

MINUTES  
HERITAGE TRUST ADVISORY BOARD  
NOVEMBER 3, 2005  
FRANCIS MARION UNIVERSITY  
FLORENCE, SC

Members Present

Julia Krebs (Chair)  
Campbell Coxe (Vice-Chair)  
Beth Grace  
Freddy Vang  
Henry Fair  
Fritz Hamer (for William Galloway)  
Rodger Stroup  
Jake Rasor  
Sonny King  
Joel Felder (for Bob Showalter)  
Graham Gallivan (for Bob Faith)

Members Absent

Mike McShane  
John Frampton  
Mike Foley  
Jon Leader

Others Present

Barry Beasley  
Stuart Greeter  
Paul League  
Ken Prosser  
Bert Pittman  
Hank Stallworth  
Kathy Boyle  
Jamie Dozier  
Tim Ivey  
Breck Carmichael  
Marvin Davant  
Lynn Quattro  
Ann Darr  
Kay Daniels  
Sam Alford  
Emily Cope  
John Brubaker

Julia Krebs called the meeting to order and called the roll.

Approval of May 19 Minutes

A motion was made and seconded to approve the minutes of the May 19, 2005 Heritage Trust Advisory Board (HTAB) meeting. The motion was approved.

Comments from the Director

Barry Beasley stated there is an opportunity to expand Forty Acre Rock Heritage Preserve and he reported that grants for \$1 million each had been obtained from the US Fish and Wildlife Service and the SC Conservation Bank. Mr. Beasley said that part of the Heritage Trust mission is to conduct biological surveys and more of this work will be done in the future.

Marvin Davant gave members a report on the SC Conservation Bank. Since its inception 18 months ago, he stated 31 projects have been funded to protect 33,000

acres across the state. He said that revenues for the fiscal year 2006 will be approximately \$20 million, which is a significant increase from the previous year. Mr. Davant stated that several significant tracts of land are currently available and he looked forward to working with Heritage Trust to protect them.

### Other Business

1. Comprehensive Wildlife Conservation Plan: Lynn Quattro discussed this congressionally mandated plan and said it would benefit wildlife species and their habitats in every state. She said the plan addresses management approaches, partnerships and a long-term vision that will help DNR determine priorities for protection projects. After the plan is approved, Ms. Quattro said funding procedures will be developed along with an annual work plan and a database.
2. Forest Legacy Program: Emily Cope explained the program and stated its goal is to protect important forested land threatened by non-forest uses. She said the program was established in 1996 under the US Forest Service and added that 45 states participate. All funds received require a 25 percent match. Ms. Cope said title to property acquired with these funds must be held by a government entity and the lands must remain as a working forest. Since fiscal year 2000, she stated that South Carolina has received \$29 million for land protection projects.
3. Dedication of Heritage Preserves: Paul League discussed the issue of whether property acquired using the Heritage Land Trust Fund must be dedicated as a preserve. After examining the Heritage Trust Act, Mr. League concluded that DNR may acquire priority areas without dedicating them, but the Heritage Trust Program would be responsible for managing them. He added that the long-term objective of the law is the protection of priority areas as preserves through dedication. The statutes provide a stepped process for the acquisition, dedication, and placing in trust of priority areas. The law does not mandate the immediate dedication of land acquired with Heritage Land Trust Funds. The DNR has the flexibility to sell land prior to dedication and retrench the proceeds into the trust fund. Land acquired with trust funds that will be permanently retained by the DNR should be dedicated commensurate with the funds originating from the Heritage Land Trust Fund. Rodger Stroup requested Mr. League write a summary of his findings and it be attached to the board minutes.
4. Berry's Mill Conservation Easement: Stuart Greeter informed members that when governmental entities convey conservation easements to other entities, they must be approved by HTAB. Mr. Greeter explained the proposed easement in Greenville County that would protect a source of drinking water for Spartanburg. A motion was made to approve the easement. The motion was approved.

