budgets (but which has not happened since 2008). If poor economic conditions exist, the BEA would reflect this change and the Bank would adjust its operations accordingly just as every agency does.

**Public Access:** **1.** Public access is mentioned five times but it is **not required** by the statute. Public benefit also is mentioned all through the Act. If public access was the overriding issue of conserving significant lands statewide then the General Assembly would have made more than 10% statutorily required. The Legislature in SC realized, as did every other State that the LAC researched and compared SC to who do not require **ANY** public access on conservation easements, that it would stop landowners from using incentivized land conservation. Landowners will not give the public full access to their lands because of liability concerns and they don't want the general public going all over their property; particularly at the average price of \$413 per acre the Bank pays for easements. The General Assembly realized when it wrote the statute, as do other states, that requiring public access on conservation easements will stop land conservation. Fee transfers do require full public access. It also is noted that conservation easements do not affect county property taxes

while fee simple transfers to State agencies and non-profits remove properties from the tax rolls. **2.** The Bank has never funded a club *per se* or any property used solely as a hunt club. Only two grant applications characterized the property as a club of any kind. But many of the Bank grants have hunting either by the landowner; members of a club formed by the landowner; or the leasing of hunting rights to increase their land revenues. Hunting seasons last for 2-4 months. The rest of the time these lands are raising corn; beans; cotton; wheat; timber and other crops which are then called farms. Hunting is a very important aspect of Bank grants and is also mentioned in the statute several times; even as a requirement. To call these tracts "hunt clubs" because the highest and best use price wise is recreational, hunting and fishing, and agriculture is a disservice to what they actually are. They are farms with hunting taking place on them. The public access allowed on what is termed as "hunt clubs" is no different or any higher than any other farm group or large timber tract wherein public access is at variance with the landowner practices and carries a high degree of liability to the landowner. This information was given to the LAC in the Draft Report. The amount that any grant is awarded, let alone the "hunt clubs" is derived from fair market appraisal; the size of the number of acres; and the amount the landowner requests as long as it is under the FMV. The Bank does not question why a landowner does not provide public access because: 1. Public access is not required on an easement; 2. Those terms are the result of the negotiations between the landowner and the Qualified Entity (applicant) and not the prerogative or liability of the Bank.

**Scoring: 1.** We do not concur. We do not believe that the scoring is an entirely subjective process that has no value. Or that it is ineffective. The Enabling Act does not mandate a criteria-based scoring process. The Board directed the staff to develop this process as a guideline as part of several factors considered for grant approval. We believe all applications provide adequate information from which to make a decision on grant funding and that narratives are sufficient considering that the appraisals and EAS, generally explain anything not in the application. The Board does agree that the process can be improved and will be considering scoring changes. **2. Verification and Documentation:** The application itself is an affidavit, sworn to by the applicant and the landowner. Neither the Bank nor does the LAC, in its Draft Report, have any evidence that the application documentation is insufficient or has never not been in accordance with what is on any application as stipulated by the LAC. As discussed previously, the threat of development is only one of 20 criteria that is considered by the Bank. This threat is generally covered in the application and the appraisal which is available for LAC inspection. It is noted that threat of development becomes less important to conservation in the absence of high natural resource criteria. Land with a low natural resource value is not an application the Bank should consider as a significant conservation target.

**3. Grant Award Methodology:** The Bank does not negotiate the amount of the application request. The price brought to the Bank is a result of negotiations between the landowner and the Qualified Entity. Some landowners do not require or ask for as much as others because it does not fit their needs (sometimes for tax reasons) and may donate more of the appraised value than other landowners. This is not a result of Bank negotiations. Some Qualified Entities have met with local landowner associations and decided on an across the board asking price in certain geographical areas regardless of the FMV. There are many variations and it would be senseless for the Bank to pay more than the requested amount if the landowner was willing to accept less. The amount of the award depends on: 1. the appraised value; 2. the amount of the request; 3. the significance of the tract; and 4. how much funding the Bank has on hand or is expected to receive. 80% of the applications for grants were awarded to non-profit conservation groups because there are 45-50 Qualified Entity conservation groups and hundreds of interested landowners while there are only three Qualified State agencies that can apply. Hence, it would follow that most of the number of awards would come from that sector. The more important question is not how many in number but how much funding has gone to each group. Actually, 42% of **ALL** Bank funds have gone to lands with full public access. In fact, as we

