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**SPECIAL CALLED MEETING/WORKSHOP MINUTES  
SOUTH CAROLINA CONSERVATION BANK  
1000 ASSEMBLY STREET, ROOM 325  
COLUMBIA, SC 29201  
Tuesday, September 23, 2014**

The Special Called meeting/workshop of the Board of the South Carolina Conservation Bank (SCCB) was held at 10:00 am on Tuesday, September 23, 2014 in Room 325 of the Rembert C. Dennis Building, Columbia, South Carolina. Notice of the date, time and place of the meeting was posted and mailed to the news media. Chairman Weston Adams, III presided at the meeting. Board members present included William L. Snow, Sr., Vice Chairman; Andrea Clark; Elliott Close; Michael G. McShane; Thomas Miller; James Roquemore; and Harry Shealy and Ex-Officio members D. Glenn McFadden, Chairman SCDNR Board; and Frank A. McLeod, III, Chairman SC Forestry Commission. Members absent were D. Clinch Heyward, C. Douglass Harper (new Bank Board appointee) and Duane N. Parrish, Director for PRT.

**I. WELCOME AND CALL TO ORDER**

Chairman Adams called the meeting to order and welcomed everyone to the meeting and noted the Freedom of Information Act guidelines had been met.

**II. INTRODUCTION**

Chairman Adams reminded everyone this was a special called Board meeting to take public comment on the processes the Bank uses to approve the Conservation Easement deals. The new process was announced at the last Board meeting on April 30, 2014 which included two major procedural changes. The Board is interested in any public comments on those changes. Chairman Adams apologized for not taking comments from the public prior to making the changes and that these changes are revisable if the discussions today provide a clear justification for any changes.

Chairman Adams welcomed D. Glenn McFadden the new SCDNR Board Chairman and new to the Conservation Bank Board. Chairman Adams acknowledged Ben Geer Keys who retired off the Bank Board and thanked him for his service over his many years on the Board. Mr. Keys stated it had been an honor and privilege to serve on the Conservation Bank Board and that he has seen the Board do some great work over the years. Mr. Keys stated he would miss being a part of the Bank Board; however, his has some health issues that have prompted him to retire from the Board. Chairman Adams stated Mr. Keys is a gentleman of gentlemen and thanked Mr. Keys again for his contributions to the Bank. Chairman Adams asked the Board to put forth a Board resolution thanking Mr. Keys and asked Mr. Miller to work with staff in preparing this.

**III. OPEN FORUM WORKSHOP**

Chairman Adams stated that the Land Trusts submitted comments on the changes made by the Board.

**a. Public Discussion of the Application Policy Changes Relation to the New Appraisal Guidelines**

Chairman Adams asked if the spokesman for the Land Trust group was present. Andrew Waters, Executive Director, Spartanburg Area Conservancy stated he is now the Director of the SC Land Trusts Network (SCLTN). Mr. Waters thanked the Board for the opportunity to discuss the procedural changes. Mr. Waters stated during his time as the Director of the SCLNT the SC Conservation Bank and the legislation guiding it are the most important matters of the SCLTN and it was the objective of the SCLTN to maintain an open and respectful dialogue with the Bank Board no matter what the outcome of the meeting. The SCLTN Committee consisted of Mary Crockett with Congaree Land Trust; Erin Knight with Upstate Forever; Chris Vaughn with Ducks Unlimited; Raleigh West with Lord Berkeley Land Trust; Katy

Malloy with The Nature Conservancy, and Ashley Demosthenes with Lowcountry Open Land Trust, who served as Chairman of the Committee.

Ashley Demosthenes stated the SCLTN's recommendations address the appraisal process, the timing of the process, and a full draft conservation easement included with the application. Ms. Demosthenes stated the first recommendation relates to the appraisals and the selection of the appraiser. The Committee recommended as an alternative to the having the Director of the Conservation Bank select the appraiser is to maintain a list of prescreened appraisers. Ms. Demosthenes stated that is not uncommon for Land Trusts to maintain as well. Many land trusts maintain a list of appraisers with experience working on easement and that list is made available to the landowners. The Land Trusts feel if a list of prescreened appraisers were maintained that the landowner could choose from would help the Land Trusts maintain an arm's length distance in the process. Ms. Demosthenes agreed that the Conservation Bank should be listed as an intended user and isn't an issue.

