



## SUMMARY

# A Review of the S.C. Conservation Bank



### INTRODUCTION

Members of the General Assembly asked the Legislative Audit Council to conduct an audit of the S.C. Conservation Bank (Bank) to review:

- The grant application process.
- If the Bank is overpaying for properties.
- If the Bank is overcommitting its authorized budget.
- If sufficient public access on conservation property is being allowed.
- To whom the grants are being awarded.

### BACKGROUND

The Bank, established in 2002, has a mandated purpose of conserving and ensuring public access to South Carolina's natural resources. This is accomplished through Bank grants for conservation easements or fee simple deed transfers with the properties being placed in conservation, and encumbered with land use restrictions, in perpetuity.

The Bank is funded by 25¢ of the \$1.30 state deed recording fee. The Bank may offer loans but generally grants funds to eligible recipients such as SCDNR, SCPRT, S.C. Forestry Commission, municipalities, and non-profits and land trusts — entities experienced in owning and managing conservation properties.

THE BANK CAN IMPROVE ITS OPERATIONS, GRANT APPROVAL PROCESS, AND PUBLIC ACCESS TO PROPERTIES THAT ARE PLACED IN CONSERVATION THEREBY IMPROVING ITS USE OF PUBLIC FUNDS.

### APPLICATION ISSUES

- The Bank has a subjective and ineffective application process for scoring the required conservation, financial and public access criteria.
- There is no criteria or documented methodology as to how the agency determines the amount to award grant applicants — leading to some grantees receiving as low as 21% of fair market value and others receiving as high as 100% of fair market value.
- The Bank, in some cases, is not requiring proper documentation to determine if the threat of development, claimed in the application, is credible. This has possibly resulted in funding some grants to the exclusion of more deserving grants.
- The application score determined by the Bank is not used to determine whether an applicant receives a grant.

### BUDGET LIMITS

The Bank is awarding grants without sufficient revenues based upon future expected revenues, thereby exceeding its authorized budget. This could lead to the state being unable to pay for grants awarded by the Bank if funds from the deed stamp fee are reduced due to poor economic conditions.

### PUBLIC ACCESS

- The Bank does not properly weight its scoring of public access — given the importance the General Assembly has placed on public access as evidenced by the statute.
- The Bank is providing grants to hunting clubs, which often have no or very minimal public access and, as a group, allow less public access than other grant classifications.
- The average amount of a grant for a hunting club exceeds the average of all other grants by over \$250,000.
- The Bank does not question applicants as to why they cannot allow public access.

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## APPLICATION AND GRANT PROCESS

### SCORING

The criteria scoring is a subjective process completed by the same Bank staff member who ultimately recommends the grant, regardless of the application score; therefore, the purpose of scoring the application is unclear.

- Some applications do not provide adequate narrative, which explains more about the criteria as it relates to the property under consideration, or documentation for the staff member to more precisely score the criteria (assign a numerical value).
- There is no scoring pass/fail threshold and no file has been rejected on the basis of the score, which ranges from 40 to 88 in the files we reviewed, with 88 being the highest possible score.
- There is no documented methodology explaining how scores are determined in interpreting the narrative.

### VERIFICATION AND DOCUMENTATION

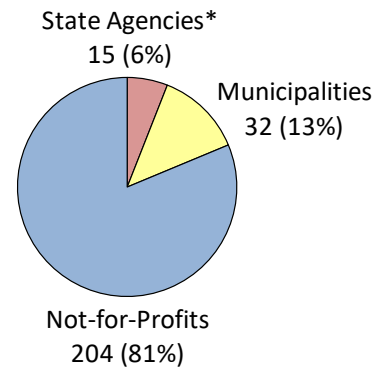
There is no evidence that the assertions in the grant application about the property's conservation criteria value and financial criteria value were verified. The threat of development criteria listed on the application is not being properly documented in some cases, possibly leading to funding some grants to the exclusion of more deserving grants.

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.

### GRANT AWARD METHODOLOGY

The Bank does not have criteria or a documented methodology as to how it determines the amount to award grant applicants. It appears the Bank pays the amounts applied for without negotiation of the grant award amount. This leads to some grantees receiving a high percentage of fair market value of the property and others receiving a low percentage of fair market value. More than 80% of the grants were awarded to not-for-profit conservation groups.