pointed out to the LAC in the Draft reply, **ALL** grant requests from DNR; PRT; and Forestry have been approved and **ALL** Fee Simple Transfers providing full public access have been funded since the creation of the Bank.

**Grant Award Process:** The Bank attempts to leverage all Bank grants where possible although leveraging is **NOT** required. Through leveraging our dollars, the Bank has provided conservation of 286,000 acres of land at the exceedingly low price of \$431 per acre. Based on information received from the Qualified Entity grant recipients, the Bank has provided \$135 million in grants to our landowners and has received back \$144 million in matching funds to our State. In other words, more funding came back to SC as a result of the Bank grants than the Bank paid for the grants. Proof of this information was available to the LAC.

**PROPERTY VALUE DETERMINATIONS:**

The LAC sampled selected files for a comparison of cost to FMV (every file was reviewed in detail by the LAC) when it could have easily accessed and used the total population amount of funds spent in grants as compared to fair market value from the Bank web site. The actual total amount on average is 83% below market value and not 50%. On average, the Bank has paid 17% of the FMV of all grants including fee simple transfers. We do not know which of the grants the LAC selected for the chart shown by the LAC at this point but it underscores the fact that the Bank leverages its funding whenever possible. Any properties receiving 100% of FMV were fee simple transfers based on the sales contract from another Qualified State Agency or occurred in very early years of Bank conservation easement grants. The Bank does not have the authority nor the liability to negotiate how much a fee simple award is made for by another State agency. That amount is based on the sales price contract brought to the Bank by another State agency who presumably has already negotiated the sales price and agrees with the amount. The award of a conservation easement grant is based on the 1. Appraisal; 2. the amount requested; 3. the amount of funding the Bank has and 4. the amount that the landowner and the qualified entity have agreed to as long as it is under the FMV, as well as, the significance of the property based on criteria measures and Board decisions. From these applications, the Bank funds what it considers are the best deals to the State. Award criteria is already used by the Bank and has been the same criteria for 14 years and has not had one single complaint from an end user, applicant, or a landowner as to the fairness or effectiveness, or transparency of the Bank process. Not even once. The LAC has interviewed the Bank customers extensively and to the Bank's knowledge, not one had any substantial problems with the Bank process being efficient, fair, and equitable. Different properties always have different values. No two are totally alike and different values should be expected on many various factors. Determining a fixed price that the Bank would pay for an easement would have serious unintended consequences such as paying much more for a grant based on an artificial value than the landowner requested to begin with. Having a fixed grant amount would chill landowner's involvement in conservation. ALL Bank grants for conservation easements average between 30%-50% of the conservation easement value which will normally range from 25%-50% of the actual overall FMV. The average amount paid for a conservation easement by the Bank is 17% as compared to FMV. This exceedingly low amount indicates value to the Bank. This data was made available to the LAC in the Draft Reply.

**Threat of Development:** As discussed earlier, the threat of development is only one of 12 natural resource criteria and 20 overall criteria. While it is an important consideration, this threat, in and of itself, would neither reject or approve a grant. The applicant signs a sworn affidavit as to how large they consider the threat to be and the appraiser takes this threat into consideration in his appraisal. Considering SC is a small State and it has gained a net one million people in the last 25 years, it is easy to consider anything as potential development property. Recreational/agricultural/timber properties are in many cases the highest and best use in terms of market value of properties. This classification does not mean that the threat of development is any less because of this particular use. As discussed earlier, the Bank has not funded any lands classified by

the applicant as a hunting preserve. Even so, because there is hunting or fishing on a property does not lessen the threat of development.