Ms. Demosthenes stated regarding the procedural process, when do you provide it and how much do you provide, the Committee agreed to provide at least a preliminary evaluation either with the application or within 30 days of the Bank Board meeting. Sometimes it is difficult to try and arrange all the steps to occur in a timely fashion. If a Land Trust is not able to submit a preliminary evaluation with the application as more time maybe needed to work through logistics, then having the material submitted 30 days prior to the Board meeting provides a little flexibility. The Land Trust or Landowner can get the evaluation submitted and information would be available at the Board meeting as to the value of the property, what the value of the easement is and what the funding request is for.

Ms. Demosthenes stated the Land Trusts are trying to be landowner friendly and make this accessible to landowners. One way they have accomplished this is to try and minimize the upfront costs to the landowner. Many times the award from the Bank is helping to offset the costs to the landowner such as not having to provide a full appraisal at the time the application is submitted.

Ms. Demosthenes stated the second major change to the process dealt with the conservation easement and requiring that a final draft be submitted. Mr. McShane asked if we could address the first issue before Ms. Demosthenes explained the concerns about the second issue to eliminate any confusion between the two. Chairman Adams and Ms. Demosthenes agreed that was a good idea.

Chairman Adams called for any questions from the Board members to Ms. Demosthenes on the appraisal issue. Mr. Snow stated the timing of the appraisal was discussed by the Board thoroughly and the appraisers have rules and regulations they have to follow as they build a file. Mr. Snow stated there was a question in the early stages as to who can give the evaluation and how much work has to be done before providing the evaluation in building the file. Mr. Snow stated when the evaluation is being done the evaluation is critical as to how the Bank makes its judgment and asked what is the Land Trusts perspective on that. Ms. Demosthenes stated to produce a preliminary evaluation or opinion on the property the appraiser does have to do a great deal of research in looking up comparable sales and the appraisers are 50% or more into the full appraisal process. The Land Trusts experience in providing a preliminary and then the full appraisal is once the Bank Board approves the application it is simply a cost issue. The quality of the report the Bank receives on the front end is good. It contains much of the same information as in a full appraisal. However, completing the final full appraisal is where the greater cost comes in to the appraiser and this is based on the way appraisers handle the process for Lowcountry Open LT. Mr. McLeod stated that if the appraisal evaluation gives an indication of value without the full appraisal prior to the Bank Board meeting and it complies with the SC Appraisers Board guidelines in form and content then the appraisal evaluation submitted should work for the Bank Board.

Mr. McLeod stated that the appraiser, by statute, has to do a certain amount of work to even deliver a number. Mr. McShane stated the primary issues is the choice of appraiser and asked for clarification from the Chairman as to why the decision was made to have Mr. Davant or the Executive Director to choose the appraiser. Chairman Adams stated the decision was made based on the fact that when the circumstances were explained to a commercial banker stating that the landowner is picking the appraiser and the Bank is left out of the conversation that there is no legal duty owed by the appraiser to the Conservation Bank. The

duty is entirely to the landowner. Chairman Adams stated that after numerous conversations with Commercial Bankers and Mitigation Bankers it was clear that the landowner should not be choosing the appraiser. Chairman Adams stated the Conservation Bank isn't the same as a commercial bank; however, as a public entity the Conservation Bank has a higher due diligence requirement. Chairman Adams stated that there are three options (1) the Conservation Bank continues to handle the process the same as it has always done by letting the landowner choose the appraiser; (2) the Bank Board picked a middle ground by the Bank choosing the appraiser and the appraisal is addressed to both the landowner and the Conservation Bank; or (3) have two completely separate appraisals, which is too costly. Chairman Adams stated the Board agreed with option two that the Conservation Bank pick the appraiser and the appraisal is addressed to both the landowner and the Conservation Bank thereby a duty is owed to both entities. Chairman Adams stated that this matter was addressed with the Conservation Bank's attorney, George Bailey. Mr. Bailey informed the Chairman that there was no tax law issue with the way the Bank is recommending to handle, nor is there a legal issue. The Board determined that the third option was a problem as the landowner would pay for an appraisal and the Bank would have to pay for the second appraisal which is not a cost effective use of the Bank's revenue. Chairman Adams stated he had issues with the Land Trusts recommendation on the choice of appraiser.

