

AN ORDINANCE

TO ESTABLISH THE GREENVILLE COUNTY HISTORIC AND NATURAL RESOURCES TRUST TO PROTECT LANDS WITH SIGNIFICANT NATURAL, CULTURAL AND/OR HISTORIC RESOURCES IN GREENVILLE COUNTY, SOUTH CAROLINA.

WHEREAS, no other county in South Carolina and few places in the United States have such an extraordinary array of natural, cultural and historic resources as Greenville County; and

WHEREAS, natural, cultural and historic resources of Greenville County provide economic benefits of incalculable value because they attract tourists and businesses to the County; and

WHEREAS, the natural resources of Greenville County, including its high-quality soils and clean waters, are the foundation of forestry and agricultural businesses in the County; and

WHEREAS, many lands in Greenville County with significant natural, cultural and/or historic resources are threatened by future development; and

WHEREAS, according to studies conducted by the North Carolina-based firm, City Explained, the amount of developed land in Greenville County will increase from 133,000 acres in 2015 to 339,000 acres in 2040 if current trends continue; and

WHEREAS, continued growth and development are essential to keep the economy strong and to provide good jobs for the citizens of Greenville County, but the patterns of such growth and development are causing the loss of significant natural, cultural, and historic resources in the County; and

WHEREAS, without financial compensation, many otherwise willing landowners would not be able to permanently protect their properties with significant natural, cultural, and/or historic resources through either fee simple acquisition or conservation easements; and

WHEREAS, the Greenville County Comprehensive Plan states that it is one of the County's priorities to protect its significant natural, cultural and/or historic resources; and

WHEREAS, the South Carolina General Assembly enacted the South Carolina Conservation Bank in order to protect lands with significant natural, cultural and/or historic resources in the State; and

WHEREAS, additional federal, state, local, and private funding programs exist in order to provide financial incentives to protect lands with significant natural, cultural and/or historic resources; and

WHEREAS, in considering which projects to approve, these land protection programs ascribe great weight to the availability and commitment of funds from other sources; and

WHEREAS, in order to carry out these purposes, Greenville County Council desires to establish and administer the Greenville County Historic and Natural Resources Trust to acquire interests in land from willing sellers that meet certain criteria and to ensure the orderly development of the County.

NOW, THEREFORE, BE IT ORDAINED BY GREENVILLE COUNTY COUNCIL:

Section 1. Establishment of the Greenville County Historic and Natural Resources Trust. There is hereby established the Greenville County Historic and Natural Resources Trust in order to protect lands with significant natural, cultural and/or and historic resources in Greenville County that meet the criteria set forth in Sections 6 and 7 by providing a financial incentive to willing landowners to convey either a conservation easement or fee simple title to eligible recipients.

Section 2. Definitions.

- a. “Trust” means the Greenville County Historic and Natural Resources Trust
- b. “Board” means the governing board of the Trust.
- c. “Eligible Trust Recipient” means any of the following:
 - i. Greenville County;
 - ii. A municipality in Greenville County;
 - iii. An agency or commission of Greenville County whose mission directly relates to the conservation of lands with significant natural, cultural and/or historic resources;
 - iv. A not-for-profit charitable corporation or trust authorized to do business in South Carolina and organized and operated for natural resource conservation, land conservation, or historical preservation purposes, and having tax-exempt status as a public charity under the Internal Revenue Code of 1986, as amended, and having the power to acquire, hold, and maintain interests in land for these purposes;
 - v. Federal, state, and local agencies organized and operated for natural resource protection, land conservation, or historical preservation purposes.

- d. "Land" means real property, including, but not limited to, buildings, improvements, historic structures and features, watercourses, and wetlands of any description.
- e. "Conservation Easement" means an interest in real property as defined by the South Carolina Conservation Easement Act of 1991, South Carolina Code of Laws, Chapter 8, Title 27.
- f. "Interests in lands" means fee simple title to lands or conservation easements on land and historic structures.

Section 3. Board.

- a. The Trust is governed by a twelve-member Board appointed by Greenville County Council in accordance with the following requirements:
 - i. One Board member shall be appointed from each County Council District.

