

The Heritage Trust Bonding Authority Act :
An Analysis of Pending Timber Sell-Offs in South Carolina and the Steps Being Taken
to Conserve Biological Diversity

By: Kate Elizabeth Whetstone

ABSTRACT

Major timber companies recently announced plans to sell huge chunks of there timber lands throughout the Southeast due to changing market conditions. This paper focuses on the importance of the timber industry in South Carolina, issues affecting conservation and the steps being taken to protect the rural character of the state. Particular attention is aimed at analyzing the recently enacted Heritage Trust Bonding Authority Act which allows for the state's Heritage Trust Program to issue bonds, borrowing against its currently revenue stream provided by deed stamp taxes, in order to raise around \$30 million to enable the acquisition of timber land. Considering the background of the Heritage Trust Program, the involvement of numerous conservation groups, and the language of the legislation, this paper concedes that the Heritage Trust program Bill constitutes a positive first step in the conservation of timber lands. Yet, the legislation is limited in scope ultimately indicating a need for innovative new approaches to address the pending timber sales.

The Heritage Trust Bonding Authority Act :
An Analysis of Pending Timber Sell-Offs in South Carolina and the Steps Being Taken
to Conserve Biological Diversity

By: Kate Whetstone

TABLE OF CONTENTS:

INTRODUCTION 3

BACKGROUND ON TIMBER INDUSTRY IN SOUTH CAROLINA 6

ISSUES AFFECTING CONSERVATION..... 7

PRIVATE ACTION VS PUBLIC ACTION 8

DETERMINING WHICH LANDS TO PROTECT 10

THE CURRENT PLAN: THE HERITAGE TRUST BONDING AUTHORITY ACT 13

WHAT IS THE HERITAGE TRUST PROGRAM?..... 14

**THE MOVERS AND SHAKERS OF THE HERITAGE TRUST ACT: THE S.C. DEPARTMENT OF NATURAL
RESOURCES, THE NATURE CONSERVANCY, AND THE CONSERVATION BANK 17**

**UNDERSTANDING THE HERITAGE TRUST ACT AS DRAFTED AND HOW IT FITS INTO THE FUNDING SCHEME
..... 21**

ANALYSIS OF THE HERITAGE TRUST BONDING AUTHORITY ACT..... 25

CONCLUSION 28

I. Introduction

It is imperative to maintain portions of the wilderness untouched so that a tree will rot where it falls, a waterfall will pour its curve without generating electricity, a trumpeter swan may float on uncontaminated water - and moderns may at least see what their ancestors knew in their nerves and blood.
~Bernard De Voto, *Fortune*, June 1947

South Carolina has long been a southern state characterized by its rural features.¹ However, as the state's population continues to rapidly increase, more and more of this rural area is being consumed by development. According to Governor Mark Sanford's office, an average of 200 acres of forestland per day is converted into suburban or urban uses.² In a turn of events that stands to potentially dramatically increase the rate of development throughout South Carolina, major timber companies announced plans within the last year to sell-off much of their holdings throughout the Southeast.³ These major timber companies, such as International Paper Company⁴ and MeadWestvaco,⁵ constitute many of the top private forestland owners. Compounding these sell-offs, the federal government recently announced plans to sell a fraction of America's public forestland, including approximately 4,600 acres in

¹ See generally John Lawson, A NEW VOYAGE TO CAROLINA; CONTAINING THE EXACT DESCRIPTION AND NATURAL HISTORY OF THAT COUNTRY: TOGETHER WITH THE PRESENT STATE THEREOF. AND A JOURNAL OF A THOUSAND MILES, TRAVEL'D THRO' SEVERAL NATIONS OF INDIANS. GIVING A PARTICULAR ACCOUNT OF THEIR CUSTOMS, MANNERS, &C. (1709); Margaret Mitchell, GONE WITH THE WIND (1936); Pat Conroy, THE WATER IS WIDE (1972).

² Tony Bartelme, *S.C. weighs laws to acquire large swaths of land: Forest sales inspire legislation*, POST & CURRIER, Jan. 21, 2006 at B1 [hereinafter *S.C. weighs law*].

³ Daniel Cusick, *Stakes are high as timber giant plans massive land sale*, GREENWIRE, Jan. 3, 2006, at http://www.redlodgeclearinghouse.org/news/01_03_06_stakes.html (Private forest ownership in the United States is expected to continue on the path of radical transformation this year as large industrial owners of timber land quicken the pace of forest divestment The details that emerge are expected to have major implications for the future of private forests, particularly on questions of conservation verses timbering and the trend of converting timberlands into suburban-style developments.”)

⁴ Homepage, INTERNATIONAL PAPER CO., 2005 at <http://www.internationalpaper.com/> (providing information about the global leader in paper, packaging, and wood products).

⁵ Homepage, MEADWESTVACO (last visited Mar. 3, 2006) at <http://www.meadwestvaco.com/corporate.nsf> (homepage detailing the endeavors of the company).

South Carolina.⁶ Placing these timber holdings on the market opens the door for developers to obtain and transform huge swaths of forestland.⁷

International Paper Co. (IP) plans to sell 1.5 million acres in the South during the next two to three years.⁸ Sell-offs by IP have been described as a 21st century edition of the Louisiana Purchase of 1803.⁹ In South Carolina alone IP could potentially place most or all of its 628,000 acres in the state, a portfolio of property larger than Charleston County, on the market.¹⁰ In translation, the possibility exists that 3 percent of the land in South Carolina could go on the market at one time.¹¹

Changing marketing conditions are triggering the sell-offs by timber companies. First, advancements in forest techniques are allowing the companies to grow more trees on less land.¹² Secondly, rising land values are making the selling of land to developers more lucrative than growing trees on the lands.¹³ In reaction, conservation groups throughout the southeast are jumping into action in hopes of acquiring a portion of the forestland going on the market, some of which contains important biological habitats and species.¹⁴

In South Carolina, the movement is being led by the South Carolina Department of Natural Resources through the state's Heritage Trust Program. In a conjoined endeavor with The Nature Conservancy and the Conservation Fund, efforts in the state are currently focused

⁶ Sammy Fretwell & Joey Holleman, *Forest Sale May Ignite Growth: Scenery of property near Oconee State Park Might Attract Buyers*, THE STATE, Feb. 16, 2006, at A1 (this plan has not been finalized).

⁷ *Id.* (“[E]cologically valuable areas facing particular development right now include virtually all of Florida as well as parts of the South Atlantic coast from Savannah, Ga., to the mouth of the Chesapeake Bay. [Bob Benedict of The Nature Conservancy] specifically mentioned Charleston, S.C. as ‘a very rapidly growing region surrounded by a lot of commercial forestland that could be on that market.’”)

⁸ *S.C. weighs law*, *supra* note 2.

⁹ Cusick, *supra* note 3.

¹⁰ *S.C. weighs law*, *supra* note 2.

¹¹ Telephone Interview with Cary Chamblee, Lobbyist, South Carolina Chapter of the Sierra Club (Feb. 27, 2006).

