

**CHARLESTON COUNTY ORDINANCE NO. _____
ESTABLISHING THE CHARLESTON COUNTY GREENBELT BANK
AND OTHER MATTERS RELATING THERETO**

WHEREAS, Charleston County Council finds that Charleston County is experiencing rapid land development and economic growth which has benefited the County's people and economy, but has also led to the loss of forestlands, farmlands, open space, wildlife habitats, outstanding natural areas, and beaches; and has impacted the health of the county's streams, rivers, wetlands, estuaries, and bays, all of which impacts the quality of life of the county's current and future citizens and may jeopardize the well-being of the county's environment and economy if not addressed appropriately, and

WHEREAS, this same rapid land development has also led to the loss of historical and archaeological sites that embody the heritage of human habitation in the County, and

WHEREAS, Charleston County Council has begun to develop and will implement a comprehensive transportation plan through revenues from the half-cent sales tax that will inevitably cause urban areas to expand. Therefore, it is imperative that the County establish a board and a funding source to preserve wildlife habitats, outstanding natural areas, sites of unique ecological significance, historical sites, forestlands, farmlands, watersheds, open space, and urban parklands in the County to promote balanced growth, provide for the well-being, and quality of life of the county's citizens, and

WHEREAS, the protection of open space by acquisition of real property (whether a limited interest or in fee simple) from willing sellers is essential to ensure that the County continues to enjoy the benefits of wildlife habitats, forestlands, farmlands, open space, parks, historical sites, and healthy streams, rivers, bays, and estuaries; for recreational purposes, for scientific study, for aesthetic appreciation, for protection of critical water resources, to maintain the county's position as an attractive location for visitors and new industry, and to preserve the opportunities of future generations to benefit from the existence of the county's outstanding natural and historical sites, and

WHEREAS, the State of South Carolina also recognizes the importance of natural and historical resources and the necessity of balanced growth. As a result, the State enacted the South Carolina Conservation Bank Act. In order to compliment the objectives of the State, the Charleston County Conservation Bank Ordinance is modeled after the South Carolina Conservation Bank Act to the extent the Charleston County half-cent sale tax which is currently the main funding source for this ordinance, can fund projects under the ordinance. In doing so, the County will encourage cooperation and innovative partnerships among landowners, state agencies, local governments, and nonprofit organizations, which must work together in order to meet these objectives, and

WHEREAS, in order to carry out these purposes, Charleston County Council will make annual appropriations from the Greenbelts portion of the Charleston County half-cent sales tax which was approved by the voters of Charleston County on November 2, 2004, as needed, to acquire interests in land from willing sellers that meet these objectives, and to ensure the orderly development of the County. To these ends, Charleston County Council hereby adopts the above-stated recitals as findings of fact and hereby enacts the following ordinance creating the Charleston County Greenbelt Bank.

SECTION ONE: MEMBERSHIP, TERMS, ORGANIZATION

- A. There is established the Charleston County Greenbelt Bank. The Bank is governed by a nine-member board appointed by Charleston County Council and selected as follows:
 - (1) One must be a board member of a charitable corporation or trust authorized to do business in this State that is actively engaged in the acquisition of interests in land from voluntary sellers for the purposes of natural resource or land conservation in Charleston County;
 - (2) One must be an owner of rural real property actively engaged in the management and operation of forestlands, farmlands, or wildlife habitat;
 - (3) One must be an owner of real property who is actively engaged in the real estate business;
 - (4) One must be in the business of appraising forestland, farmland, or conservation easements;
 - (5) One must be a board member of a charitable corporation or trust authorized to do business in this State which is organized for historic preservation purposes;
 - (6) One must be a board member of an organization that represents hunting, fishing or outdoor recreation interests;
 - (7) One must be engaged in the business of banking, finance or accounting;
 - (8) One must be a licensed attorney admitted to practice before the South Carolina Supreme Court with an emphasis in real estate and or land use law; and
 - (9) One member at-large.
- B. All appointed board members must have a demonstrated background, experience, and interest in the conservation of natural or historical resources.
- C. Terms of board members are for four years and until their successors are appointed

and qualify, except that the initial terms of the members must be staggered with the initial term noted on the appointment. Vacancies must be filled in the manner of original appointments for the unexpired portion of the term. Members shall serve without compensation, but may receive the mileage and per diem as may be authorized and appropriated by Charleston County Council. The board shall elect a chairman and other officers as necessary from its membership. The Board shall adopt rules and procedures to conduct its meetings