5. State Bonds for Land Acquisition: Mr. Beasley reported that several significant tracts of land in the state are currently for sale by timber companies. To acquire them, he proposed the idea of issuing revenue bonds and using the Heritage Land Trust Fund to repay the cost. Mr. Beasley explained that a legislative bill would be required to allow DNR to issue bonds. He added that alternatives to a bond bill would also be examined. After some discussion, a motion was made to move in the direction of issuing bonds for land protection. The motion was approved.

#### Budget Committee

The board entered executive session to discuss contractual matters. They returned to regular session and voted to approve the Heritage Land Trust Fund budget as presented. Addendums to the budget included the Marsh Furniture tract, Tiger Bay, Fish Dam Ford, additions to Forty Acre Rock and a legal issue at Lewis Ocean Bay.

The next meeting will be February 1 and 2, 2006 at the Webb Center in Jasper County.

Adjourn.

/k

Attachment

ATTACHMENT TO THE NOVEMBER 3, 2005 MINUTES



## MEMORANDUM

<b>To:</b>	Barry Beasley
<b>From:</b>	Paul League Deputy Chief Counsel
<b>Date:</b>	November 8, 2005
<b>Subject:</b>	Heritage Land Trust Fund

Written below are my notes on the presentation given to the Heritage Trust Advisory Board on November 3, 2005.

**QUESTION:** Must every acquisition of land made with funds from the Heritage Land Trust Fund be dedicated under Section 51-17-80?

The South Carolina Heritage Trust Program, as provided in Section 51-17-10, *et seq.*, SC Code Anno., includes three sections addressing the subject of funding. Each section will be discussed below.

Section 51-17-110 states:

Funding; appropriations; user fees; income.

The department shall include those costs and operating expenses necessary for the activities of the board of the department and the advisory board as well as staff support to carry out the provisions of this act in the annual State Appropriation Act. Funding for management of areas and features which become Heritage Preserves must be specifically requested by the department or that entity of government responsible for management thereof.

The board of the department shall select those Heritage Preserves for which it is appropriate to charge an individual user fee. The department may sell such user permits for a cost not to exceed five dollars and to be valid for the fiscal year in which issued at all Heritage Preserves where a permit is required. At the end of the fiscal year, the department shall distribute the funds collected among the

entities of government assigned responsibility for management in direct proportion to the acreage which they manage. The proceeds of the sale of the user permits must be used to defray the management expenses.

This section addresses two separate but related matters. The first paragraph mandates the DNR to include certain costs of administering the program "in the annual State Appropriations Act." If only the DNR had that power. What seems to be mandated is that the DNR include the projected costs of administering the program in its annual request for funding from the General Assembly. Obviously, the legislature retains discretion in determining the amount of funds to be appropriated for these purposes. One interesting requirement of the first paragraph is that funding for management of a preserve must be made "by the department or that entity of government responsible for management thereof." At present, the DNR has delegated management responsibility for several preserves to both governmental and non-governmental entities.<sup>1</sup>

The second paragraph authorizes the DNR to charge a user fee. The proceeds from the sale of user permits must be used for preserve management expenses. To date, the DNR has not selected any preserves as appropriate for the charging of a user fee.

Section 51-17-115 states:

#### Establishment and administration of Heritage Land Trust Fund.

There is created the Heritage Land Trust Fund, which must be kept separate from other funds of the State. The fund must be administered by the board of the department for the purpose of acquiring fee simple or lesser interest in priority areas, legal fees, appraisals, surveys, or other costs involved in the acquisition of interest in priority areas, and for the development of minimal facilities and management necessary for the protection of the essential character of priority areas.

Unexpended balances, including interest derived from the fund, must be carried forward each year and used only for the purposes provided in this chapter.

No fund money may be expended to acquire interest in property by eminent domain nor may the funds be expended to acquire interest in property without a recommendation of the Heritage Trust Advisory Board and the approval of the State Budget and Control Board.

The board of the department shall report by letter to the presiding officers of the General Assembly not later than January fifteenth each year all funds expended pursuant to this chapter for the previous year, including the amount of funds expended and the uses to which the expenditures were applied.