¹² Tony Bartelme & Chris Dixon, *Protect land, Sanford says*, Post & Currier, Dec. 6, 2005 at A1.

¹³ *Id.*

¹⁴ Cusick, *supra* note 3 (“For conservation groups like The Nature Conservancy, The Wilderness society and The Conservation Fund, the stakes have never been higher.”).

on an act, the Heritage Trust Bonding Authority Act, which allows the DNR to borrow against its current revenue stream and issue up to \$30 million in bonds in order to allow for a onetime purchase of IP forestlands being placed on the market.¹⁵ Using this money, in conjunction with other state appropriations and federal funding, DNR plans to purchase two large tracts of land. The first, a 14,000 acre sliver of Marion County located between Horry and Georgetown Counties is targeted because it provides river corridor protection against part of the Little Pee Dee River.¹⁶ The second tract, about 26,000 acres, is located in Hampton County adjacent to the DNR's Webb Wildlife Center.¹⁷ Recently, the Nature Conservancy and The Conservation Fund completed the purchase of these two properties from International Paper and will hold these tracts until the state is able to purchase them.¹⁸

Understanding that the timber industry is a significant economic force in South Carolina and some of the general issues involved in conservation, this paper offers a detailed look at the creation and function of the Heritage Trust Program and analyzes the impact of the recently enacted Heritage Trust Bonding Authority Act. While the Heritage Trust Bonding Authority Act represents an important step in the effort to protect rural forestland in South Carolina, it only provides protection for a small percentage of the land going on the market. Consequently, the need remains for innovative initiatives to provide alternate and additional conservation plans in order to preserve the rural character of South Carolina.

¹⁵ *S.C. weighs law, supra* note 2.

¹⁶ Zane Wilson, *Bill Aims for more S.C. Land Preserves*, SUN NEWS, Feb. 12, 2006, available at <http://www.myrtlebeachonline.com/mld/myrtlebeachonline/news/local/13853407.htm>.

¹⁷ *Id.*

¹⁸ Press Release, The Conservation Fund, The Nature Conservancy And International Paper Join The State Of South Carolina In Announcing Landmark Conservation Project: Governor Sanford Signs \$32M Conservation Bond Act; SC Project Key Component of 10-State Deal (Mar. 28, 2006) [hereinafter *Announcing Landmark Project*] at <http://www.nature.org/wherewework/northamerica/states/southcarolina/press/press2340.html>.

II. Background on Timber Industry in South Carolina

The timber industry represents a substantial figure in the Southern economy. Approximately 29 percent of the forest land in the United States occurs in the South, totaling about 215 million acres.¹⁹ The forest products industry is the largest industry in a few southern states and ranks within the top industries in most.²⁰ In fact, 1997 estimates indicate the industry produces around 770,000 direct jobs and contributes over \$120 billion in assets to the southern economy.²¹ The timber industry's role in the economy of the southeastern United States continues to increase through out time. In 1941 the South produced 41 percent of the country's wood fiber output and 6.3 percent of the world's industrial wood production.²² By 1997, those figures increased to 58 percent and 15.8 percent, respectively.²³ Today, the southern region of the United States presents a formidable figure in the timber world as the primary producing region in the country and the world-wide leading producer of industrial timber contributing 25 percent of the world supply.²⁴

In South Carolina, forests cover two-thirds of the total land area of the state, totaling about 12.4 million acres.²⁵ The South Carolina forest products industry employs 30,272 people, making it the third largest employer in the state.²⁶ The forest industry generates about \$14 billion annually for the state's economy.²⁷ For those who believe South Carolina is synonymous with King Cotton, one may be surprised to learn that today the timber industry

¹⁹ T. R. Fox & R. R. Hicks, *Timber Management*, Forest Encyclopedia Network, http://www.forestencyclopedia.net/Encyclopedia/science/Encyclopedia_Page.2004-07-22.4649/Encyclopedia_Page.2004-07-22.5406 (last modified Aug. 24, 2005).

²⁰ *Id.*

²¹ *Id.*

²² Jeffery P. Prestemon & Robert C. Abt, *Southern Forest Resource Assessment Highlights; The Southern Timber Market to 2040*, 100 J. FORESTRY 7, Oct./Nov. 2002, at 16.

²³ *Id.*

²⁴ *Id.*

²⁵ SOUTH CAROLINA FORESTRY ASSN., FORESTRY IN SOUTH CAROLINA (2003), available at <http://www.scforestry.org/Downloads/index.htm>.

²⁶ *Id.*

²⁷ *Id.*

is South Carolina's most valued agricultural crop, valued at \$835 million.²⁸ In addition, use of forest lands by hunters and fishermen add an additional \$1.3 billion each year to the state's economy.²⁹ Clearly, forests in South Carolina play a key role in the state's environment, economy, and quality of life.

III. Issues Affecting Conservation

Before delving into the current plan of action in South Carolina to address the timber sell-offs, understanding a few of the various factors playing a role in conservation decisions may aid in assessing achievements of the Heritage Trust Bonding Authority Act. As anyone who has ever taken a moment to consider environmental issues has discovered, taking clear action in the environmental arena is difficult, if not impossible in many instances. This may be contributed to the fact that issues about the environment affect everyone, thus many different and adverse interests begin to clash. The Heritage Trust Bonding Authority Act is an example of public action which allows the state government to purchase property and essentially own the land outright. However, the government cannot be expected to bear all the burden of taking action, nor is this method always the best approach, thus an analysis of the benefits and costs of public action and private action may help to understand which is the best line of attack in a particular situation. In addition, determining which features to protect is a key ingredient for deciding which lands to focus on and the precise measures to take in achieving this goal.

²⁸ *Id.*

²⁹ *Id.*; See also *Outdoors Profitable for S.C.*, THE STATE, Dec. 9, 2005 at D1 ("Wildlife recreation, which includes boating hunting and fishing, is a \$1.4 billion industry in South Carolina. That also includes bird-watching, camping and other outdoor recreational activities.").

A. Private Action vs Public Action

Originally, throughout the United States conservation efforts took place solely through governmental action and concentrated on protecting the habitat of threatened species.³⁰ Public sector provisions can take the two general forms: public ownership of land and government regulation.³¹ The Heritage Trust is an example of government ownership of land. “Under this option, effective habitat protection is dependant on the appropriateness of the agency’s mandate and the interests of its stakeholders.”³² Regulations, on the other hand, allow the government to control specific land use activity without acquiring full ownership of lands.³³ Each method has its proponents and critics, but everyone can agree that these actions alone affect only a small percentage of land and are not enough.

“[While] in the past habitat conservation in the USA focused on the retention and management of *public* land, both federal and state, more recently it has started to address the role of the *private* landowner in the protection of natural areas.”³⁴ This issue takes front stage in the current timberland sell-offs, as the state cannot buy all of this acreage going on the market. When private landowners consider environmental planning on their property they consider the costs and benefits of preserving the natural areas in comparison to the costs and benefits of alternative uses of the land.³⁵ The market theory approach to conservation transactions are not simple and each can involve a unique set of actors, costs and benefits.