Mr. Roquemore liked the Land Trusts recommendations and wanted to work with the group to find a happy medium for both. Mr. Roquemore stated that if the Land Trust and the Executive Director agreed on an appraiser from the approved list but if there is deemed a conflict of interest by the Executive Director that the Executive Director has the final say which would appear to resolve any concern about the choice of the appraiser and would lend a check and balance to the Bank's side of the situation and not the Land Trusts side. Mr. Roquemore stated that this would be a compromise that could be considered by the Board in Executive Session. Chairman Adams stated that all the recommendations would be reviewed by a committee appointed by the Chairman before the next Bank Board meeting and that committee would provide some possible action on the recommendations at the November Bank Board meeting. Chairman Adams stated Mr. Bailey (the Conservation Bank's attorney) recommended having the appraisal done in the name of the Bank only and leave the landowner completely off.

Mr. McLeod stated one thing to consider is that some agencies use their own review appraisal. In other words, the Land Trust would pick the appraiser and the Bank has someone outside of staff that reviews all appraisals submitted to determine if the values make sense or not. Chairman Adams stated that was a fourth option. Mr. McLeod stated that would take away the lists but the Bank would have someone to review the appraisals who does this on a regular basis and is well versed in farm and rural property appraisals. Mr. McShane stated that Mr. Davant has roughly 50 years experience and a great deal of that time is reviewing appraisals. During his forty years with the Department of Revenue I think he reviewed a few appraisals. Mr. McShane stated that Mr. Davant serves in the capacity Mr. McLeod mentions as he makes recommendations to the Bank Board.

Mr. Snow stated the Executive Committee looked at the review process. There has to be one appraisal done and paid for so the Board agreed not to have a large amount of redundancy in the process. Also, many of these matters are tax sensitive and the process has taken six months at best to make it work and adding another layer of redundancy, with the Board meeting only twice a year, many applications would be kicked into the second year and therefore, that would probably kill the project from a tax standpoint. Mr. Snow stated the Committee looked at the tax ramifications if the appraisals were addressed to the Bank if the landowner could use the appraisal for his tax purposes as long as it was within six months as set forth in IRS guidelines. Mr. Snow stated the Committee worked through all the various parameters before determining that the option to have both the landowner and the Conservation Bank listed in the appraisal would be a middle ground to benefit all parties. Mr. Snow stated that if the appraisal changed, such as changing something material in the conservation easement, the Board wouldn't have a chance to act on that specific application until the next meeting and two thirds to three quarters of the anticipated funds for the year have been used. The Board is trying to keep the process where it will flow along for the Land Trusts benefit in the time frames that the Bank has to work with. Mr. Snow stated he spoke with numerous appraisers and other state government agencies to determine the appraisal guidelines they follow.

Mr. McShane stated that the Land Trusts had made four recommendations, three of which there appears to be a general agreement between the Bank Board and the Land Trusts to (1) maintain the list of prescreened appraisers; (2) require that the Conservation Bank be listed as an intended user, and (3) include an appraisal evaluation as part of the application process. The only point that appears to be in question before the Board is allowing landowners to choose the appraiser, which is the Land Trusts recommendation, versus the Conservation Bank's current policy. Chairman Adams stated he would like to form a Committee and give the issues in total to the Committee and let them come back to the Board with recommendations as to how to handle. Mr. Snow asked if the Land Trusts would take this into consideration as to what the Bank presented at this time and what the thought process was. Ms. Clark stated the Bank did not intend to just pick an appraiser and shove it down the throat of the Land Trusts or the landowners. There is some flexibility there but the Bank wanted the Executive Director to have the final say. Chairman Adams stated that Mr. Roquemore's recommendation may be the easiest solution where the Executive Director gets with the Landowner and they collectively select an appraiser but the Executive Director has the final say. Chairman Adams asked for comments from Ms. Demosthenes.