- D. The Board is a public body and its members are hereby expressly subject to the South Carolina Ethics Act, as amended, and must perform their duties in accordance with its provisions.
- E. The board shall meet at least once monthly in regularly scheduled meetings and in special meetings as the chair may call. All meetings must be conducted in accordance with the South Carolina Freedom of Information Act.

SECTION TWO: DUTIES AND RESPONSIBILITIES

A. The Bank is established and through its board it is authorized to:

- (1) award grants to “Eligible Greenbelt Fund Recipients” for the purchase of land or interests in land, so long as the grants advance the purposes of this ordinance and meet criteria contained in Section Four (D)(E) and (F).
 - a. Eligible Greenbelt Fund Recipient means: Charleston County or a municipality in Charleston County, or any agency, commission, or instrumentality of the County or municipality within Charleston County; or a not-for-profit charitable corporation or trust authorized to do business in this State and organized and operated for natural resource conservation, land conservation, or historic preservation purposes, and having tax-exempt status as a public charity under the Internal Revenue Code of 1986, and having the power to acquire, hold, and maintain interests in land for these purposes.
- (2) any grant as described herein must be approved in advance by Charleston County Council consistent with the provisions of this ordinance; and
- (3) apply for and receive additional funding for the Greenbelt Fund from federal, state, private, and other sources, to be used as provided in this ordinance; and
- (4) receive charitable contributions and donations to the Greenbelt Fund on behalf of Charleston County Council, to be used as provided in this ordinance; and
- (5) receive contributions to the Greenbelt Fund in satisfaction of any public or private obligation for environmental mitigation or habitat conservation, whether

such obligation arises out of law, equity, contract, regulation, administrative proceeding, or judicial proceeding. Such contributions must be used as provided for in this ordinance.

B. To carry out its functions, the Bank shall:

(1) operate a program in order to implement the purposes of this ordinance;

(2) develop additional guidelines and prescribe procedures, consistent with the criteria and purposes of this ordinance, as necessary to implement this ordinance;

(3) submit an annual report to Charleston County Council.

C. The County Administrator is directed to provide the initial staff/support to operate the Greenbelt Bank and carry out the purposes of this Ordinance. When and if deemed appropriate by the Bank, the Bank may seek County Council's approval to hire permanent staff.

D. Operating expenses of the Bank must be paid out of the Greenbelt Fund in accordance with Charleston County Policies and Procedures.

SECTION THREE: The Charleston County Treasurer shall establish an account separate and distinct from all other funds appropriated by County Council, called the Charleston County Greenbelt Bank Fund. The Charleston County Greenbelt Bank Fund may receive revenues annually from the proceeds of the half-cent sales tax as approved by voters on November 2, 2004 and other revenues or funding sources as authorized and appropriated by Charleston County Council. Revenues from the half-cent sales tax are restricted solely for financing the cost of greenbelts. Any other revenues or funding sources may be used for greenbelts and any other purpose as defined in this ordinance.

SECTION FOUR: PROGRAM AND PROCEDURES

A. An Eligible Greenbelt Fund Recipient independently or in conjunction with the landowner may apply for a grant from the Greenbelt Fund to acquire an interest in land identified in its application. Within five business days of the applicant's submittal to the Greenbelt Bank, the applicant must notify in writing any adjacent landowners and other property owners within 300 feet of the proposed parcel of the applicant's submittal to participate in the Greenbelt program. Contiguous landowners and other interested parties may submit in writing to the board their views in support of or in opposition to the application. Based on a review of these submissions, or in any instance where the board determines the public interest so requires, it may hold a public hearing on the application at which the Eligible Greenbelt Fund Recipient, contiguous landowners, and other interested parties may be heard.