³⁰ VICTORIA EDWARDS, DEALING IN DIVERSITY: AMERICA’S MARKET FOR NATURE CONSERVATION 1-2 (1995) (“Since [America] was first settled, more than 90% of the tall grass prairies, 55% of wetlands, 26% of all forests, 50% of tropical forests and 75% of the old growth forests have been destroyed.... Although the extent of loss is disputed, it is generally recognized that species extinction is proceeding at an increasing rate, which is inconsistent with evolutionary trends. Alarmed at the accelerated loss, nations are searching for means to halt this dramatic reduction in biological diversity.”)

³¹ *Id.* at 4-7.

³² *Id.* at 5.

³³ *Id.* at 6.

³⁴ *Id.* at 3.

³⁵ *Id.* at 13.

The timber companies, while harvesting their forestland, have incentives to preserve certain areas and to sustainably harvest others. These incentives may not be applicable to the new owners of this land. Most of the timberland owned by large timber companies has been within their possession for extended periods of time. In addition timber companies often make efforts to sustainably harvest their lands in order to maintain future profit³⁶ and these companies can also work with conservation organizations to protect certain biologically important areas.³⁷ Furthermore because the forestland constitutes the timber companies' primary resources, these lands were not threatened by development. Selling these properties to the highest bidder highlights the increased difficulties in protecting the lands. Not only are the lands now open to development, but increasing the number of private owners means additional actors to contend with in attempting to achieve conservation goals.

In fact, forestland ownership primarily resides in the hands of private landowners. According to the recent National Woodland Owner Survey for South Carolina the number of private forestland owners has doubled while the number of privately owned forestland acres has decreased.³⁸ Tim Adams, resources development manager for the South Carolina Forestry Commission, reports that "A total of 357,400 family forest owners control 7.1 million acres--57 percent--of forestland in South Carolina. Therefore, the fate of much of the

³⁶ See generally, Sustainable Forest Technologies, International Paper Co. (2005) at <http://www.internationalpaper.com/Forest/Forest%20Customer%20Segments/Forest%20Technologies.html> (webpage on International Paper's website noting its efforts to sustainably harvest its forests); Letter from John A. Luke, Jr., Chairman and Chief Executive Officer, Meadwestvaco, titled Sustainability: Strategic Framework for Our Resources at <http://www.meadwestvaco.com/corporate.nsf/sustainability/main> (last visited May 3, 2006) (webpage on Meadwestvaco's website noting their dedication to sustainability).

³⁷ See News Release, The Conservation Fund, International Paper, The Nature Conservancy and The Conservation Fund Protect 218,000 Acres of U.S. Forestland Through Historic Land Acquisition Project (March 28, 2006) at <http://www.conservationfund.org/?article=3188&back=true> (one example of a timber company taking part in conservation efforts).

³⁸ *Landowner Survey Forecasts Benefits, Challenges for South Carolina Foresters*, THE FORESTRY SOURCE, January 2004, available at http://www.safnet.org/archive/0104_scforests.cfm; See also Tim Adams & Brett Butler, *SC's Family Forests: The Future is in Their Hands*, S.C. FORESTRY ASS'N at <http://www.scforestry.org/forestland/profile.htm>.

state's forest resources depends upon what this diverse group of landowners does with their land."³⁹ These statistics clearly indicate the need for developing conservation incentives to encourage collective action among private landowners.⁴⁰

Public action and private action both have their place in conservation efforts. Understanding their respective roles will aid in assessing the achievements of the Heritage Trust Bonding Authority Act and the challenges left to encounter.

B. Determining Which Lands To Protect

When anyone, including the government, conservation organizations, and the private landowner, considers protecting land, the first issue to address is establishing which lands should be protected. While the idealist environmentalist may respond "All of them!", the realistic approach is to consider which areas prove to be the most important or which serve to achieve an ultimate goal.

The early environmental movement focused on protecting particular species which was in reaction to the rapid decline of biological diversity.⁴¹ While today much focus remains on protecting the habitat of biologically important or rare species, conservationists recognize that other lands serve important purposes as well. Some of these include protecting buffer zones,⁴² which may be natural lands around an important habitat to provide additional

³⁹ *Id.*

⁴⁰ See generally South Carolina (Partners for Fish and Wildlife Program, U.S. Fish and Wildlife Service), Sept. 2001 at <http://www.fws.gov/partners/pdfs/SC-needs.pdf> (Partners for Fish and Wildlife Preservation in South Carolina focuses on various habitat restoration activities and works to provide technical and financial assistance to private landowners.)

⁴¹ EDWARDS, *supra* note 30 at 2; See generally REED F. NOSS ET AL., THE SCIENCE OF CONSERVATION PLANNING: HABITAT CONSERVATION UNDER THE ENDANGERED SPECIES ACT (1997) (providing an assessment of habitat based conservation by evaluating the influence of the 1973 U.S. Endangered Species Act).

⁴² See generally Vincent J. Burke & J. Whitfield Gibbons, *Terrestrial Buffer Zones and Wetland Conservation: A Case Study of Freshwater Turtles in a Carolina Bay*, 9 CONSERVATION BIOLOGY, 1365 (1995) (scholarly article recommending the preservation of habitats of water upland from wetlands in order to protect the biological diversity of the wetlands and ensure that the fresh water sea turtle is protected); Raymond D. Semlitsch & J. Russell Bodi, *Biological Criteria for Buffer Zones around Wetlands and Riparian Habitats for*

protection of lands around a city to contain further development. In addition, researchers have begun to recognize the important of protecting tracts of land which species use to migrate⁴³ and protecting sites rich in cultural or archeological history.⁴⁴ All of these factors should be taken into consideration in determining which forests lands to focus more attention on in South Carolina.

The two tracts which the Heritage Trust Binding Authority Acts funds will be directed have already been chosen. In fact, these tracts have already been purchased by the Conservation Fund and The Nature Conservancy who paid International Paper \$50.4 million for the tracts and will hold the lands until the state is able to buy them.⁴⁵ The lands include the 25,688 acre Woodberry tract in Marion County and the 13,281-acre Hamilton Ridge tract in Hampton County.⁴⁶ These tracts provide about 46 miles of river frontage, including nearly 27 miles of frontage on the Pee Dee River, 11 miles on the Little Pee Dee River and about eight miles on the Savannah River.⁴⁷ The Woodberry tract is bound by the Pee Dee and Little

Amphibians and Reptiles, 17 CONSERVATION BIOLOGY, 1219, 1219 (2003) (“Although the protection of water resources from human activities such as agriculture, silviculture, and urban development is obvious, it is also apparent that terrestrial areas surrounding wetlands are core habitats for many semiaquatic species that depend on mesic ecotones to complete their life cycle. For purposes of conservation and management, it is important to define core habitats used by local breeding populations surrounding wetlands.”)

⁴³ See generally Thomas S. Hctor, *Identifying a Linked Reserve System Using a Regional Landscape Approach: the Florida Ecological Network*, 14 CONSERVATION BIOLOGY 984 (2000) (article addressing land acquisitions priorities in the state of Florida’s program called Greenways which is an aggressive land acquisition initiative to preserve biological corridors for the state’s migratory animals such as the Florida panther and the Florida black bear).