### GRANT AWARD DISTRIBUTION



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

### GRANT AWARD PROCESS

Applications for grants are submitted by the landowner, S.C. Department of Natural Resources (SCDNR), S.C. Forestry Commission, S.C. Department of Parks, Recreation and Tourism (SCPRT), and municipalities, with the landowners usually assisted by qualified entities, such as non-profits whose principal activity is the acquisition and management of interests in land for conservation or historic preservation.

Grants are awarded for fee simple purchases (outright sale of land) and for conservation easements, which place restrictions on the land, mainly limiting or eliminating development in perpetuity.

The application is scored by the Bank using criteria set forth in state law regarding conservation and financial criteria, which the landowner uses to identify what conditions and attributes the property has — such as wetlands, forestland, farmland, historic sites, endangered species, etc. Each criterion has a check-the-block square, sometimes accompanied by a narrative, which assists in scoring criteria.

Financial criteria includes the degree to which:

- A unique opportunity is present to protect the land at a reasonable cost.
- Grant funding provided by the Bank may be leveraged. Leveraging includes other funding sources, in-kind assets, etc. Public access refers to the degree to which the public can access the property.

## 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.	State funds generally not expended in enforcing the easement.
PUBLIC ACCESS	Required.	Not necessarily required.
PUBLIC ACCOUNTABILITY	State agencies are accountable to the public.	Non-profits are not fully accountable to the public.

### PROPERTY VALUE DETERMINATIONS

Our review of a sample of files revealed the average paid for property from Bank grant funds was \$274,933 below fair market value. This is, on average, 50% below the fair market value of the properties. The fair market value of the property to be conserved is established by a certified appraiser. We found four properties in our test that were paid at 100% of fair market value and two easements receiving over 84% of fair market value.

The agency has no stated methodology used to determine how much to award grantees for the fee simple sale or conservation easement, and the Bank could negotiate with the applicants regarding the percentage of fair market value paid. We recommend the Bank develop criteria for award amounts which could help ensure that the Bank's limited funds are spent optimally.

### NUMBER OF PROPERTIES SOLD AT OR BELOW FAIR MARKET VALUE

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

### THREAT OF DEVELOPMENT

In Bank applications, qualified entities are required to describe the threat of development facing the land in question.

In our review we found the Bank does not:

- Verify claims of threats of development, although the threat of development of land is an important factor in determining the funding of applicants' projects.
- Require specifics regarding potential threats. Of 57 files reviewed, 37% did not contain a narrative regarding the threat of development.
- Resolve claimed threats of development in applications that are in conflict with the conclusions of the professional appraiser of the property.
  - An example of a threat of development claim that differed with the appraiser involved a property that was used as a hunting preserve. The applicant claimed that the property was in danger of non-traditional use within 10 years and was located near imminent infrastructure development. However, the appraiser concluded that the property's highest and best use was to remain a hunting preserve.

## BUDGETING AND GRANT AWARDS

### GRANTS OVEREXTENDED

We found instances of the agency awarding grants without sufficient revenues, based upon future expected revenue. This could lead to the Bank being unable to honor grants already awarded due to insufficient funds.

S.C. Code of Laws §48-59-75 directs that when more than half of the state agencies receive budget cuts, the Bank receives no deed recording revenue, its main source of revenue, as those funds are stopped from transfers to the agency.

Therefore, it is important for the Bank to stay within its approved appropriations and not allow grants based upon expected future revenues.

We reviewed revenue and the cash position of the agency as of a particular point in time and calculated that it was overcommitted by \$7.8 million.

### OVERCOMMITTED REVENUES

OUTSTANDING GRANTS AS OF APRIL 30, 2014	AMOUNT
GRANTS OUTSTANDING	
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>
REVENUE	
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.

### MULTIPLE YEAR GRANT PAYMENTS

The Bank knowingly planned to make multiple payments extending into the next fiscal year, or several years, for six grants it approved for funding from FY 10-11 through F 14-15. The Bank did not have the funds to pay the full amounts of the grants. The Bank could be committing itself without assurance the funds will be available.

The November 2015 (FY 15-16) Bank board meeting minutes reflect the following content discussed and action taken in the meeting, and demonstrates the board acknowledged it was overextending grant awards by \$9.5 million.

- Due to potential budget forecasts, none of the 33 grants awarded would have funding available until after July 1, 2016 (FY 16-17).
- The board approved 33 grants totaling \$9,504,419.