**Budgeting and Grant Awards:** We do not concur with this section. **THE BANK HAS NEVER OVERCOMMITTED ITS RESOURCES TO GRANTS AND IT HAS NEVER EXCEEDED ITS BUDGET AUTHORIZATION.** As previously discussed, the Bank budget process is regulated by the SCEIS accounting system which will not allow an agency to overspend its budget authorization in a fiscal year without legislative approval. The Bank files an annual budget request with the Governor’s Office in October; the House Sub-Committee in January; and the Senate Budget Sub-Committee in February like every other State agency does and is required to do. The Bank uses the BEA estimate of its expected revenues for the next fiscal year as does the General Assembly and every other agency. It is noted that all Bank grants for the ensuing fiscal year have been less than the BEA expected revenues have been so there could have not been any deficiency in amounts that were over committed. The Bank process since inception is to pay for the grants it has funding for in a given fiscal year. At the end of the fiscal year in April, (once in a November meeting) the Board meets to decide what grants out of that application period that it wants to approve funding prioritization for out of the next fiscal year. The Senate Finance ruled in 2008 (Budget Rescission Act) that the SC Bank awards were not State commitments but were prioritizations by the Bank if, and when, it received the budget allocations sufficient to cover them. They were ruled not to be contracts that the State could be held liable for. This statement is now listed on the Bank application and is reiterated at every Board meeting and is signed as an affidavit that they understand these conditions and are aware of this at the time they file an application. We do not concur with the attached table and have inserted our chart showing the actual numbers. The Bank made available the corrected data including the expected revenues from the next fiscal year based on the BEA. The LAC chart in the Summary shows the amount of the prioritized grants but chose not to include the expected revenues that the Bank would receive in the next fiscal year that would more than pay for these grants and, in fact, actually shows excess funds available for other grants. The LAC cannot include one and not the other in order to indicate the Bank overcommitted its funds. This process is consistent with Bank practices since the inception of the Bank. This was explained in the Reply to the LAC Draft Report but not mentioned here. See SCCBank Chart below as a response to the LAC table entitled **Overcommitted Revenues:**

<b>SCCB REVISED</b> OUTSTANDING GRANTS AS OF APRIL 30, 2014	AMOUNTS
Prior to November 2013 *	\$4,742,753
From November 2013 Board Meeting	\$3,504,590
Grants Approved at the April 30, 2014 Board Meeting	\$5,655,960
<b>Total Grants Outstanding</b>	<b>\$13,903,303</b>
Cash-on-hand Balance as of April 30, 2014	\$5,480,708
Estimated Appropriations to be Received for April – June 2014	\$2,861,308
Estimated Revenue for FY14-15	\$7,842,115
<b>Total Funds Available</b>	<b>\$16,184,314</b>
<b>(Total Grants Outstanding Less Total Funds Available)</b> <b>EXCESS FUNDS AVAILABLE</b>	<b>\$2,281,828</b>

**Grants Overextended; Multiple Year Grant Payments:** The Bank chose to make split payments on very large properties in multiple years (3) not because it did not have the funds to pay the grant in the year in which the application was made but because it had rather spread them out so that large grants would not take up so much revenue in one year and other grants could be funded and not be lost. This arrangement was made



with the Qualified Entity and the landowner approval with the knowledge that they may not get the ensuing year payments. The Bank and all concerned think it is a good business decision to do so.