⁴⁴ See generally, CULTURE, ENVIRONMENT, AND MANAGEMENT IN THE APPALACHIAN SOUTH (Benita J. Howell ed., 2002) (quoting from Preface, vii) (“In the spirit of mutual respect between disciplines, this book seeks to encourage more comprehensive and culturally grounded thinking about human culture in the southern Appalachian biosphere by presenting case studies that highlight various cultural dimensions of regional environmental history and cultural perspectives on conservation and development issues.”)

⁴⁵ Joey Holleman, *Deal to Keep S.C. Land Wild Forever*, THE STATE, Mar. 29, 2006, at A1.

⁴⁶ *Id.*; See generally Video: Woodberry Tract (The Nature Conservancy, DNR 2006), available at <http://www.dnr.sc.gov/videosdnr.html>; Video: Hamilton Ridge Tract (The Nature Conservancy, DNR, 2006) at <http://www.dnr.sc.gov/videosdnr.html>; Video: Woodberry tract – Hamilton Ridge tracts – Animals in the Tracts (The Nature Conservancy, DNR 2006) at <http://www.dnr.sc.gov/videosdnr.html> (these three videos allow the viewer to see the land to be purchased by the state with the money raised from the Heritage Trust Bonding Authority Act).

⁴⁷ *Deal to Keep S.C. Land Wild Forever*, *supra* note 34.

Pee Dee rivers and in conjunction with the 20,000 acre Waccamaw National Wildlife Refuge⁴⁸ provides a safe haven for wildlife from the rapidly growing Grand Strand.⁴⁹ The Hampton Ridge tract, which is adjacent with the Web Wildlife Center,⁵⁰ a 5,900 acre preserve already owned by the Department of Natural Resources, creates a natural river corridor for wildlife comparable in size to the Congaree National Park in Richland County.⁵¹

The Woodberry and Hamilton Ridge tracts appear to encompass two of the goals set forth above which conservationist tend to focus towards.⁵² First, these tracts are praised as two very important sites in terms of biological diversity.⁵³ According to Mike Andrews, Chief Operating Officer of The Nature Conservancy:

“The Woodbury and Hamilton Ridge tracts protect outstanding wildlife habitat, native forests, migratory bird nesting areas and precious water resources in the Savannah, Pee Dee and Little Pee Dee Rivers.... These lands have been conservation priorities for more than a decade. Together, these two projects will be the largest conservation land purchase by the state in its history.”⁵⁴

Thus, the biological importance of these tracts played a major role in the state’s decision to purchase these properties. Also note that the area provides nesting for migratory birds, which is another factor of consideration in determining what lands to protect. In addition, these lands, in particular the Woodberry tract, provide a buffer zone from the development occurring throughout the Grand Strand.⁵⁵ The fact that these lands encompass a number of conservation goals, in addition to the timing of the timber sell-offs, likely played a major role

⁴⁸ Overview, Waccamaw National Wildlife Refuge (U.S. Fish & Wildlife Service) (last visited May 3, 2006) at <http://www.fws.gov/refuges/profiles/index.cfm?id=42512> (more information about this national refuge).

⁴⁹ *Deal to Keep S.C. Land Wild Forever*, *supra* note 45.

⁵⁰ Web Wildlife Center, Teacher’s Wildlife Conservation Workshop (Clemson U. Dept. of Agriculture, Fisheries & Wildlife 2003) at <http://virtual.clemson.edu/group/AFW/wb712/wcenter.htm> (learn more about the Web Wildlife Center)

⁵¹ *Id.*

⁵² *See supra* pp. 9-10

⁵³ Announcing Landmark Project, *supra* note 18.

⁵⁴ *Id.*

⁵⁵ *Deal to Keep S.C. Land Wild Forever*, *supra* note 45.

in the decision to pass the Heritage Trust Bonding Authority Act. Without these unique features the momentum behind the legislation would have undoubtedly been curtailed.

However, the task remains to assess the remaining timberland to be dumped on the market. Should conservation groups continue to direct attention to biologically diverse habitat or consider timberland buffering the Charleston area or other large cities in efforts to contain developmental sprawl? There exist obvious pluses and minuses to each approach. By focusing solely on biologically diverse habitat conservationists run the risk of sporadically preserving small areas throughout the state and failing to consider the wildlife trends in the bigger picture. On the other hand, attempting to buy lands buffering large cities will mean acreage prices will be more, thereby reducing the amount of land the groups may preserve due to financial strain. Undoubtedly, these issues and others must be addressed in the near future by organizations intent on preserving additional timber tracts.

IV. The Current Plan: The Heritage Trust Bonding Authority Act

With the pending land sale in sight, conservation organizations within South Carolina jumped into action. The current, and apparently only, plan of action within the state rests in the recent legislative action, the Heritage Trust Bonding Authority Act. The product of joint initiative between the South Carolina Department of Natural Resources, the Nature Conservancy and the Conservation Fund, the Heritage Trust Bonding Authority Act is drafted to allow for a one-time advancement of \$30 million in order to aid these groups in purchasing land from International Paper. The plan, fast tracked through the legislature,⁵⁶ presents the state with a great opportunity to purchase and preserve a large tract of land in

⁵⁶ S.1061, 116th Sess. (S.C. 2006), available at http://www.scstatehouse.net/cgi-bin/query.exe?first=DOC&querytext=1061&category=Legislation&session=116&conid=1751796&result_pos=0&keyval=1161061 (this site provides a complete copy of the bill and a history of the legislative action and amendments it has under gone).

Marion and Hampton Counties. To better understand the effect of the Heritage Trust Bonding Authority Act, background on the origins of the Heritage Trust Program itself is needed.

A. What is the Heritage Trust Program?

The South Carolina Heritage Trust Program was created by statute in 1976.⁵⁷ The program, the first of its kind in the nation,⁵⁸ aimed to “help stem the tide of habitat loss by protecting critical endangered species through acquisition and other means.”⁵⁹ The Heritage Trust Program reflects a recognition by the General Assembly that “it is necessary and desirable that portions of the State’s rich natural and cultural diversity be set aside as Heritage Preserves and Sites and protected for the benefit of present and future generations, for once they are disturbed they cannot be wholly restored.”⁶⁰ Thus, the Heritage Trust Program was created, equip with enabling legislation empowering the Department of Natural Resources in conjunction with other agencies to determine what land acquisition best achieved the goals of the legislations and the power to create Heritage Trust Preserves or Sites.⁶¹ In 1976 the Heritage Trust Program began protecting endangered species habitat, and in 1987 began protecting important archaeological sites in the State.⁶² Today, in addition to protecting South Carolina’s most significant natural and cultural resources, the Heritage Trust Program is involved in numerous activities including, but not limited to: public presentations, press conferences, tours of preserves, developing partnerships, providing

⁵⁷ S.C. CODE ANN. §§ 51-17-10 to 110 (1976).