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<sup>1</sup> For example, the management plan for the Peachtree Rock HP indicates that the Nature Conservancy will manage the preserve. The plan for the Wood Bay HP indicates that the SC Department of Parks, Recreation & Tourism will manage the preserve. Presumably, SCPRT will request funding from the legislature, while the TNC will bear the costs of management out of its own pocket.

The fund is eligible to receive appropriations of state general funds, federal funds, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. Reimbursement for monies expended from this fund must be deposited in this fund. Funds received through sale, exchange, or otherwise of any Heritage Preserve acquired under this section, or products of the Preserve such as timber, utility easement rights, and the like, accrue to the fund.

This section both creates and circumscribes use of funds from the Heritage Land Trust Fund.<sup>2</sup> The first paragraph of the section provides three categories of allowable use of the funds. The funds may be used to acquire ownership interests in real property (priority areas), development of minimal facilities, and prescribed management. The scope of authority of the DNR must be gleaned from this rather cursory statement of policy.

Paragraphs 2, 3, and 4 of Section 115 do not include standards on allowable uses of Heritage Land Trust fund moneys.

The last paragraph of the section contains a couple of matters of interest. The second sentence states, "Reimbursement for monies expended from this fund must be deposited in this fund." This requirement implies that trust funds may be expended for some purpose of purposes where reimbursement may occur. At first blush one might suggest that the General Assembly was authorizing the DNR wide latitude in expending funds when a possibility of reimbursement was present. However, this sentence is restricted by the legislative intent manifested throughout the paragraph. The purpose of the paragraph is to identify sources of funds that the DNR may place in the Heritage Land Trust Fund.

Section 51-17-117 states:

Heritage Trust Program; donations of real and personal property;  
disposition of donations.

(A) Donations of real and personal property including, but not limited to, land, houses, stocks, and bonds may be made to the Heritage Trust Program.

(B) The board of the department, on its own or by its agent, may:

(1) sell donated property. Proceeds from the sales must be deposited in the Heritage Land Trust Fund and used for the purposes established in this chapter;

(2) establish minimum acceptable prices for disposition of donated property;

(3) trade donated property for property of equal value;

(4) promote donations to the program through advertising;

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<sup>2</sup> The General Assembly has provided one source of recurring funds for the trust fund. Sections 12-24-90 and 12-24-120, SC Code Anno., allocate a portion of deed recording fee to the Heritage Land Trust Fund.

(5) decline donations for any reason.

This section addresses donation of real or personal property. Donations accrue to the "Heritage Trust Program" under the SCDNR. The DNR appears to have some flexibility in use of the property; however, a requirement that donated property be used in support of the Heritage Trust Program is implicit. When any donated property, real or personal, is sold by the DNR, the proceeds of the sale go the Heritage Land Trust Fund. While donations of money are not specifically mentioned, any such donations would go into the Heritage Land Trust Fund immediately upon receipt.

Of the three statutes outlined above, only the first paragraph of Section 51-17-115 squarely addresses the question of the scope of use for trust funds. The pertinent language states:

The fund must be administered by the board of the department for the purpose of acquiring fee simple or lesser interest in priority areas, legal fees, appraisals, surveys, or other costs involved in the acquisition of interest in priority areas, and for the development of minimal facilities and management necessary for the protection of the essential character of priority areas.

Even though the statute authorizes expenditures for varying purposes, all must be in relation to "priority areas." A priority area is defined in the law as:

"Priority areas and features list" means the list made up of those areas and features recommended by the advisory board, and approved by the board of the department, under this chapter whose preservation is of primary importance to the goals and purposes of this chapter and which are, therefore, eligible to be included as Heritage Preserves and Sites. (Section 51-17-10.11)

The key term here is eligible.<sup>3</sup> Trust funds must be used to acquire, etc., priority areas; however, the statute does not mandate that those areas must become "Heritage Preserves and Sites." The legislature assigned specific terms to specific actions as evidenced by the detailed definitions contained in Section 51-17-10. In administering the law, an administrative agency must accept the clear terminology used by the legislature. The mere purchasing of an interest in a priority area does make the area a

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<sup>3</sup> Merriam-Webster Online Dictionary: Main Entry: el-i-gi-ble