**PUBLIC ACCESS:** Since full public access is required on fee transfers and is not on conservation easements, lower public access on easements is to be expected. However, public benefits are still just as critical to our State. Forestlands require full time management particularly on large tracts and are no more conducive to public access than any other type land. The Bank does not concur that public access should be required or the current percentage should be increased in order to receive a grant from the Bank. It is a fact that fee transfers have more public access. However, conservation easements clearly conserve more acres at less cost and have enormous public benefits that are as important as public access. To fixate only on public access as the most important criteria defeats the overall mission of conserving many different kinds of land and working with landowners in partnership with other agencies and private entities as the Bank Act requires. It should be stated here that the SC General Assembly was aware of the rapid land loss that the State was experiencing and was seeking to find some way of land conservation with a recurring revenue stream in which to conserve significant lands in SC by incentivizing landowners to do so and not to pursue further Regulations to force landowners to infringe on their private property rights. Many different types of lands are named in the Act as important to the cultural and economic success of our State. The Act clearly sets out what the Legislature thought was important and how it should be done and which criteria should receive the most attention. While the Bank Act places some emphasis on public access, it does **not require public access** in order to have a grant approved. It does, however, mention in the Act criteria to require that 10% of lands with Bank grants should have public access. This was added to ensure that State agencies would be able to receive a portion of the Bank grants. It is noted here that the Bank has **substantially exceeded** that amount in every year since its inception (ranging from 28% to 90% with 62% in the current fiscal year). None of the other States that the LAC compared the Bank to had **any** requirement for **any** grant for a conservation easement to have public access. They clearly understood that landowners would not participate in incentivized land conservation with having other people walking around or hunting on their lands because of the safety and liability issues along with having their own private property rights infringed upon; especially at the extremely low amounts per acre that are paid for conservation easements (\$431 per acre avg. for the SCC Bank). To require a higher level of public access will diminish, if not end altogether, participation in incentivized land conservation. Clearly, the SC General Assembly understood this also as they did not make public access a requirement. The Bank clearly does emphasize the importance of public access. The Bank spends 42% of all its funding on lands with Public Access. Fee simple grants require full public access. In fact, The Bank has approved funding for **EVERY** fee simple property application and **EVERY** application brought to it by another State agency including DNR; PRT; and Forestry in order to ensure that the State got the most public access that was available to the Bank. Over 86,362 acres of land, including over 65,000 acres now in the DNR WMA program, now have full general public access as a result of Bank grants. Fee transfers will always have full public access

**PUBLIC ACCESS SCORING AND CONSERVATION EASEMENT DEFICIENCIES:** The Bank has no authority under the Act to impose any penalties or public access requirements on a conservation easement. The terms of an easement are between the Qualified Entity and the landowner and are enforced by the QE. The value of the easement is determined by the qualified appraiser. This was explained in the Draft Reply.

**HUNTING CLUBS:** The Bank does not fund hunting clubs *per se*. Only two grant applications mention the word club. In fact, the majority of the Bank grants have hunting, fishing, and other outdoor recreation on the properties. The Statute singles out the importance of this activity. The landowner may hunt frequently with friends or family or they may lease hunting rights or hunting memberships to derive additional revenues from

their land like any other revenue source. They may, in fact, lease a specific hunting right such as to deer hunting clubs and reserve others for themselves or not participate at all. Most, if not all, of these properties also concurrently have farming and timber management in large degrees that create products and jobs that pay the costs of owning these lands just like any other farm. Hunting season generally lasts for two months. The rest of the time these "Hunting Clubs" are active farms. The fact that these lands are hunted on does not justify singling them out and calling these properties "Hunting Clubs." The threat of development is no less a threat to lands that are hunted on than any other property. The Bank does not know which grants the LAC selected as "hunting clubs" in their chart on average spending, so detailed comparisons are not possible. However, Bank grants on properties like these are due to the large acreage size of some tracts and not because they receive any more or less funding per acre or on an overall basis per acre. As stated before and in the Draft Reply, SC is a small State and we have gained a net 1 million people in the last 25 years and that trend is continuing. Basically, that is why the Bank Act was passed: To conserve some of our significant lands and open spaces while it can still be done.