Ms. Demosthenes stated the Land Trusts main concern was the effect the Bank Board's decision may have on the landowner as to their participation. The Land Trusts agree it is a different process than dealing with Commercial or Mitigation Banks. The landowner brings a great deal of value to the table and for the landowner to not to have any ownership in the process or decision making, there is concern about the unintended consequences that may occur. The Land Trusts have worked successfully over the years to ensure the integrity of appraisals. The attention to appraisals has been increased just in the Land Trust industry. The Land Trust Alliance has encouraged Land Trusts to complete the accreditation process to verify that nothing egregious is done during the appraisal process. Ms. Demosthenes stated that the Land Trusts have just as much at stake to make sure that the appraisals stand up to IRS requirements. In discussions between the Land Trusts and the landowners, the landowner is advised that choosing an appraiser this is one of the most important decisions in the process of choosing an appraiser that has credibility. Ms. Demosthenes stated she was not aware of any other process that chooses an appraiser other than the federal government which is usually when property is being purchased as with a NAWCA grant or another federal grant source. The model suggested by the Land Trusts Network has worked well at the Charleston County level and Dorchester County. Ms. Demosthenes asked if any of the other Land Trusts had seen any other examples of appraisers being chosen.

Mr. Roquemore asked Mr. Davant if during the history of the Conservation Bank had there been a time where an appraiser was considered questionable. Mr. Davant stated that he could not think of anyone in a logical issue that problem existed. Technically, generally speaking, the appraiser the Land Trusts use must meet the three criteria as presented and disbursed to the Land Trusts. Mr. Davant stated he had no knowledge of an individual appraiser who didn't meet these qualifications. Mr. Davant clarified that the Conservation Bank is a critical agency to everyone, but at the end of the day it is more important than any individual issues we may have. Whatever resolution is reached, Mr. Davant said he would assure everyone that the Bank would continue with the same process of getting the best deals done at the best price as quickly and efficiently as the funds are made available. That aspect is not going to change.

Barry Beasley with Katawba Valley Land Trust thanked the Board for their time and asked that if the Bank has a list of appraisers that met the set of criteria set by the Bank Board, what difference it makes at that point if Mr. Davant is choosing or the landowner is choosing the appraiser. If they are qualified and everyone agrees the appraisers are qualified what difference does it make? Chairman Adams stated there were two reasons. First, there is a legal duty created by the Bank making the selection. Second, in an attempt to be generous, the Bank Board has made the appraisers list. The practical effect of taking the broad appraiser list and then have the landowner select the appraiser would be to go back to what the Bank was previously doing. Thus, there would be no change in the process. Chairman Adams stated that the legal duty issue is inarguable wherein a legal duty is created to both the Conservation Bank and the landowner. To answer the choice question, the Bank made the list broad in an attempt to be ecumenical and if the Bank goes back to the landowner to pick from the approved appraiser list then the process would be same as it was before we made the process change. Mr. Beasley stated if the list of appraisers has been created based on criteria established by the Bank Board and is not a list of the Land Trusts and the Bank Board can establish the criteria as tight or as open they deemed necessary. Mr. Beasley stated that if the

Chairman is putting together a committee to discuss the issues addressed at this meeting, you may want to add some people from the Land Trust Network to continue the dialogue between both groups. Chairman Adams stated Mr. Beasley's suggest was a good idea and the committee would be the Board Committee (Bill Snow, Jim Roquemore, Mike McShane, Marvin Davant and the Chairman) and they could pick individuals from the Land Trust Network to meet together and work through these issues.

Erin Knight with Upstate Forever asked when talking with appraisers and others in the Land Trust Community there are some questions as to what the appraisal letter should like or should contain. Ms. Knight asked who the Appraiser's Board is. If there was some guidance from the Conservation Bank Board as to what the appraisal letter should contain so that everyone is consistent, that would helpful guidance for the Land Trust Network. The Network would like to show the proper procedures were done. Mr. McLeod stated that the comments received from the Land Trusts and the Bank's responses, he feels it would be best to go to the Appraisers Board to ask what pleases them and create a template that could be by everyone to be consistent. Mr. McLeod stated the Board was trying to do a better job for the legislature or for an audit that would stand up to any scrutiny from any direction. Mr. McLeod stated the Board would try to get some type of a template to distribute to the Land Trusts.