The primary residence of such Board member shall be in his or her County Council District. Board members shall elect by majority vote the chair of the Board.
 - ii. At least one of the appointed Board members shall be a board member or executive officer of a charitable corporation or trust authorized to do business in this State that is one of the following: (i) actively engaged in the acquisition of interests in land from voluntary sellers for the purposes of natural resource or land conservation in Greenville County; or (ii) represents hunting, fishing or outdoor recreation interests; and
 - iii. At least one of the appointed Board members shall be an owner of rural real property who is actively engaged in the management and operation of forestlands, farmlands, or wildlife habitat; and
 - iv. At least one of the appointed Board members shall be actively engaged in one of the following: (i) the real estate business; or (ii) the business of appraising forestland, farmland, or conservation easements; or (iii) the business of banking, finance or accounting; or (iv) the practice of law with a concentration in the field of real estate or land use law.
 - v. At least one of the appointed Board members shall be actively engaged in historic or cultural preservation.
 - vi. All appointed Board members shall have a serious interest in the conservation of lands with significant natural, cultural and/or historical resources.

- b. The initial term of the Board members from Council Districts 17, 18, 19, 20, 21, and 22 shall be for two years and thereafter for two-year terms.

The initial term of the Board members from Council Districts 23, 24, 25, 26, 27, and 28 shall be for three years and thereafter for two-year terms.

Board members may not serve more than two consecutive terms, but are eligible for appointment after being off the Board for one term.

Vacancies shall be filled by Council for the unexpired portion of any term.

- c. The members of the Board shall serve without compensation but may receive the mileage and per diem as may be authorized and appropriated by Greenville County Council. The Board shall adopt rules and procedures for conducting its meetings and carrying out its responsibilities.
- d. The Board is a public body and its members are therefore subject to, among other applicable laws and regulations, the South Carolina Ethics Act, the South Carolina Freedom of Information Act, and Greenville County Code of Ordinances Section 2-83 and shall perform their duties in accordance with the provisions thereof.
- e. The Board shall meet at least four times per year in regularly scheduled meetings open to the public and in special meetings as the chair may call. All meetings shall be conducted in accordance with the South Carolina Freedom of Information Act.

Section 4. Board Duties and Responsibilities.

- a. The Board is authorized to:
 - i. Award grants to “Eligible Trust Recipients” for the purchase of land or interests in land that meet the criteria contained in Sections 6 and 7; and
 - ii. Apply for and receive additional funding for the Trust from federal, state, private, and other sources, to be used as provided in this Ordinance; and
 - iii. Receive charitable contributions and donations to the Trust to be used as provided in this Ordinance, with such contributions and donations to be deductible to the extent allowed by law; and
 - iv. As approved by County Council, receive contributions to the Trust 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 shall be used as provided for in this Ordinance.

- b. To carry out its functions, the Trust shall:
 - i. Operate a program which includes:
 - 1. Developing a ranking system for applications pursuant to the criteria in Sections 6 and 7;
 - 2. Receiving applications from Eligible Trust Recipients pursuant to Sections 6 and 7;
 - 3. Evaluating applications from Eligible Trust Recipients for eligibility in the program pursuant to Sections 6 and 7;
 - 4. Reviewing and ranking applications from Eligible Trust Recipients pursuant to the ranking system; and
 - 5. Approving and awarding grants to Eligible Trust Recipients with such conditions as determined by the Board.
 - ii. Establish additional guidelines and procedures as necessary to implement this Ordinance; and
 - iii. Submit an annual report to Greenville County Council.
- c. The County Administrator is directed to provide the administrative resources and support needed to operate and manage the Trust, including the hiring of staff.
- d. No more than ten percent of the annual operation, management and administrative expenses of the Trust shall be paid out of the Trust appropriated for the year.

Section 5. Trust Account. The Greenville County Treasurer shall establish an account for the Trust that is separate and distinct from all other funds appropriated by County Council. The Trust shall receive revenues according to one or more funding measures approved by Greenville County Council. The Council acknowledges and agrees that funding measures shall be undertaken as soon as feasible in order to avoid escalating land costs and lost acquisition and protection opportunities. Any funds not fully expended during the fiscal year shall remain in the Trust and be available for grants in subsequent years unless the Council expressly provides otherwise. The Board may at any time request the Council to appropriate additional funding for the Trust.