**POTENTIAL MERGER:** The Bank does not concur that a merger of the Bank with the DNR would be advantageous to the Bank or to the DNR. It would be an inherent conflict of interest to place the Bank under DNR when the DNR itself is a Qualified Entity who can apply and receive grants from the Bank. As answered previously, other than the fact that both entities are funded by documentary stamps there is very little comparison between the Bank and the Heritage Trust program. The Bank buys many different types of land in fee simple and conservation easements statewide that provide many different kinds of public benefits. The Heritage trust buys land to protect environmentally endangered species and environmentally sensitive areas. Many of their land purchases do not have public access for that reason. Neither the Heritage Trust nor DNR does conservation easements. Nor do they want to assume this liability that now rests elsewhere with various non-profit conservation organizations. Bank funds have increased since the Great Recession based solely on the basis of the increase in Documentary Stamps from increased land sales and not because of an increase in appropriation to the Bank as the Bank's funding is tied to a percentage of the doc stamp sales. It can just as easily reverse itself if this trend changes. While the Bank totally supports the DNR and their mission, to say the increase in Bank revenues should make funds available for DNR would simply take the funding from land conservation and transfer them to another agency for some other use. It is noted that the Bank through Provisos has transferred \$3 million of its funding this fiscal year to DNR for WMA management and other costs. The Bank as it currently exists is a two-person agency. It cannot operate with any less so there is no economy of scale involved in placing it elsewhere. The Bank has operated efficiently as it is and would not benefit from additional administrative nor legal support from DNR. As previously stated in the Draft Reply, the Bank has its own scoring and grant approval and methodology and the Board agrees that it can be improved and will look at possible changes. While management of lands already owned by DNR may increase the quality of access, additional public access can only be achieved by obtaining additional lands. The Bank has access to many Board rooms including its own. It moves its meetings around, as do many agencies including the DNR, because it wants to serve different geographical areas as well as accommodate the Board members who travel to meetings. The meetings are announced to the applicants, other interested parties, and the general public through the normal FOI process. The Bank Board members have never charged mileage, per diem, or any other costs for serving on this Board since the inception of the Bank.

## LINE-ITEM COMMENTS ON LAC REVIEW REPORT OF THE SC CONSERVATION BANK

### Introduction

The Bank would prefer to address each issue, however given the 10-page limit imposed by the LAC on our responses, only major issues not covered in the Summary Response are being addressed here. **The Bank has a detailed response to the LAC report that is available upon request.**

### Chapter 1: Background and Introduction

The SC Conservation Bank accepts this chapter as general information.

### Chapter 2: Application and Grant Process

#### ***Application Process and Criteria Evaluation – LAC Report, Pages 11 – 23.***

The response to most of the application process is addressed in the Summary Response document. However, the Bank has concerns over several conclusions of the LAC from their sample of data. The LAC had full access to all of the Bank files. Drawing a subsample of selected applications may lead to conclusions not otherwise determined with a totally random sample. The LAC expressed concerns that there is inconsistency in board discussion of grant applications. There are valid reasons why some applications do not have much discussion. Applications in certain areas often bring low per acre bargain easements to the Board by the same Land trust, such as SOLO, wherein the land trust has standardized the amount of \$250 per acre on grants in the Lower Savannah River Watershed. These grants all have the same land characteristics of other agricultural lands; forest lands; wetlands; and river frontage so that extensive discussion is not necessary for prototypical properties that the Board is very familiar with from numerous previous applications brought in a particular area. Additionally, a review of the Board tapes would reveal more discussion than is written in the minutes.

#### ***Lack of Evidence/Documentation, LAC Report, Pages 18-19***

The Bank's response to LAC concerns regarding the application documentation, narratives and leveraging are included in the Bank's Summary Response.