- B. Before an award to disburse greenbelt funds for the purchase of any interest in land, the Eligible Greenbelt Fund Recipient receiving the funds must notify the owner of the land, that is the subject of the Greenbelt Fund grant, of the following in writing:
- (1) that interests in land purchased with greenbelt funds result in a permanent conveyance of such interests in land from the landowner to the Eligible Greenbelt Fund Recipient or its assigns; and
 - (2) that it may be in the landowner's interest to retain independent legal counsel, perform appraisals, create surveys, and seek other professional advice; and
 - (3) the application must contain an affirmation that the notice requirement of this subsection has been met.
- C. Grants from the Greenbelt Fund must be awarded based upon the conservation criteria contained in subsection (D) and the financial criteria contained in subsection (E) of this section. In each application, the qualifying entity must provide information regarding how the proposal meets one or more of the following criteria and advances the purposes of the Bank.
- D. For purposes of this ordinance, conservation criteria include:
- (1) the value of the proposal for the conservation of unique or important wildlife habitat;
 - (2) the value of the proposal for the conservation of any rare or endangered species;
 - (3) the value of the proposal for the conservation of a relatively undisturbed or outstanding example of an ecosystem indigenous to South Carolina;
 - (4) the value of the proposal for the conservation of riparian habitats, wetlands, water quality, watersheds of significant ecological value, critical aquifer recharge areas, estuaries, bays or beaches;
 - (5) the value of the proposal for the conservation of outstanding geologic features;
 - (6) the value of the proposal for the conservation of a site of unique historical or archaeological significance;
 - (7) the value of the proposal for the conservation of an area of critical open space, forestlands, farmlands, or wetlands that promotes the objectives of state or local plans for preservation of open space;

- (8) the value of the proposal for the conservation of an area for outdoor recreation, greenways, or urban parkland;
- (9) the value of the proposal for the conservation of a larger area or ecosystem already containing protected lands, or as a connection between natural habitats or open space that are already protected;
- (10) the value of the proposal for the size of the land protected;
- (11) 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; and
- (12) the value of the proposal because of the likelihood that the land will be developed unless protected with greenbelt funds.
- (13) The value of the proposal as it relates to the Comprehensive Greenbelts Plan as approved by the PRC and Charleston County Council, including the Greenbelts Map, Greenbelts Criteria, and Greenbelts Priorities.

Notwithstanding the above criteria or any other provision in this ordinance, proceeds from the Charleston County half-cent sales tax cannot be used to acquire any interest in property inconsistent with S.C. Code Ann. Section 4-37-30.

E. For purposes of this ordinance, financial criteria include:

- (1) the degree to which the proposal presents a unique value opportunity in that it protects land at a cost that is below fair market value, or protects at or below fair market value land that is likely to appreciate dramatically in value;
- (2) the degree to which the proposal leverages Greenbelt Funds by including funding or in-kind assets or services from other governmental sources such as federal, county, municipal, and other sources of state funds;
- (3) the degree to which the proposal leverages Greenbelt Funds by including funding or in-kind assets or services from private or nonprofit sources, or charitable donations of land or conservation easements;
- (4) the degree to which the proposal leverages Greenbelt Funds by purchasing conservation easements that preserve land at a cost that is low relative to the fair market value of the fee title of the land preserved; and
- (5) the degree to which other conservation incentives and means of conservation, such as donated conservation easements or participation in other governmental programs, have been explored, applied for, secured, or exhausted.