Mr. Roquemore stated that there is some chance during Executive Session that the Board would resolve most of the issues raised at the meeting. If it suits the Board, Mr. Roquemore didn't want anyone to leave saying they would have a committee and then made some decisions at the meeting. It would be better to keep options open for the Board to review the recommendations during Executive Session and then possibly return a decision before everyone leaves today's meeting. Chairman Adams stated he wanted to avoid making a reactive off the cuff change from an hour meeting. Mr. Roquemore clarified this was an option. Mr. Roquemore state secondly the Bank is providing a list of what is required and what is expected on the application which will continue to exist and Mr. Davant will prepare that list. Mr. Roquemore asked Mr. Davant if that was correct that a list of everything that is expected in the application is provided to the Qualified Entities and Land Trusts and any changes made by the Board would be reflected in the list. Mr. Davant stated that was correct.

Chris Vaughn with Ducks Unlimited stated there were two issues he had concerns about. As relates to the landowner, Mr. Vaughn stated his concerns were how the landowner might react if they choice of the appraiser were taken out of their hands and the possible unintended consequences. Additionally, with the choice of the appraiser being taken away from the landowner many landowners may walk away from the deal or they may ask for more per acre if they cannot chose the appraiser. With working with landowners daily, Mr. Vaughn stated these are issues of concern to him. Mr. Vaughn stated his second concern related to the tax rules. It is Mr. Vaughn's understanding that the tax rules require that the appraisal be no earlier than 60 days prior to the date of the gift which is a timeframe the Land Trusts try to manage with the landowner to finalize the deal. The tax rule may require that the landowner must be a client. Chairman Adams called on the Bank's attorney, George Bailey to address this issue. Mr. Bailey stated his suggestion was that if the landowner wasn't comfortable with the Bank selecting the appraiser, then the appraisal be addressed to the Bank alone and the landowner would have the option of going back to the appraiser and stating since the appraiser had done all the work would the appraiser issue an appraisal to me. Mr. Bailey stated there are certain requirements for the appraisal to qualify for tax purposes that would not be applicable to what would satisfy the Bank. This would allow the landowner to have an opportunity to see if he liked the appraisal submitted to the Bank. Mr. Vaughn stated the concerns with the unintended consequences with the landowner and the tax rules are issues that will take more time to be reviewed more carefully.

Van Whitehead with Upstate Forever stated he had several concerns, the first being the cost of the appraisal. Conservation easement appraisals are not cheap and not like a basic residential appraisal. A conservation easement appraisal runs \$3,000 to \$6,000 per appraisal. For a retired family member trying to donate the family farm and a qualified entity goes to them stating it would apply for some money you may or may not get but you need to pay up to \$6,000 for an appraisal on the front end, will have some significant effect on the landowner. There are additional transaction costs that the landowner is present with such as surveying, attorney fees, etc. The cost of an appraisal up front is going to be a concern to these landowners. Chairman Adams deferred to Mr. Snow for a response. Mr. Snow state that the Bank

was not requiring a full appraisal before the Board reviewed the application. One reason was to help keep the upfront costs down but with the Bank picking the appraiser it provided a comfort level in the process to bridge that time. That was a consideration. Mr. Whitehead stated the Land Trusts would need to hear from the appraiser community as to their comfort level in doing preliminary letter opinions that may consist of 90% of the appraiser's workload at a reduced rate and the appraiser is taking the risk that the full appraisal not being utilized and that would be an issue for the appraiser to address. Many landowners like to shop around to see which appraiser will give them the best price for the best product. Mr. Roquemore stated that the Bank agrees it will talk about the collaborative effort as a possibility and will take it under advisement that there needs to be some collaborative effort if possible. Mr. McLeod stated when the Board votes on a grant when someone is placing an easement on the property the Board needs to know what the easement is to know what to vote on. Secondly, the Board needs to know what the number is as far as the value to know what to vote on. Mr. McLeod stated it may seem like a catch 22 on the landowners side in putting out money but from the Bank side the Bank has to answer the general public about the decisions. Mr. McLeod stated the Board was trying to come up with something that would work for everyone.

Glen Sandifer with NRCS stated he had worked with these type programs for a while and in some of the NRCS programs the landowner chooses the appraiser and some NRCS chooses the appraiser. The NRCS has noticed there is a considerable difference in the ones NRCS controls and the ones the public/landowner controls. Mr. Sandifer understands both sides issues as he handles both but agrees the Bank Board needs some control and some consistency.