#### ***Valuation of Properties Process – LAC Report, Pages 26-33***

The process of valuing conservation grant properties and the method of determining the grant award amount are addressed in the Bank's Summary Response. However, it should be further noted that in the application process the "value" of a property for conservation varies by type such as agricultural, wetland, cultural, viewshed quality, unique geologic formations, urban usage, and wildlife (which are stipulated as areas of conservation concern in the Bank Act) **AND** by the significant role of the context of a project (such as does it contribute to a larger core area or is it a contiguous wetland for flood control or water quality). Also, the LAC has suggested that the Bank set criteria for the appraisers, however, we do not believe the Bank can set qualifications for an appraiser who is certified and licensed by another State Agency, the SC Department of Labor, Licensing and Regulation nor do we feel that it is necessary. Another valuation issue of the LAC was the method of determining the development threat for properties. Threat of development is addressed in the Bank's Summary Response.

### Chapter 3: Budgeting and Grant Awards

#### ***Revenue – LAC Report, Pages 35-36***

The LAC Audit of the Conservation Bank repeatedly states that the Bank has "Overcommitted its Resources" which is inaccurate. The Bank has never overcommitted its resources to grants and it has never exceeded its Budget Authority. The Bank takes its "commitments" to fund grants and the **entire** budget process very seriously. Response to the LAC budget report is addressed extensively in the Bank's Summary Report however this is a critical issue and a more detailed response is available upon request.

#### ***Obligated Payments beyond Current Fiscal Year – LAC Report, Pages 38-41***

Response to the LAC budget report regarding payment obligations is addressed extensively in the Bank's Summary Report. In addition to the information provided there, in May 2016 the Bank made a policy

change regarding carryover grant award funding to eliminate danger of losing funds at the end of any FY. The Board established a six-month timeline to submit all due diligence for funds as Priority 1 awards. If an applicant could not complete their due diligence within the six months, all outstanding grants would be on a first come, first serve basis. At the end of two years, if the grant award was still outstanding, the applicant would have to submit a new application. This change was made to notify applicants that those having completed due diligence would be paid after the six-month period regardless of when an award was approved.

The Bank gets its revenue monthly. Once a grant recipient has been approved and is ready to close and all their due diligence is submitted, the Bank requests advanced notice of the closing date to verify if the funds are available for that grant or to request the applicant to change the closing date until sufficient funds are available. The intent was to coordinate scheduling such that Qualified Entities would not have to wait significant periods of time after submitting completed paperwork to receive the State funds. We consider this a good business practice.

***Recommendations – LAC Report, Page 41***

Information on the Bank’s revenue is included in the Bank’s Summary Response.

**Chapter 4: Public Access**

***Public Access Laws - LAC Report, Pages 44-45***

See the Bank’s Summary Response.

***Possible Bank Public Access Law Changes – LAC Report, Pages 46-50***

See the Bank’s Summary Response, however, the Bank reiterates that only 10% of grants are required to have public access. The Bank has far **surpassed** this requirement annually.

***Public Access Policies – LAC Report, Pages 51-52***

See the Bank’s Summary Response.

***Hunting Clubs – LAC Report, Pages 53-55***

See the Bank’s Summary Response.

***Other Funding Available to Applicants – LAC Report, Pages 55-56***

See the Bank’s Summary Response. Additionally, there are many other agencies and organizations that require leveraging from an outside source (e.g. NAWCA; FFRP; CRP; NRCS) to get matching funds from federal or other private sources. **The Conservation Bank grants are basically the only available source of matching funds in South Carolina.**

***S.C. Dept. of Natural Resources Land Management Funding – LAC Report, Page 56-57***

According to a DNR source, the Bank has awarded \$22,587,719 in grants to DNR and DNR has generated an additional \$81,927,491 in Matching Other Funds at that time. Without Bank grant funds, this would not have been possible. It is noted that under Budget Provisos in this fiscal year, the Bank has already transferred \$3 million dollars of its funding to DNR to be used as matching funds for NAWCA and Pittman–Robertson federal funds for WMA management. It is also noted that all applicants for Bank grants, including DNR, sign an affidavit that they have the resources and a general management plan to manage the properties purchased with Bank grant funds. This question also is specifically asked at the Board meetings. Additionally, the Bank Act prohibits the Bank from giving grant funds to any applicant for management purposes or fees. This rule was added to ensure that all funds go toward acquisition of interests in land and to prevent potential abuse in using Bank funds.