- F. The board shall evaluate each proposal according to the conservation criteria listed in subsection (D) and the financial criteria listed in subsection (E) of this section, and award grants based on how well the proposals meet these criteria. Priority shall be given to proposals that fulfill both conservation and financial criteria. The more criteria a proposal satisfies, the higher priority it shall be given.
- G. For each grant application the applicant shall specify:
- (1) the purpose of the application;
 - (2) how the application satisfies criteria listed in subsections (D) and (E);
 - (3) the uses to which the land will be put;
 - (4) the extent to which hunting, fishing, or other forms of outdoor recreation will be conducted upon the land;
 - (5) the extent to which farming, forestry, timber management, or wildlife habitat management will be conducted upon the land;
 - (6) the party responsible for managing and maintaining the land; and
 - (7) the parties responsible for enforcing any conservation easements or other restrictions upon the land.
- H. Where an Eligible Greenbelt Fund Recipient seeks a Greenbelt Fund grant to acquire fee title to land, it must demonstrate both the expertise and financial resources to manage the land for the purposes set forth in its application. Where an Eligible Greenbelt Fund Recipient seeks a Greenbelt Fund grant to acquire a conservation easement, it must demonstrate both the expertise and financial resources to manage and enforce the restrictions placed upon the land for the purposes set forth in its application. The board shall evaluate each proposal to determine the qualifications of the proposed managing party and to determine whether the proposed management is consistent with the purposes of the Bank and the purposes set forth in the application.
- I. An Eligible Greenbelt Fund Recipient seeking a grant from the Greenbelt Fund must:
- (1) demonstrate that it is able to complete the project and acquire the interests in land proposed;
 - (2) indicate the total number of acres of land it has preserved; and

- (3) briefly describe the lands it has preserved, including size, location, and method of preservation. The reporting requirement of this subsection need not be complied for specific preserved lands, when in the grant applicant's discretion, or in the discretion of the owners of such preserved lands, the privacy or proprietary interests of the owners of such preserved lands would be violated.
- J. Partnerships, matching contributions, management agreements, management leases, and similar collaborations among state agencies, the federal government, Eligible Greenbelt Fund Recipients, and local governments, boards, and commissions are encouraged and may be used to fulfill the requirements of sections D and E of this Section.
- K. No matching funds or other contributions are required to receive grants from the Greenbelt Fund. However, the board shall encourage matching funds and other contributions by weighing the degree to which applications meet the criteria of subsection (E) when determining which proposals to fund.
- L. The board may only authorize grants to purchase interests in lands at or below fair market value pursuant to a certified appraisal. In no case may funds from the Greenbelt Fund be used to acquire interests in lands at a price that exceeds the fair market value of the interest being acquired. The board must also establish reasonable procedures to ensure the confidentiality of appraisals before the award of a grant, and the subsequent acquisition of interests in lands obtained with such grant.
- M. In recommending the awarding of a grant from the Greenbelt Fund the board shall set forth findings that indicate:
- (1) how the application satisfies the purposes of this ordinance, and the criteria and other considerations set forth in this section;
 - (2) the purpose of the award and the use to which the land will be put;
 - (3) the extent to which hunting, fishing, or other forms of outdoor recreation will be conducted upon the land;
 - (4) the extent to which farming, forestry, timber management, or wildlife habitat management will be conducted upon the land;
 - (5) the party responsible for managing and maintaining the land;
 - (6) the party responsible for enforcing any easements or other restrictions upon the land;
 - (7) the parties designated in items (5) and (6) possess the expertise and

financial resources to fulfill their obligations; and

(8) any other findings or information relevant to the award.

SECTION FIVE:

- A. Only Eligible Greenbelt Fund Recipients may acquire interests in lands with Greenbelt Funds.
- B. The Bank may purchase an interest in land on behalf of Charleston County subject to the above-referenced criteria.
- C. The Bank and Eligible Greenbelt Fund Recipients receiving monies from the Greenbelt Fund shall retain all records of acquisition of interests in land with Greenbelt Funds including, but not limited to deeds, title documents, contracts, surveys, inventories, appraisals, title insurance policies, environmental assessments, and closing documents.
- D. Charleston County and the Bank must be indemnified as to title in the amount of any grants it makes to Eligible Greenbelt Fund Recipients, and this indemnification must be secured by a title insurance policy acceptable to the board and County Council, and obtained by the grant recipient. The indemnification requirement as to title may be waived by the board in extraordinary cases where insurable title is unobtainable, the risk of adverse claims to title are small, the land in question presents a particularly valuable conservation opportunity according to the purposes of this ordinance and the criteria of Section Four subsections (D), (E), and (F) and the cost of the interest in land acquired reflects the lack of insurable title.
- E. In order to identify potential liability pursuant to applicable state or federal environmental law or regulation, an environmental hazard assessment must be conducted on lands before the disbursement of Greenbelt Funds for the acquisition of all interest in such lands.
- F. All interests in lands acquired with Greenbelt Funds must be held by the Eligible Greenbelt Fund Recipient approved by the board to acquire the interest in land; except that an interest in land obtained with Greenbelt Fund money may be assigned from one Eligible Greenbelt Fund Recipient to another upon approval of the board by majority vote.
- G. Except as provided in subsection (F) of this section, no interest in land acquired by an Eligible Greenbelt Fund Recipient with Greenbelt Funds may be extinguished, sold, transferred, assigned, alienated, or converted to a purpose or use other than that set forth in the grant award, without securing a:

(1) two-thirds vote of the board, following a finding of fact that the land no longer exhibits the characteristic that qualified it for acquisition with funds from the Greenbelt Fund; and

(2) majority vote of the Charleston County Council.

H. If any interests in lands, that have been acquired by an Eligible Greenbelt Fund Recipient with Greenbelt Funds, are extinguished, sold, transferred, assigned, alienated, or converted pursuant to subsection (G) of this section, the Eligible Greenbelt Fund Recipient extinguishing, selling, transferring, assigning, alienating, or converting the interests in land shall replace them with interests in land of substantially equal current fair market value, with any deficit being made up by contribution (cash or in-kind at the discretion of the board) to the Greenbelt Fund. The replacement land must also exhibit characteristics that meet the criteria of this ordinance. The board must verify that suitable replacement interests in lands have been identified and will be obtained before authorizing that any interest in land purchased with monies from the Greenbelt Fund be extinguished, sold, transferred, assigned, alienated, or converted.

I. Interests in land acquired with Greenbelt Funds must be managed and maintained in order to perpetuate the conservation, natural, historical, open space, and recreational uses or values for which they were originally acquired. Uses which are adverse to the original purposes for which the interests in land were acquired with Greenbelt Funds are not permitted without securing a:

(1) two-thirds vote of the board, following a finding of fact that the use is one that furthers the original purpose of this ordinance; and

(2) majority vote of the Charleston County Council.

SECTION SIX: Funds from the Greenbelt Fund may not be used to acquire interests in lands or other interests in real property through the exercise of any power of eminent domain or condemnation proceeding.

SECTION SEVEN: The provisions of this ordinance must not be construed to eliminate or unreasonably restrict hunting, fishing, farming, forestry, timber management, or wildlife habitat management, as regulated by the laws of this State, upon lands for which interests in lands are obtained pursuant to this ordinance. These and other traditional and compatible activities may be conducted, where appropriate, upon lands preserved with Greenbelt Funds.

SECTION EIGHT: When Greenbelt Funds are used to purchase a conservation easement on land, the conservation easement will be the controlling legal document regarding what is and what is not permitted upon the land, how the land will be preserved, and what rights are vested with the Eligible Greenbelt Fund Recipient or its assigns which hold the

conservation easement. If any inconsistencies or ambiguities arise between the provisions of this ordinance and the terms and conditions of a conservation easement purchased with Greenbelt Funds, the terms and conditions of the conservation easement must prevail. The board must exercise due diligence to assure the terms and conditions of conservation easements are consistent with the purposes of this chapter before disbursing Greenbelt Funds for the purchase of such conservation easements.

SECTION NINE: EFFECTIVE DATE; SEVERABILITY

This Ordinance shall take effect immediately upon third reading. If any provision of this ordinance or its application to any circumstances is held by a court of competent jurisdiction to be invalid for any reason, this holding does not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or application, and to this end, the provisions of this ordinance are severable.