Pronunciation: 'e-l&-j&-b&l

Function: *adjective*

Etymology: Middle English, from Middle French & Late Latin; Middle French, from Late Latin *eligibilis*, from Latin *eligere* to choose -- more at ELECT

1 a : qualified to participate or be chosen : **ENTITLED** <eligible to retire> b : permitted under football rules to catch a forward pass <an *eligible* receiver>

2 : worthy of being chosen : **DESIRABLE** <an *eligible* young bachelor>

"Heritage Preserve." The Heritage Trust Program statutes outline a series of actions available to protect priority area, including the dedication of an area as a heritage preserve. However, the act of dedication is separate from acquisition. This conclusion may be shown by reference to various portions of the program statutes. For example, duties assigned to the Board of the DNR<sup>4</sup> in Section 51-17-40 demonstrates the progression of authorized acts for the protection of natural and cultural resources:

2. To supervise the establishment, updating and maintenance of a statewide inventory of the natural and cultural resources and the maintenance of a list of those areas and features selected or established under this chapter as priority areas and features or as Heritage Preserves and Sites;

3. To select from the recommendations of the advisory board those natural and cultural features, the preservation of which is of primary importance to the goals and purposes of this chapter, and to classify such as priority areas and features;

4. To select from the recommendations of the advisory board those priority areas and features which should be dedicated or recognized as Heritage Preserves or Sites, and thereafter to establish as such through dedication or recognition;

5. To select from the recommendations of the advisory board those Heritage Preserves, interests therein or portions thereof, deserving of protection under the Heritage Trust and thereafter to transfer same into the corpus of the trust.

The law recognizes that the State cannot protect every significant natural and cultural asset. Section 51-17-20 contains the following legislative finding:

While the preservation of all of these assets in their natural state is both impractical and often not necessarily in the total best interest of the State and the public, they exist in limited and decreasing quantities. The time is now for a decision to be made as to which of these areas and sites deserve increased protection and for selecting the most appropriate means for doing so.

Thus, the General Assembly established the Heritage Trust Program, authorizing the DNR, its Board, and the Heritage Trust Advisory Board to carrying out a variety of actions, ranging from the creation of inventories of natural assets to management of real property in the corpus of the trust. The program envisioned by the legislature was not simply the dedication of land as Heritage Preserves; rather, the legislature provided for a broader role for the DNR as also stated in Section 51-17-20:

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<sup>4</sup> This Code section continues to refer to the Wildlife and Marine Resources Commission. This was a clear oversight on the part of the legislature in its enactment of Act No. 181 of 1993 (re-structuring law).



It is therefore the public policy of this State to secure for the people, both present and future generations, the benefits of an enduring resource of natural and cultural areas and features by establishing a system of Heritage Preserves and Sites; protecting this system; gathering and disseminating information regarding it; establishing and maintaining a listing of Heritage Preserves and Sites; and otherwise encouraging and assisting in the preservation of natural and cultural areas and features of this State. (Emphasis added).

The following question will demonstrate the application of the conclusion stated above:

Question – Ditch Pond: Land was purchased using funds from the Heritage Land Trust Fund. A small portion of the land was separated from the remainder by a highway. The small portion was not dedicated as a Heritage Preserve. The DNR tentatively has classified the small portion as surplus land to be sold. Was this a proper use of Heritage Land Trust Fund? Must the decision to surplus the small undedicated portion of Ditch Pond be reviewed and approved by the Heritage Trust Advisory Board?

The answer to the first question is yes. This conclusion assumes that all of the Ditch Pond tract was properly designated as a priority area. Thereafter, the a decision was made to dedicate only a portion of the property. At this point, a comment on the real world is appropriate. Often, sellers of real property are not willing to part with only a portion of a tract. The DNR, not infrequently, has been confronted with purchasing land that is not of the caliber of the natural feature that requires protection that is part of a larger tract. No good reason exists, and the law does not require, the DNR to manage this type of land. Therefore, the DNR and the interests of the Heritage Trust Program are best served by not dedicated the poorer land. The program can be served by seller that land and directing the proceeds of the sale to the Heritage Land Trust Fund for future use.