**Chapter 5: Administrative and Miscellaneous Issues**

***Board Minutes & Conflict of Interest – LAC Report, Pages 59-61***

The LAC expressed concerns over the detail and availability of Board meeting minutes as well as Board members' and executive staff's potential conflicts of interest from their activities in other conservation organizations or from their interactions with grant applicant Qualified Entities. The LAC recommended that the Bank require signed Conflict of Interest Statements and recusal documents to disclose potential issues and ensure operational transparency. All Board members are informed of any affiliation a member has with a Qualified Entity by the individual member during the Board meeting and will recuse themselves from voting on applications where conflict of interest may be implied. Two incidences were cited as possible conflicts of interest. We accept the recommendations regarding Board member conflicts and will issue a written Conflict of Interest statement to be signed by all Board members. Further, the Bank will enhance the Board minutes and ensure that they are fully available on the agency website as soon as possible after conclusion of the meeting. To ensure fairness and transparency in the grant application process, the Board will provide additional review of staff recommendations prior to Board meetings by an Executive Committee.

#### ***Missing Documentation – LAC Report, Page 61***

The LAC indicated that 23% of the 22 files that they inspected did not have a copy of the final signed fee simple purchase or conservation easement and 73% did not have copies of the final closing/settlement statement in the file. The Bank is not aware of which files are being referenced as they were not listed in the LAC report. This information also does not indicate if a grant check had been issued in these cases before the signed contract was received. We do, in fact, require this documentation prior to a check being issued. Further, the Bank will strive to make sure that all appropriate documentation is on file for every Bank application.

#### ***Strategic Planning – LAC Report, Pages 62-63***

The Bank has developed a Conservation Vision for South Carolina. The Bank's vision does not target specific parcels of land for conservation but focuses on the larger landscape issues of preserving the best of the habitats and unique places in the State and developing corridors between these areas that provide habitat for long-term sustainability of species. The Bank's strategy is to work individually and collectively with the land trusts and non-profits in their geographic areas to incentivize landowners to continue to voluntarily protect important lands in South Carolina. The individual land trusts and non-profits are the most informed and connected to landowners and are more qualified and equipped to find important lands and landowners. The Bank's mission is to support those efforts with education and incentives. These goals are difficult to predict in future or *pro forma* measurable quantities because it is: 1. Voluntary and 2. The amount of funding is ever changing. The Bank continues the on-going process of mapping important core area activities as well as connecting corridors. While all conservation easements are voluntary, by working with the land trusts and non-profits, these core areas are becoming quite distinct. For example, the Savannah River (SOLO); Blue Ridge Escarpment; PeeDee; CoWasse (Congaree/Wateree/Santee) and Santee/Waccamaw areas were designated by consensus of the conservation organizations in South Carolina to be areas of concern and focus for land conservation. **Example maps were provided to the LAC.**

#### ***Real Property Taxes – LAC Report, Pages 63-69***

In their audit report, the LAC stated that property encumbered with a conservation easement and property purchased fee simple by tax-exempt agencies reduced real property tax collections. The Bank does not concur with the LAC conclusions. It is true that fee simple purchase removes property from the tax rolls. The majority of fee simple purchase transfers from the Bank have been to the DNR and other State agencies and a smaller number to qualified non-profit organizations (many were eventually transferred to the DNR or PRT). Conversely, conservation easements ensure that properties remain on the tax rolls at the same rate as before the easement was created. Further, the Bank does not concur the figures regarding the reduction in taxes from decreased property values. Generally, most if not all, of the Bank grants are to properties having agricultural or silvicultural assessed values. By law, this is the lowest possible assessed value of any County Property Tax evaluations and cannot be any lower. Placing a conservation easement on these properties has no effect on the amount of property taxes paid. With a conservation easement, the land remains in the name

of the landowner and they are still responsible for the property taxes that existed at the time of the easement which remain unchanged.