⁵⁸ DNR, Heritage Land Trust Fund Activity in 2000, A report to the General Assembly, *at* <http://www.dnr.sc.gov/pubs/HLTF2000.pdf> [hereinafter Report to General Assembly]; *see also* RICHARD BREWER, CONSERVANCY: THE LAND TRUST MOVEMENT IN AMERICA 199-201 (2003) (discussing the origins of the National Heritage Programs as one of the most influential ideas of The Nature Conservancy Program and its implementation through states).

⁵⁹ Report to General Assembly, *supra* note 58.

⁶⁰ S.C. CODE ANN. § 51-17-20 (1976).

⁶¹ S.C. CODE ANN. §§ 51-17-10 to 150 (1976).

⁶² Report to General Assembly, *supra* note 58.

technical assistance to individuals within and outside the department, conduct archaeological surveys, form management plans and distribute information to the media and public.⁶³

The Heritage Trust Program works to protect land through purchases, donations from private land owners, and the placement of conservation easements on private land. When the Heritage Trust Program first came into being, the legislation provided the Department of Natural Resources with the power to create Heritage Preserves.⁶⁴ Heritage Preserves are created upon recommendation of the Advisory Board and through a process of dedication.⁶⁵ Preserves represented acquisition by the Program of certain rights,⁶⁶ possibly via the placement of conservation easements on property of private land owners.⁶⁷ The written “Dedication Agreement” which explains “any restrictions, conditions, permissive, and nonpermissive use of the area or feature involved” are then filed in the real estate records of the county in which the land was located.⁶⁸ Though these interests may represent something less than a fee simple interest in the land, any acquisition by dedication is considered to be in “perpetuity.”⁶⁹

In conjunction with the power to designate Heritage Preserves, the South Carolina Legislature created the South Carolina Heritage Trust, conveying the state agency with the power to obtain full ownership title in lands.⁷⁰ The Board of the South Carolina Department of Natural Resources was designated as the trustee and mandated with the power, in taking

⁶³ *Id.*

⁶⁴ S.C. CODE ANN. §51-17-80 (1976).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *See generally* PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT AND FUTURE, (Julie Ann Gustanski & Roderick H. Squires, eds.) (2000) (book providing, through case studies, an in-depth evaluation of the growth of conservation easements, the legal issues involved in this form of land management, and a forecast of challenges involving conservation easements in the future).

⁶⁸ S.C. CODE ANN. §51-17-80 (1976).

⁶⁹ *Id.*

⁷⁰ S.C. CODE ANN. § 51-17-90 (1976).

into consideration the Heritage Trust Program's purpose of preserving the unique natural or cultural character of the state, to recommend areas which "merit a greater degree of preservation than that provided by dedication."⁷¹ Once such recommendation obtains approval of the board of the Department of Natural Resources, legal title transfers to the trustees of the South Carolina Heritage Trust and the transfer is recorded within the country in which the property is located.⁷²

As originally drafted, the Heritage Trust Program depended on acquiring interest in lands through negotiations with willing private land owners and funding appropriations from the state. Accordingly, while the program was successful in obtaining some significant land areas, the conservations methods were haphazard as they primarily depended on the willingness of private owners to offer their lands to the program.⁷³ In the 1980s, initiative began to provide the Heritage Trust Program with a consistent revenue stream. Led by state Senator Author Ravanel, in 1986 the Heritage Land Trust Fund was established providing the program with a percentage of the state's real estate transaction fees.⁷⁴ For every \$500 spent in a real estate transaction, \$1.30 goes to the state.⁷⁵ Of this \$1.30 the Heritage Land Trust receives 10 cents.⁷⁶ Last year the Heritage Land Trust Fund receives about \$6 million from the deed recording fee due to a jump in the housing market.⁷⁷ The attainment of a consistent revenue fund allowed the DNR through its Heritage Trust Program to take a more proactive initiative towards conservation.⁷⁸ Unlike the haphazard approach which resulted from relying

⁷¹ *Id.*

⁷² *Id.*

⁷³ Stuart Greeter, *The First Quarter Century*, S. C. WILDLIFE MAG., 2001, available at <http://www.dnr.sc.gov/magazinejf01/html/firstquarterjf01.htm>.

⁷⁴ *Id.*

⁷⁵ S.C. CODE ANN. § 12-24-95(b)(1) (1976).

⁷⁶ *Id.*

⁷⁷ Joey Holleman, *Heritage Trust seeks \$30 million to buy land*, THE STATE, Jan. 8, 2006 at B1.

⁷⁸ Greeter, *supra* note 73 ("Instead of doing preservation by chance, we were doing preservation by design.").

primarily on donations, the Heritage Trust Program today maintains strategic plans for conservation focusing on biologically diverse regions of the state.⁷⁹

The Heritage Trust Program has clearly made an impact on conservation initiative through the state of South Carolina since it came into existence in 1976. In the year 2000 alone, four new heritage preserves were create and five were expanded, equating to a total protected area of 2,164 acres.⁸⁰ As of 2000, a total of 55,482 acres had been protected using funds from the Heritage Land Trust Fund, which came into being in 1986.⁸¹ In a 2001 South Carolina Wildlife Magazine celebrating the 25 year anniversary of the Heritage Trust Act, Stuart Greeter in his article “The First Quarter Century” noted that a total of 77,182 acres, including lands acquired using the Heritage Land Trust Funds and donated properties, were then dedicated under the Heritage Trust.⁸² Thus, the Heritage Trust Program has and continues to play an important role in the conservation movement within the state of South Carolina.

B. The movers and shakers of the Heritage Trust Act: The S.C. Department of Natural Resources, The Nature Conservancy, and The Conservation Bank

Many of the Heritage Trust Programs are not the product of a single organization, but rather the combined efforts of multiple state agencies, non-profit organizations and private individuals.⁸³ Land transactions occur in the open marketplace, thus each acquisition is

⁷⁹ See DNR Heritage Trust Preserves (*last visited* Mar. 6, 2006), at <http://www.dnr.sc.gov/managed/heritage.html> (This site provides links to the numerous Heritage Trust Preserves throughout the state. Each link gives a description of a preserve, hours of operation, and contact information.)

⁸⁰ Funding Profile: South Carolina, The Trust for Public Land, at http://www.tpl.org/tier3_cdl.cfm?content_item_id=884&folder_id=706.

⁸¹ *Id.*

⁸² Greeter, *supra* note 73.

⁸³ Greeter, *supra* note 73. (“Fortunately for everyone today, more conservation projects today are team efforts.... An Ace Basin Task Force composed of DNR, U.S. Fish & Wildlife Service, TNC, Ducks Unlimited, Low Country Open Land Trust, Westvaco, Nemours Wildlife Foundation, and local landowners has been

subject to present economical conditions. In fact, it has been noted that land acquisition by the Heritage Trust Program has slowed in recent years due to rising prices in the real estate market.⁸⁴ By pooling their resources, conservation organizations become better equip to weather marketplace conditions and making them competitive in private transactions. The same can be said for the Heritage Trust Bonding Authority Act which is backed by the S.C. Department of Natural Resources, the Nature Conservancy and the Conservation Bank, who pulled together their legislative lobbying resources to put the Heritage Trust Bonding Authority Act on the fast track through the South Carolina General Assembly.