Section 6. Conservation Criteria. The Board shall use the following conservation criteria in developing a ranking system for applications pursuant to Section 4(b):

- a. Environmental Sensitivity
 - i. Presence of wetlands

- ii. Frontage on USGS blue line streams
 - iii. Water quality classification of stream by the South Carolina Department of Health and Environmental Control
 - iv. Presence of threatened and/or endangered species
 - v. Habitat suitable for threatened and/or endangered species
 - vi. Habitat suitable for native wildlife species
 - vii. Extent of biological diversity
 - viii. Presence of unique geological and/or natural features
- b. Percentage of Property Sharing a Boundary with Protected Land
- c. Historic/ Cultural Structures and Features
 - i. Contains structures or features designated on the National Register of Historic Places
 - ii. Contains structures or features eligible for designation on the National Register of Historic Places
 - iii. Contains structures or features designated as historic by Greenville County
 - iv. Contains historic and/or prehistoric structures
 - v. Contains historic and/or prehistoric sites or locations of an historic event
- d. Percentage of Property Containing Prime/ Statewide Important Soil Types
- e. Extent of Active Farming on Property
- f. Extent of Public Visibility of Property
 - i. Visibility from public roads
 - ii. Visibility from public land
- g. Scenic view from property
- h. Extent of public access
- i. Location of property

- j. Threat of development
- k. Size of property

Section 7. Financial Criteria. The Board shall use the following financial criteria in developing the ranking system for applications pursuant to Section 4(b):

- a. Comparison of requested funding to appraised fee simple value or conservation easement value.
- b. Partnerships, matching contributions, management agreements, management leases, and similar collaborations among state agencies, federal agencies, Eligible Trust Recipients, and local governments, boards, and commissions.
- c. No matching funds or other contributions are required to receive grants from the Trust. However, the commitment of such funds shall be a positive factor considered by the Board in its evaluation of the applications.

Section 8. Program and Procedures.

- a. Application
 - i. An Eligible Trust Recipient independently or in conjunction with the landowner may apply for a grant from the Trust by submitting an application in accordance with the rules and procedures established by the Board under this Ordinance.
 - ii. Prior to the submission of its application, the Eligible Trust Recipient must obtain the written consent to the submission of the application from the owner(s) of the land that is subject to such application. In addition, the Eligible Trust Recipient must notify in writing the owner(s) of the land that is the subject of the application of the following:
 - 1. That interests in land purchased with the Trust result in a permanent conveyance of such interests in land from the landowner to the Eligible Trust Recipient and 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.

The application must contain an affirmation that the consent and notice requirements of this subsection have been met.

- iii. For applications involving historic resources that are not designated as historic by Greenville County, the applicant shall apply for, and be granted, such designation by the Greenville County Preservation Commission as a condition to consideration of the application under this ordinance. In addition, the applicant shall send a copy of the application to the Greenville County Historic Preservation Commission.
- iv. In each application, the Eligible Trust Recipient must provide information regarding how the proposal meets the criteria contained in Sections 6 and 7.
- v. For each grant application the applicant shall specify:
 - 1. The purpose of the application;
 - 2. How the application satisfies the criteria contained in Sections 6 and 7;
 - 3. The uses to which the land will be put;
 - 4. The party responsible for managing and maintaining the land; and
 - 5. The parties responsible for enforcing any conservation easement or other restrictions upon the land.
- vi. Where an Eligible Trust Recipient seeks a Trust grant to acquire fee title to land, the Eligible Trust Recipient must demonstrate both the expertise and financial resources to manage the land for the purposes set forth in its application. The Board, on a case by case basis, may require an Eligible Trust Recipient acquiring fee title to land to place a conservation easement on such property to ensure its permanent protection.
- vii. Where an Eligible Trust Recipient seeks a Trust grant to acquire a conservation easement, the Eligible Trust Recipient must demonstrate both the expertise and financial resources to monitor and enforce the restrictions placed upon the land for the purposes set forth in its application. The Board shall evaluate each application to determine the qualifications of the proposed managing party and to determine whether the proposed management is consistent with the purposes set forth in the application.

b. Application Review

- i. The Board shall accept three rounds of applications each calendar year in accordance with the following deadlines: April 1, August 1, and November 1. The Board may cancel or defer any deadline if there are insufficient funds to award grants.