## PUBLIC ACCESS

State law places an emphasis on public access when awarding S.C. Conservation Bank grants and is mentioned no less than five times in the pertaining S.C. Code of Laws. 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.

### CONSERVATION EASEMENT VS. FEE SIMPLE

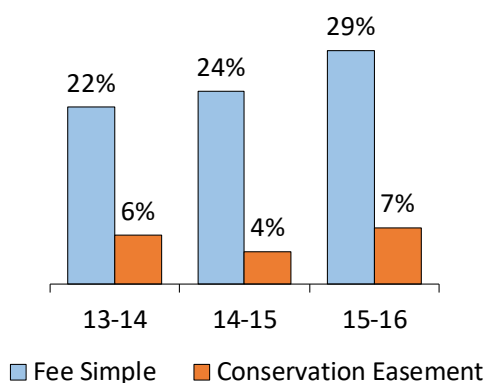
BANK GRANT TYPE	NUMBER OF GRANTS	ACRES WITH FULL PUBLIC ACCESS
Fee Simple	71	75,446.55
Conservation Easement	10	10,915.87
<b>TOTAL</b>	<b>81</b>	<b>86,362.42</b>

### PUBLIC ACCESS

- Approximately one-third of the grants awarded do not allow any public access.
- How much public access to be allowed is left up to the land owner and qualified entity.

Grants for fee simple purchase are required by law to allow public access. Conservation easements have no such requirement. The result has been a lower percentage of full public access on conservation easements.

### FULL PUBLIC ACCESS FEE SIMPLE AND CONSERVATION EASEMENT GRANTS



### PUBLIC ACCESS SCORING

The Bank does not impose different levels of public access on different types of properties and is not required to by state law. However, some land is more conducive to public access than other types. For example, forestland is more conducive to public access than farmland.

- Farmland has agricultural processes ongoing, which could be nearly year-round.
- Forestland, generally, has no such activity and it is easier to allow public access and is more reasonable for the Bank to expect more public access allowed on such tracts.

However, the Bank makes no provision for these differences and this element of the conservation of property is not taken into consideration in its evaluation. All types of property are treated the same and has the same maximum points available for public access scoring — 15. Although it is clear the General Assembly emphasizes public access, the other criteria have been assigned much higher total point potential by the Bank — 48 for conservation criteria and 25 for financial criteria.

### CONSERVATION ON EASEMENT DEFICIENCIES

Applicants’ intentions to allow public access, as stated on the application, are not necessarily recorded in the conservation easement, which makes it unclear as to if there is any obligation of the applicant to allow the public access noted, and no means to enforce the “intention.”

Many of the applications awarded have broadly-written conservation easements that are not specific with regard to how public access is allowed or required. This makes it problematic for the Bank to know how to categorize the level of public access in its reporting of data and it is uncertain if there is a landowner obligation to allow public access.

FOR MORE  
INFORMATION

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

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## HUNTING CLUBS

Hunting clubs have a combination of factors that bring into question the propriety of awarding these grants the way they are currently being awarded. Grants are funded by deed stamp funds, which are paid by many South Carolina companies and citizens, yet these same citizens generally do not have access to enjoy the property. These factors are:

- The threat of development, as listed on the grant application, is often not a credible one and the bank does not require documentation to support the claim.
- Hunting clubs and owners of the conservation easements often allow no or very minimal public access.
- The average grant amount for hunting club conservation easements exceeds the average grant award by just over \$250,000.

### AVERAGE SPENDING

HUNTING CLUBS	ALL OTHER BANK GRANTS
\$805,394	\$538,913

## POTENTIAL MERGER

During our review we found the Bank and SCDNR, through its Heritage Trust program, have similar missions and a merger of the two offers some advantages that could improve the Bank's operations.

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 some funds are available to shift to SCDNR. SCDNR could:

- Support the Bank's administrative functions (IT, legal).
- Support core functions such as providing personnel to develop a scoring methodology and score applications for grants to improve objectivity.
- Increase public access to state-owned lands, as SCDNR has more capacity, but cannot utilize it without additional funding.
- Provide Bank board meeting space for public meetings so the public is aware of the location. Currently the meeting location changes each time and is arranged on an ad hoc basis.

The Bank may benefit from a merger with SCDNR but continue with its separate mission — with its own designated funding.