Ms. Demosthenes stated when working with The Nature Conservancy similar issues arose regarding appraisers which raised their awareness of being more diligent in having reliable certified appraisers to do the conservation easements. The Land Trust Alliance has done the same in encouraging Land Trusts to be very proactive in doing appraisals. Ms. Demosthenes stated she had worked with a landowner who submitted an appraisal and there was a big problem with the appraisal in there was a missing component appraisal. She stated having a process in place to be able to present the best possible appraisal with applications submitted to the Bank and if an issue arises to have a process in place to evaluate those issues and bring to a resolution.

Michael Herger who was a landowner stated that he had already engaged an appraiser and gotten an appraisal which was more on the high end than the low end of the numbers that were discussed. It was a concern as a landowner that he would be to a point in the process and then be told he had to get another appraisal or the Board would not look at the appraisal. The appraiser he chose was picked with a lot of thought and consideration as to his qualifications both within the state and federal arenas. Mr. Herger stated he would be concerned if he wasn't accepted by the Board. Mr. Herger stated he had some concerns since he had already started his process and felt he had a qualified appraiser that may not meet the Board's guidelines. Mr. Roquemore stated that the applications that were in process but had not been submitted to the Board the process would not be changed on those. Mr. Roquemore stated as long as Mr. Herger satisfied the requirements when submitted to Mr. Davant that it would meet the Board's guidelines.

Mark Robertson with The Nature Conservancy reinforced Ms. Demosthenes comments that since 2005 standards of Land Trusts have been raised tremendously and should be on the same page as the Conservation Bank. The Land Trusts don't review the appraisals carefully to verify if a donation exists or not. Mr. Robertson stated that the Land Trusts carry out a great deal of oversight presently and in reviewing any appraisal and if any discrepancies exist they go back to the landowner and the appraiser for clarification or changes to meet the proper standards. When the Land Trusts signs a document accepting it as accurate and correct the Land Trust has a responsibility to hold to a higher standard as well. The landowner's donation is the basis for a tax deduction as a tax credit. Mr. Robertson stated that if the Board uses the preliminary appraisal letter or a full appraisal the Land Trusts Network recognizes that the Bank's Executive Director always has the right to ask for clarification on that information. If at any point in the process if the Bank has any questions of the integrity of the appraisal, the content or the quality of the work the Bank's staff has every right to ask any question. Mr. McShane asked for clarification that the Bank Board had the prerogative to ask questions at a Board meeting and Mr. Robertson agreed the Board did.

Elizabeth Hagood with Lowcountry Open Land Trust stated that in the last 10 years the Land Trusts have followed the national level accreditation processes which are the highest standards for a Land Trust. The appraisal process is a key component of that accreditation. The Land Trusts have talked with top appraisers and legal advisors at the national level to set proper standards and guidelines. Ms. Hagood stated the Land Trusts network would be glad to share that information with the Bank.

Mr. Snow stated that the Bank funds are public funds and everyone here is committed to conservation. The ones that control the funds are not as committed to conservation and the group here today. When the Bank is committing its funds or the State's resources, there are individuals that will conclude the Bank is letting someone pick out what they want and the Bank is going to trust them for the money. The legislature doesn't trust everything that is said and perception becomes reality which is an issue the Bank has to address because the Bank funds are public dollars. The main factor is to make sure the Bank survives.

Chris Vaughn mentioned about leverage wherein many projects submitted by DU have been about \$250 per acre where the easement has been \$900-\$1,000 per acre.

Mr. Davant stated that once the grant is approved part of the due diligence is a full formal appraisal is required. No funds are released by the Bank without a full formal appraisal being submitted. Mr. Davant stated he goes through every appraisal and that he does have some background in appraisals. Mr. Davant stated he is cognizant of the difference when an appraisal is \$1,500 and the asking price is \$300. Mr. Davant stated he looks at the total value of the appraisal and that is the top end number he reviews.

## POINT 2: CONSERVATION EASEMENT

Chairman Adams asked Ms. Demosthenes to move forward with the second point in the recommendations from the Land Trust Network.