- ii. The Board shall post a copy of the applications that it receives or a summary thereof on the Trust website (or the Greenville County website until such time as the Trust website is available) and shall invite and accept comments from any interested member of the public on the applications.
- iii. The Board shall evaluate each application according to the criteria contained in Sections 6 and 7 of this Ordinance, shall consider any public comments that it receives, and shall make a final decision within ninety days of its receipt of the application. The decision may be for full approval, partial approval or disapproval.
- iv. In its decision the Board shall set forth findings that indicate:
 - 1. How the application meets the criteria set forth in Sections 6 and 7;
 - 2. The purpose of the grant and the use to which the land will be put;
 - 3. The party responsible for managing and maintaining the land;
 - 4. The party responsible for monitoring and enforcing any conservation easements or other restrictions upon the land;
 - 5. How the parties designated in Section (a)(v) and (a)(vi) possess the expertise and financial resources to fulfill their obligations;
 - 6. The availability of Trust funds for the grant;
 - 7. Any other findings or information relevant to the grant.
- v. If the Board's decision is to approve the grant, the grant shall be made and the transaction closed in accordance with Section 9(c) of this Ordinance.
- vi. The Board may only authorize grants to purchase interests in lands at or below fair market value pursuant to a certified appraisal. The Board shall establish reasonable procedures and requirements to ensure the confidentiality of appraisals.

c. Grant Award

- i. The Board shall notify the Eligible Trust Recipient of its decision.
- ii. If the Board decides to approve the application in whole or in part, the Eligible Trust Recipient and the owner of the interest in the land identified in the application shall have a period of sixty days from the date of the Board's decision to close the transaction.

- iii. The Eligible Trust Recipient shall submit the following required documents to the Board prior to closing the transaction:
 - 1. A certified appraisal satisfying the requirements of Section 8(b)(vi);
 - 2. Greenville County and the Trust shall be indemnified as to title in the amount of the grant, and this indemnification shall be secured by a title insurance policy acceptable to the Board 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 is small, the land in question presents a particularly valuable conservation opportunity according to the criteria of Section 6, and the cost of the interest in land acquired reflects the lack of insurable title.
 - 3. In order to identify potential liability pursuant to applicable state or federal environmental laws or regulations, a certified environmental hazard assessment shall be conducted on lands before the disbursement of a grant from the Trust for the acquisition of all interests in such lands except as provided below in Section 8(c)(iii)(4).
 - 4. An application for such interest in land shall qualify as a small grant application if the amount requested is less than thirty thousand dollars (\$30,000) or 10% of the appraised fair market value of either the conservation easement or fee simple acquisition, whichever value is smaller. The environmental assessment required in Section 8(c)(iii)(3) shall be waived for applications for interest in land qualified as a small grant unless specifically required on a case-by-case basis by the Board.
- iv. The Trust and Eligible Trust Recipients receiving monies from the Trust shall retain all records of acquisition of interests in land with a grant from the Trust including, but not limited to deeds, title documents, contracts, surveys, inventories, appraisals, title insurance policies, environmental assessments, and closing documents.
- v. The Board shall disburse the grant from the Trust to Eligible Trust Recipient and the closing shall occur after all applicable requirements of this section are fully satisfied, provided the closing shall take place no later than one year after the Eligible Trust Recipient and owner of the interest in land decide to accept the award unless the Board, for good cause shown, extends the deadline for a period not to exceed six months.

Section 9.