The LAC further recommended that the General Assembly should consider the effect of lower real property tax collections when determining the future of the SC Conservation Bank and the Bank should consider the effect of lower real property tax collections when deciding the number of grants to approve. The Conservation Tax credit charitable deduction found under title 12 of the SC Code of Laws has no connection to the SC Conservation Bank Act and is not a specified criterion that the Bank considers for approving an application. Conservation grants are based on criteria designed to protect significant lands from rapid loss in South Carolina and has no connection to ad valorem taxes. Additionally, we presume that the General Assembly was well aware that tax credits would reduce tax revenues as do any number of tax credits and exemptions and that this was the prerogative of the Legislature. To repeal this tax credit is a legislative decision but would have a chilling effect on land conservation. Regardless, this is not a criterion that is used in determining the value of an interest in real property and is not associated with the Conservation Bank Act in any way. Consequently, these criteria have no effect on property conservation values and are not, and should not, be considered in protecting property.

***Relocation Expenses – LAC Report, Pages 71-72***

The LAC states that prior to FY-2015, the Bank was provided office space, parking and IT support by the DNR at no cost to the Bank. The Bank operated for years under an MOU with DNR to provide minimal office space and services until the requirements outgrew the agreement. This MOU did not offer rent and IT services to the Bank for free. In fact, the Bank paid rent to DNR in the amount of \$9.47 per square foot for 155 square feet that was supposed to house four employees, files, desks, computers, chairs and public entry. However, rent was inconsistently invoiced and in several instances, the DNR failed to provide any invoice or necessary paperwork to pay rent. The DNR provided two offices and joint file storage with the DNR Human Resources. Bank grant files were stored in with DNR personnel files while chairs, desktops and a scavenged sofa from the hallway was used to store active files. By any measure, the Bank simply had run out of space to efficiently operate the agency. We had grown from one FTE in 2002 to two in 2008 with file requirements increasing ten-fold. An intern was added to help with the increased workload who worked in a hallway and the General Assembly provided an additional FTE to the Bank in 2014. All operating expenses, except for IT services, were borne by the Bank. The Bank purchased its own computers, printers, scanners and several software licenses. Access to SCEIS, MS Office and GIS software were provided by the DNR “as long as excess licenses were available”. There was no agreement that the DNR continually would provide free software licenses to the Bank. Finally, DNR wanted its space back as they had grown in the number of Law Enforcement employees and needed the space we were occupying (which was directly adjacent to LE). On several occasions the OSS Deputy Director asked when we were moving so they could allocate our space to DNR staff. Working with the Department of Administration, the Bank attempted to find additional space and exhausted all possibilities before finding space at the 1201 Main St building. The DOA negotiated the lease and the move. As such, the Bank pays the same per square foot rent and the same for monthly parking (which is a reduced amount) as the other ten State agencies housed in this facility and for IT services through DTO which is a State agency responsible for statewide Information Technology.

***Potential Merger of the Bank with the DNR – LAC Report, Pages 72-74***

Our response to the potential merger of the Bank with the DNR are addressed in the Bank’s Summary Response. Another important factor, not included in the Summary Response, that would negatively impact a merger is that many matching fund grant programs, especially federal conservation programs, require “outside match funds”. In other words, matching funds must come from outside of the agency applying for the grant. DNR would lose the capability of using the Bank funds as matching funds from other sources. To date, the DNR has generated \$81,027,491 million in match funds from \$22,587,719 it has received in Conservation Bank grant funds. The DNR could actually lose money from such an arrangement.

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