The Department of Natural Resources (DNR), as the named trustee of the Heritage Trust Preserve,⁸⁵ clearly plays a prominent role in lobbying for changes to the Heritage Trust Fund. The DNR, originally called the S.C. Wildlife and Marine Resources Department, today represents a key executive department. The DNR, in addition to playing a major role in preservation efforts in the state, also regulates distribution of hunting and fishing licenses, offers educational programs concerning the state's outdoors and wildlife, publishes numerous publications on topics ranging from land management practices to water safety issues, and continues ongoing research through the state.⁸⁶

successful in preserving more than 130,000 acres.”); *see also* Sharon E. Richardson, *Applicability of South Carolina's Conservation Easement Legislation to Implementation of Landscape Conservation in the ACE Basin*, PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT AND FUTURE, (Julie Ann Gustanski & Roderick H. Squires, eds.), 209-220, (2000) (a case study on the acquisition and protection of the ACE basin describing in more depth the role of the different actors involved in the project).

⁸⁴ Funding Profile, *supra* note 80 (“Between 1991 and 2000, the average number of acres protected annually was slightly over 4,000, but this average has been declining as property values rise at a steeper rate.”).

⁸⁵ S.C. CODE ANN. §51-17-40(1) (1976).

⁸⁶ *See generally* Welcome, S.C. DEPT. NAT'L RESOURCES at <http://www.dnr.sc.gov/index.html> (webpage for the S.C. DNR)

Leading the DNR's effort to pass the Heritage Trust Bonding Authority Act is the Department's Director John Frampton.⁸⁷ Noting that "[t]his is a once-in-a-generation opportunity to protect thousands of acres of valuable wildlife habitat,"⁸⁸ Frampton was a prominent figure in advocating for the passage of the Heritage Trust Bonding Authority Act. Upon passage of the Act Frampton was quoted: "Today's announcement provides the state with the opportunity to conserve some of our most ecologically significant landscapes South Carolina is known for its diverse forests, abundant waterways and wildlife related recreational opportunities. We now have an opportunity to ensure that these resources are protected."⁸⁹

The Nature Conservancy⁹⁰, another organization working on the Heritage Trust Bonding Authority Act legislation, is a leading international, non-profit organization whose mission "is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive."⁹¹ In fact, The Nature Conservancy (TNC) played a key role in developing the South Carolina Heritage Trust Program.⁹² In 1974 TNC sent Tom Kohlsaat⁹³ to work with the state's DNR in developing the first Heritage Trust program, which later became the landmark legislation known as the Heritage Trust Act.⁹⁴ During this same period of time, TNC established a South

⁸⁷ Director, S.C. DEPT. NAT'L RESOURCES, 2005 at <http://www.dnr.sc.gov/admin/director.html> (brief bibliography).

⁸⁸ *S.C. weighs law*, *supra* note 2.

⁸⁹ Announcing Landmark Plan, *supra* note 18.

⁹⁰ *See generally* BREWER, *supra* note 58 (chapter titled "The Nature Conservancy" giving a detailed history of the organization and its nation-wide impact on conservation).

⁹¹ About Us, THE NATURE CONSERVANCY, 2006 at <http://www.nature.org/aboutus/>.

⁹² Greeter, *supra* note 73.

⁹³ Today Tom Kohlsaat remains very active in South Carolina's conservation scene. He is currently the State Wildlife Grants Program Director of the Wildlife and Freshwater Fisheries Division of the Natural Resources Department.

⁹⁴ *Id.*

Carolina Chapter,⁹⁵ which today represents a significant contributor to conservation efforts throughout the state.⁹⁶

Mark Robertson, director the South Carolina chapter of The Nature Conservancy, is another important figure in the lobbying campaign for the Heritage Trust Bonding Authority Act. Robertson sees the availability of timber land on the market as “a unique opportunity and challenge.”⁹⁷ His efforts on behalf of the Nature Conservancy add to the propelling force behind the Act.

The third partner in the coalition backing passage of the Heritage Trust Bonding Authority Act is the Conservation Fund,⁹⁸ another prominent national environmental non-profit organization. A non-membership, non-advocatory organization, the Conservation Fund works with local, state, and federal agencies as well as non-profit and private organizations to acquire environmentally significant land through transactions with willing property owners.⁹⁹ The Fund has contributed to major habitat preservation initiatives in South Carolina, including a recent addition of hardwood forest and wetland habitat to the Waccamaw National Wildlife Refuge¹⁰⁰ and the protection of 10,700 acres along the Cooper River

⁹⁵ See generally, South Carolina, THE NATURE CONSERVANCY, 2006, at <http://www.nature.org/wherewework/northamerica/states/southcarolina/> (homepage for the South Carolina Chapter of The Nature Conservancy).

⁹⁶ See Press Release, The Nature Conservancy, The Nature Conservancy Protects More than 14,000 Acres in 2004 (Feb. 1, 2005), at <http://www.nature.org/wherewework/northamerica/states/southcarolina/press/press1780.html> (“Using a variety of land conservation tools, The Nature Conservancy in South Carolina protected more than 14,000 acres, with a land value of \$31 million, in 2004. In total, The Nature Conservancy has protected more than 220,000 acres throughout South Carolina since beginning work in the state 27 years ago.”).

⁹⁷ Wilson, *supra* note 16.

⁹⁸ See generally Welcome to the Conservation Fund, The Conservation Fund, 2006 at <http://www.conservationfund.org/> (website homepage) (last visited Mar. 5, 2006)

⁹⁹ About Us, The Conservation Fund, 2006, at <http://www.conservationfund.org/?article=2401> (Mission Statement: “The Conservation Fund forges partnerships to protect America’s legacy of land and water resources. Through land acquisition, sustainable programs, and leadership training, the Fund and its partners demonstrate effective conservation solutions emphasizing the integration of economic and environmental goals.”) (last visited Mar. 5, 2006).

¹⁰⁰ Press Release, The Conservation Fund, 850 Acres of Forestland Protected for Waccamaw National Wildlife Refuge (Feb. 21, 2006).

known as Bonneau Ferry.¹⁰¹ Backing from The Conservation Fund operates to further strengthen the legislative momentum behind the Heritage Trust Bonding Authority Act.

C. Understanding the Heritage Trust Act as Drafted and How it Fits into the Funding Scheme

The Heritage Trust Bonding Authority Act, as drafted,¹⁰² alters the present functioning of the Heritage Land Trust Fund by allowing the Land Trust Fund to borrow against its present income source from deed stamp fees. Ratified on March 23, 2006¹⁰³ and signed into action on March 28, 2006,¹⁰⁴ the Heritage Trust aims to borrow \$30 million against this income stream to put towards large land tracts suddenly available due to the immense timber industry land sell-offs throughout the state.¹⁰⁵ The Heritage Trust Act permits the board of the S.C. Department of Natural Resources, as trustee of the Heritage Trust, to issue up to \$30 million in bonds.¹⁰⁶

The language of the Heritage Trust Bonding Authority Act is narrowly drafted to ensure it applies only to the specific goal of the Heritage Trust at hand. With this aim in mind, the legislature included a number of specific limitations on the bonding power the Act vests to the board of the SC DNR. For instance, issued bonds may only be paid from revenue generated by the Heritage Land Trust Fund and are to be clearly marked with this disclaimer.¹⁰⁷ Before the trustee may even begin issuing bonds, the board of the DNR is

¹⁰¹ Press Release, The Conservation Fund, Conservation Partnership Protects 10,700-acre Bonneau Ferry (Jun 5, 2004).