- a. Only Eligible Trust Recipients may acquire interests in lands with the Trust.
- b. The Trust may purchase an interest in land on behalf of Greenville County subject to the criteria contained in Sections 6 and 7, and subject to the approval of Greenville County Council.
- c. The Trust shall be used only by Eligible Trust Recipients for the acquisition of interests in land, including closing costs. "Closing costs" shall include recording fees, deed transfer or documentary stamp fees, the costs of performing the work and providing the documentation required under Section 8(c)(iii), attorneys' fees, and the cost of obtaining or updating surveys, but in no event shall more than \$5,000 in closing costs be paid per award. The Trust shall not be used to pay general operating expenses or endowment requests of Eligible Trust Recipients, nor shall the Trust be used for the management or maintenance of acquired interests in land. The grant from the Trust shall be disbursed only at the closing of transactions in which an interest in land is acquired.
- d. All interests in land acquired with a grant from the Trust shall be held by the Eligible Trust Recipient approved by the Board to acquire the interest in land; except that an interest in land obtained with a grant from the Trust may be assigned from one Eligible Trust Recipient to another upon approval of the Board by two-thirds vote.
- e. The owner of the fee simple title to property upon which a conservation easement was purchased with a grant from the Trust, whether the original owner that conveyed the conservation easement or a successor-in-interest, may reacquire and thereby terminate or extinguish that conservation easement, whether in whole or in part, only by complying with all of the following: (i) proving that the original conservation and/or historic values of the protected land have been lost or substantially impaired by factors beyond the owner's control, (ii) obtaining unanimous approval by the Trust Board, (iii) obtaining approval by at least nine members of Greenville County Council, and (iv) payment in cash of the current fair market value of the conservation easement, as determined by a certified appraisal.
- f. If an Eligible Trust Recipient acquires fee simple title to land for conservation and/or historic purposes with a grant from the Trust, that land may not be sold, transferred, assigned, alienated, or converted to a use other than the use set forth in the grant award except by complying with all of the following: (i) proving that the original conservation and/or historic values of the protected land have been lost or substantially impaired by factors beyond the owner's control, (ii) obtaining unanimous approval by the Trust Board, (iii) obtaining approval by at least nine members of Greenville County Council, and (iv) payment in cash of the current fair market value of the protected land, as determined by a certified appraisal.

- g. If any interests in lands that have been acquired by an Eligible Trust Recipient with a grant from the Trust are extinguished, terminated, sold transferred, assigned, alienated, or converted pursuant to Sections 9(e) and (f), the Eligible Trust 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 to the Trust. The replacement land shall have the same or greater significance when evaluated under the criteria set forth in Sections 6 and 7. The Board shall verify that suitable replacement interests in lands have been identified and will be obtained before authorizing that any interest in land purchased with a grant from the Trust be extinguished, sold, transferred, assigned, alienated, or conveyed. Where replacement in whole or in part is impossible, funds realized which are not used for replacement interests in land must be credited to the Trust. Where funding for an original acquisition was from multiple sources, funds realized must be credited to the Trust under this section in proportion to the contribution that the grant from the Trust made to the original acquisition.

Section 10. Eminent Domain or Condemnation Proceedings. The Trust 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 proceedings.

Section 11. Recreational and Economic Use. The provisions of this Ordinance shall not be construed to eliminate or unreasonably restrict hunting, fishing, farming, forestry, timber management, or wildlife habitat management, as regulated by the law 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 protected with the Trust.

Section 12. Historic Resources. For grant awards involving historic structures or features designated as historic by Greenville County, the owner shall remain subject to, and shall fully comply with, all applicable provisions of Greenville County Ordinance Number 3310, as amended.

Section 13. Conservation Easements. When the Trust is used to purchase a conservation easement on land, the conservation easement shall be the controlling legal document regarding what is and what is not permitted upon the land, how the land will be protected, and what rights are vested with the Eligible Trust Recipient and its assigns which holds 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 a grant from the Trust, the terms and conditions of the conservation easement shall prevail. The Eligible Trust Recipient shall have sole responsibility for monitoring the property subject to the conservation easement and for enforcing the terms and conditions thereof.

Section 14. Severability. Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase or portion of this

Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

Section 15. Effective Date. This Ordinance is subject to the pending ordinance doctrine and is effective upon its introduction and notice of Public Hearing.

DONE IN REGULAR MEETING THIS ____ DAY OF _____, 2020.

Herman G. Kirven, Jr., Chairman
Greenville County Council

ATTEST:

Regina McCaskill
Clerk to Council

Joseph M. Kernell
County Administrator