Ms. Demosthenes stated that regarding the Conservation Easement and the revised language states that the final draft of the Conservation Easement must be submitted as part of the application and the grant award would be conditioned on the material terms of the final draft Conservation Easement not changing prior to the closing. The description of the material terms states that any changes after Board approved may result in withdrawal of the application. Ms. Demosthenes stated it appears the gists of the conservation easement policy changes are that the Land Trusts are required to submit a final draft Conservation Easement. Ms. Demosthenes stated this would be difficult as completing the Conservation Easement is a process of going through the easement negotiations with the landowner and the process the Land Trusts have to complete in reviewing all materials before submitting the application to the Conservation Bank. The Land Trusts Committee presented a recommended change by outlining the material terms of the Conservation Easement which is driven by what the values of the property and what is being protected or what is the purpose of the easement. The Land Trust Committee recommends that a separate page be included in the actual application that the applicant must answer. This page would include the following questions:

1. How many parcels are presented?
2. How many subdivisions?
3. How do the conservation easement terms specifically protect those conservation values?
4. Can you provide a property description and where did it come from?
  - a. Is there a legal description?
  - b. Is there a survey or GIS acres?
5. Provide any and all current known acreage.

Ms. Demosthenes stated these questions would all be related to the impact on the conservation value of the property and impacts the appraisal. As an alternative to providing a final draft of the Conservation Easement that is all likelihood is going to be modified in some fashion not necessarily on key material terms but to tie down the information through the referenced questions as much as possible as all of this information is tied to the appraisal. Ms. Demosthenes state the Land Trusts would prefer to have a process to review any issues on an application with the Board and the not have the application automatically be withdrawn from Board Review.

Chairman Adams stated that the Lowcountry Open Land Trust always submits a draft of the easement with the Application. Chairman Adams stated that this issue could be easier resolved with the Land Trusts. Chairman Adams stated that the material terms of the conservation easement are sufficient but a formal legal description of the property needs to be added to those material terms. The Board needs to know what the property is they are protecting and the Board understands that the exact acreage isn't known until a survey is done for the closing. Chairman Adams stated that if a legal description of the property is included in the material terms and an estimate of the acreage that should be sufficient. Mr. McLeod agreed with the Chairman.

Mr. Davant stated that he takes every conservation easement filed and goes through each one and 90% of the easement is boiler plate language. Mr. Davant is looking for the same items as the proposed questions regarding subdivisions, structures, management, how it affects the timber and then he refers back to the appraisal to match up this information as to how the appraiser looked at those particular factors to determine the value of the easement. Mr. Davant stated this having this information in one location would make his review process easier.

Mr. Snow stated that in discussions with appraisers he was informed that appraisers would not give a final appraisal until a tract was ready to close for several reasons. Mr. McLeod stated that the appraiser has to have specific information in the conservation easement to determine the conservation value. Chairman Adams stated that if the material terms and a formal legal description are listed in the draft easement and when the appraisal is submitted and there appears to be an 80+ acreage difference as opposed to 1-2 acre difference the Executive Director would bring this to the Board's attention and it would be addressed at that time. Mr. Vaughn asked if the legal description reflects 500 acres and the landowner wants to do an easement on only 400 acres this should be clarified in the draft easement when it is submitted. Chairman Adams agreed this was correct. Mr. Davant stated that questions can arise on the number of acres but also on which acres or the location of the acres where the difference exists.

Mr. Roquemore stated that in the current policy where it reads "if there are any major changes in the material terms after Board approval of an application will result the withdrawal of a grant approval" if the Board would agree to change "will" to "may" that should resolve the issue. Mr. McShane made a motion to change the language in the current policy to read "if there are any major changes in the material terms after Board approval of an application may result the withdrawal of a grant approval". Mr. Miller seconded and the motion unanimously passed.

Chairman Adams called for a motion on the material terms. Mr. McShane stated that in terms of accepting the recommendations based on the Board's discussions Mr. McShane moved that the Board accept the Land Trusts recommendations with the clear understanding that the Director will have the latitude to bring what appears to be critical back to the Board for the Board's review and the material terms needs to include the legal description of the property. Dr. Shealy seconded and the motion unanimously passed.

Chairman Adams called for any other comments from the Land Trusts Network and there were none. Mr. Snow asked Ms. Demosthenes to explain the last bullet point of Revised Conservation Easement Policy recommendations that states "A land trust may, but is not required to, submit a draft of the conservation easement to the Bank Board with their application or 30 days prior to the Board meeting." Ms. Demosthenes stated that as an alternative to this requirement that a page be included in the application where the easement was discussed. Ms. Demosthenes stated that a template would be presented to the Land Trusts where all the material terms would be explained in the application. Mr. Snow stated that a draft easement would be necessary to estimate the value.