¹⁰² S.1061, 116th Sess. (S.C. 2006), *available at* http://www.scstatehouse.net/cgi-bin/query.exe?first=DOC&querytext=1061&category=Legislation&session=116&conid=1751796&result_pos=0&keyval=1161061

¹⁰³ http://www.scstatehouse.net/sess116_2005-2006/bills/1061.htm (site only exists until printed in pocket parts)

¹⁰⁴ *Id.*

¹⁰⁵ Holleman, *supra* note 77.

¹⁰⁶ S.1061, 116th Sess. (S.C. 2006), (proposed S.C. Code Ann. §51-17-320(A)) (*available at* http://www.scstatehouse.net/cgi-bin/query.exe?first=DOC&querytext=1061&category=Legislation&session=116&conid=1751796&result_pos=0&keyval=1161061)

¹⁰⁷ *Id* (proposed S.C. Code Ann. §51-17-320(D) clearly provides:

required under the proposed legislation to meet and approve a detailed scheme as to the process to be used in distributing the bonds which must be in accordance with the requirements within the Act itself.¹⁰⁸ Once issued, the bonds represent a binding lien on the revenue generated for the Heritage Land Trust Fund which is “valid and binding against all parties having claims of any kind in tort, contract or otherwise against the trustees, whether or not the parties have notice of them.”¹⁰⁹ In addition, the bonding power created by the act is only to last for a period of two years from the effective date of the act.¹¹⁰ Further, the board of the DNR may not set a maturing date for the bond greater than thirty years from the date of issuance.¹¹¹

Most importantly, the Heritage Trust Bonding Authority Act limits the exact purpose for which the bonds may be issued:

- (J) Subject to the requirements of this section, the board acting as the trustees may authorize the issuance of bonds of the trustees for the purpose of:
- (1) refunding, on a current or advance-refunding basis, outstanding bonds of the trustees; or
 - (2) obtaining funds for delivery to the Heritage Land Trust Fund. Proceeds of bonds issued for this purpose must be delivered promptly to the Heritage Land Trust Fund and used only for the purposes provided in Section 51-17-

The board acting as the trustees may not pledge the faith, credit, or taxing power of this State or its political subdivisions in connection with the issuance of the bonds, and each bond must recite on its face that it is a special source bond of the trustees issued pursuant to and in accordance with this article and Article X, Section 13(9) of the Constitution of this State, that it is secured by and payable from only the Heritage Land Trust portion of the state deed recording fee, that it is neither a general, legal, nor moral obligation of the State or its political subdivisions, and that it is not backed by the full faith, credit, or taxing power of this State or any of its political subdivisions. Failure to include this language on the face of a bond does not cause the bond to become a general, legal, or moral obligation of the State or its political subdivisions or a pledge of the full faith, credit, or taxing power of this State or its political subdivisions.)

¹⁰⁸ *Id* (proposed S.C. CODE ANN. §51-17-320(H)).

¹⁰⁹ *Id* (proposed S.C. CODE ANN. §51-17-320(E)).

¹¹⁰ *Id* (proposed S.C. CODE ANN. §51-17-360).

¹¹¹ *Id* (proposed S.C. CODE ANN. §51-17-320(F)).

115 of the 1976 Code, except as needed to defray the costs of issuance of the bonds or to establish a reserve fund for the bonds.¹¹²

These precise limitations within the Heritage Trust Bonding Authority Act were imposed by the legislature to assure that the bonding power delegated to the Heritage Trust trustees is strictly construed to the goals of buying land within the immediately ensuing years. In addition, the provisions add confidence to the bonds because the language guarantees the repayment of a bond once issued.

However, the Heritage Trust Bonding Authority Act caps the issuance of bonds at a total of \$30 million dollars. The proposed land purchases by the Department of Natural Resources could cost upwards of \$50 million dollars, thus other sources of funding will be needed.¹¹³ Currently there exists about \$10 million that the Department of Natural Resources is holding in reserve.¹¹⁴ In addition, Governor Mark Sanford in his 2006 State of the State Address supported a one time appropriation of \$10 million to aid in the acquisition of timberland.¹¹⁵ However, the South Carolina House has successfully blocked this attempted initiative put forth by the Governor.¹¹⁶ Hypothetically, should this \$20 million materialize the current land purchase negotiations with International Paper could occur without having to search for other funding sources.

¹¹² *Id* (proposed S.C. CODE ANN. §51-17-320(J)) (S.C. CODE ANN. §51-17-115 referenced within the cited proposed statute is the codified law which created the Heritage Land Trust Fund and sets out the framework to be followed for the Fund).

¹¹³ Wilson, *supra* note 16.

¹¹⁴ Telephone Interview with Cary Chamblee, Lobbyist, South Carolina Chapter of the Sierra Club (Feb. 27, 2006).

¹¹⁵ Governor Mark Sanford, 2006 State of the State Address, (Jan. 18, 2006), available at <http://www.scgovernor.com>; *See also* Bartelme & Dixon, *supra* note 12 (article reporting on day Governor Sanford unveiled plan his plan to set aside \$10 million in the next years budget to protect timber tracts).

¹¹⁶ Tony Bartelme, *State gets Funding to Buy, Preserve Forestland*, POST & CURRIER, March 17, 2006 at A1.

However, the Department of Natural Resources is posed to submit applications for federal grants¹¹⁷ should the above funding fall short of the amount needed to complete the real estate transaction. Among the possibilities are a Forest Legacies grant from the US Department of Agriculture and a National Oceanic & Atmospheric Administration (NOAA) grant from the Department of Commerce. The Forest Legacies Program (FLP) is a federal program which works in conjunction with states to protect “environmentally sensitive” forest lands.¹¹⁸ A purely voluntary program, the FLP focuses on protection of privately owned forest land by targeting acquisition of partial interests in these lands, such as encouraging private owners to enter into conservation easements.¹¹⁹ To qualify to participate in the FLP, private forest landowners must first prepare a multiple resource management plan to submit to the USDA Forest Services.¹²⁰ If the decision is made to provide federal funding for the proposed land acquisition, federal funds may equal up to 75 percent of the purchase cost, with at least 25 percent of the cost being paid by private, state or local sources.¹²¹

Another possible source of federal funding may be to apply for assistance from the National Oceanic & Atmospheric Administration (NOAA). NOAA funding, unlike the FLP which only works with private land owners, is available to educational institutions, non-profit organizations, for-profit organizations, individuals, and state tribal and local governments who aid the agency in further its mission: “To understand and predict changes in the earth’s environment and conserve and manage coastal and marine resources to meet our Nation’s

¹¹⁷ See Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 15 CFR §24 (1988) (details the steps state and local governments must follow to obtain federal grants).