Mr. Vaughn stated that some appraisers are comfortable with providing a preliminary evaluation based on the material terms sheet but asked for clarification as to what the Board wanted. Chairman Adams stated that when an qualified entity is applying a draft of the conservation is not required; however, a list of the material terms which includes a legal description are submitted with the application but a draft of the easement would not be necessary. Mr. McLeod stated for an appraiser to give an evaluation has to know the major portions of the restriction of the conservation easement to determine a value but an executive



summary of what is being protected in order to base the evaluation on what is being done on the property which makes the difference in the appraisal and this is necessary to give an amount.

Mr. Davant stated that the easement is the material terms and once it is placed in a narrative isn't as critical to the Bank or the appraiser as long as both know what the material terms are such as the subdivision, buildings, management, etc. Mr. McShane stated that the Board is giving latitude for the land trust to provide either a draft easement or a list of the material terms with a legal description it would still provide the required information.

Chairman Adams stated that since the motion that has been approved would Mr. McLeod approach the Appraisal Board and present what the Bank Board is doing and if the Appraisal board has an issue then the Bank Board will revisit the matter. Mr. McShane stated that since the Board's process is a competitive process having a draft easement provides more confidence in the materials submitted.

Chairman Adams stated that the Board would need to go into Executive Session to discuss some legal issues relating to some of the recommendations on the Revised Appraisal Policy. Before going into Executive Session, Chairman Adams called for any other comments from anyone else. Mr. Roquemore stated that one point that would be considered to make sure it would read as follows: "The Bank will select the appraiser but will work whenever with the applicant to determine the appraiser." Mr. Roquemore stated that if at any time there is an issue with the appraiser that the Bank would have the final say as to who the appraiser would be on a tract. Elizabeth Hagood asked that in the absence or a discrepancy or disagreement on the selection of the appraiser, that the landowner would pick agree from the list. Mr. Roquemore stated the Director would work with the applicant on an appraiser but at the final decision would be with the Bank. Chairman Adams stated the Director would have conversation with the landowner about the appraiser but if there is a disagreement in the selection then the Bank would have the final call as to the appraiser. Chairman Adams stated that basically the landowner would look at the list chose an appraiser, contact the Director ask if their selection would be OK. So the landowner is making the initial selection but the Director would have the final veto. Mr. McShane stated there is a process that if an appraiser isn't on the list the landowner and/or the Land Trust can work with the Director to have the appraiser added to the list if they meet the required criteria.

#### **IV. EXECUTIVE SESSION**

Chairman Adams called for an Executive Session to discuss legal issues. Mr. McShane made a motion to go into Executive Session for purpose of discussing legal and contractual matters. Dr. Shealy seconded the motion and the motion unanimously passed.

Chairman Adams called for a Motion to go back into open session. Mr. McShane made a motion to go back into open session. Mr. Miller seconded and the motion unanimously passed.

#### **V. OPEN SESSION RECONVENED**

Chairman Adams stated the Board had a legal discussion and deferred to Mr. McShane. Mr. McShane moved that the Board modify the appraisal policy with the following language: "The Executive Director will select which appraiser will do the appraisal on any given deal from the Bank's list of approved appraisers in concert with input from the applicant. The Bank is the final arbitrator." Mr. Miller seconded and the motion unanimously passed.

Ms. Demosthenes asked about the appointment of a committee the Chairman referenced earlier. Chairman Adams stated he would appoint a Process Committee that the Land Trusts could work with over time and any comments as to the Board's actions can be provided to the Chairman and to the Committee.

#### **VI. SECOND EXECUTIVE SESSION**

Mr. McShane moved to go into Executive Session to discuss personnel and legal issues and to have lunch. Ms. Clark seconded and the motion unanimously passed.

Mr. McShane moved to come out of Executive Session to discuss actions taken. Dr. Shealy seconded and the motion unanimously passed.

**VII. OPEN SESSION RECONVENED**

Chairman stated that the Board took no legal action and there being no further action the Chairman called for a motion to adjourn. Mr. Snow made a motion to adjourn. Dr. Shealy seconded and the motion unanimously passed.

**September 23, 2014 SCCB Board Meeting**

**NO GRANTS REVIEWD OR APPROVED**