¹¹⁸ Forest Legacy Program, U.S. DEP’T. AGRIC. FOREST SERVICE, at <http://www.fs.fed.us/spf/coop/programs/loa/flp.shtml> (last modified Feb. 22, 2006).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

economic, social and environmental needs.”¹²² In the fiscal year 2004, NOAA’s Grants Management Division awarded over \$971,957,088 million in funding to over 300 recipients.¹²³ NOAA funding has aided Heritage Trust Projects before, such as in the acquisition of Bonneau Ferry in 2004.¹²⁴ In the Bonneau Ferry project funding from NOAA totaled over \$34 million.¹²⁵ Thus, this agency presents another potential source of federal funding to support the acquisition of timber lands.

IV. Analysis of the Heritage Trust Bonding Authority Act

The plan in place to protect the forestlands in Marion and Hampton County clearly presents a positive step towards conservation goals in South Carolina. Should state and federal funding materialize, which is likely, the Heritage Trust Program is set to acquire key timber tracts in the state. While this is definitely a move in the right direction, limitations exist to the plan which should be noted.

First, and most obvious, the Heritage Trust Bonding Authority Act is a onetime deal. Once the funds are raised and the land purchased what has been protected are two tracts of land in Marion and Hampton County. These forestlands, 14,000 acres in Marion County¹²⁶ and 26,000 acres in Hampton County,¹²⁷ represent only a fraction of the potential land going on the market in the state of South Carolina. With International Paper placing possibly all of its 628,000 acres on the market,¹²⁸ a plan to buy 40,000 appears meager.

¹²² N.O.A.A., U.S. DEP’T. COM., FY 2005 BUDGET SUMMARY, 1 (Feb. 2, 2004) at <http://www.publicaffairs.noaa.gov/budget2005/pdf/bluebook2005.pdf>

¹²³ Grants Office, N.O.A.A., DEP’T COM., at <http://www.ago.noaa.gov/grants/> (last updated Jan. 30, 2006).

¹²⁴ Press Release, The Conservation Fund, Conservation Partnership Protects 10,700-acre Bonneau Ferry (Jun 5, 2004).

¹²⁵ *Id.*

¹²⁶ Wilson, *supra* note 16.

¹²⁷ *Id.*

¹²⁸ *S.C. weighs law, supra* note 2.

As originally drafted, the Heritage Trust Bonding Authority Bill did not limit the DNR's ability to issue bonds to two years from the signing of the Bill into action.¹²⁹ Rather, the Bill was drafted to give the Heritage Trust Program bonding power period. While containing the same limitation on issuing bonds, such as for the narrow purpose of acquiring land for the Heritage Trust and capping issuance to an amount the revenue stream generated by the deed stamp could support, the original draft of the Heritage Trust Bill simply gave the program bonding power. The South Carolina House added the 2 year cap on bonding power as an amendment to the bill because it was hesitant to distribute this power to the DNR, fearful the department may abuse the power. Conversely, the South Carolina Parks Recreation and Tourism (PRT) agency has bonding power currently written into its statute.¹³⁰ If the legislature was willing to issue bonding authority to the PRT, one is hard pressed to develop an argument as to why a similar statute in the Heritage Trust Program is unacceptable.

The two year cap to bonding power in the Heritage Trust Bonding Authority Act means that in order to extend or regain the authority, another bill must be drafted and pushed through the legislature. This not only limits the Heritage Trust Program's ability to react quickly to other land purchases which may become available to it in the future, but requires the re-expenditure of resources to pursue a duplicate endeavor.

Another limitation to the proposed program is the future financial restraints which will be incurred by the Heritage Trust Program. A plan to repay issued bonds back over a period of 15 years¹³¹ means that the revenue source of the Heritage Land Trust Fund will be

¹²⁹ Telephone Interview with Derrick Meggie, Legislative Services Director, S.C. Dept. of Natural Resources (Feb. 28, 2006).

¹³⁰ S.C. CODE ANN. § 51-1-60(g) (1976).

¹³¹ Holleman, *supra* note 77.

substantially tied up through most of the next two decades. Some conservationists worry that the present plan will restrict the ability to buy important property which may become available in the next five years.¹³² However, supporters counter that unless the real estate market substantially drops, the agency should have sufficient funds remaining to continue purchasing property.¹³³ John Frampton, director of the DNR, noted that had the board been aware that the timber properties would go on the market, the agency would have saved for several years.¹³⁴ Despite this he is quoted saying “I don’t think we’re substantially impacting our ability to buy in the future. If you can do that and still buy something (like coastal timber tracts) now, it’s just good business sense.”¹³⁵ However, the fact remains that the present plan is definitely set to impact funding for the Heritage Trust Program in the future. How this limitation will precisely affect the effort of the Program to continue to protect and conserve lands in South Carolina will only be truly understood in the years to come.

A final limitation to the present plan is the simple fact that it is currently the only plan in place to actively pursue protection of the timber tracts being placed on the market. Creative ideas are in need in South Carolina to address the future shift in land ownership across the state. As the timber companies are private landowners, exchanges of the tracts constitute private transactions. Efforts by conservation groups are hindered by the steep asking priced for timberlands which are attractive to developers and other institutional investors. In addition, most real estate negotiations are not publicized and only become apparent after a transaction occurs. Thus, many obstacles inhibit conservation attempts.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

V. Conclusion

The Heritage Trust Bonding Authority Act presents a good beginning, but hundreds of thousands of timber land acres are going on sale and the state does not have the resources to protect all of this land. An ideal result would be private land purchasers who are willing to take steps to ensure conservation of these forest lands but this result is unlikely. Thus, the infusion of creative ideas and new approaches to the issue are needed to fill this void. One possible approach may be to analyze and draw from the initiatives of other states.¹³⁶ However, the present massive timber sell-offs are almost uncharted territory in terms of conservation. It is rare that so much land is dropped on the market simultaneously. Consequently, compounded by a new element of urgency, South Carolina conservation organizations will likely be required to develop new tactics to take on the changes that threaten the rural character of the state.

In general, the trend of the evidence indicates that in land, just as in the human body, the symptoms may lie in one organ and the cause another. The practices we now call conservation are, to a large extent, local alleviations of biotic pain. They are necessary, but they must not be confused with cures. The art of land doctoring is being practiced with vigor, but the science of land health is yet to be born.

~Aldo Leopold, Wilderness¹³⁷

¹³⁶ A topic unexplored in this paper but of interest would be to compare the efforts of North Carolina and Georgia to that of South Carolina. Looking to the bigger picture, states should begin to join in their efforts to preserve habitats thereby allowing for a macro approach to conservation. In addition, innovative ideas for conservation may be borrowed from other environmentally conscious states such as Florida or California.

¹³⁷ EDWARDS, *supra* note 30 at 155.