



HENRY McMASTER  
ATTORNEY GENERAL

August 13, 2008

John E. Frampton, Director  
South Carolina Department of Natural Resources  
Post Office Box 167  
Columbia, South Carolina 29202

Dear Mr. Frampton:

Based upon your recent letter to Attorney General Henry McMaster, we understand that the South Carolina Department of Natural Resources (the "DNR") desires an opinion of this Office regarding whether "the DNR is authorized to grant funds or title to or an interest in real property purchased with funds, from the State Mitigation Trust Fund (the Fund) to a local non-profit land trust?"

### **Law/Analysis**

As you indicated in your letter, section 50-1-310 of the South Carolina Code (2008) governs the Fund. This provision states as follows:

(A) The Mitigation Trust Fund of South Carolina is created for the purposes of receiving gifts, grants, contributions, and other proceeds for mitigation projects in the State. The Board of Trustees for the Mitigation Trust Fund is the Chairman and the members of the South Carolina Department of Natural Resources Board with full authority over the administration of the funds deposited in the fund. The State Treasurer is the custodian of the fund and shall invest its assets in an interest-bearing account pursuant to South Carolina law.

(B) The Mitigation Trust Fund may receive appropriations of state general funds, federal funds, donations, gifts, bond-issue receipts, securities, and other monetary instruments of value. Reimbursement for monies expended from this fund must be deposited in this fund.

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Funds received through sale, exchange, or otherwise, of products of the property including, but not limited to, timber and utility easement rights, accrue to the Mitigation Trust Fund. Funds recovered for losses or damages to natural resources must be deposited to the Mitigation Trust Fund to be used first for restoration in the areas affected and then as provided in subsection (C) of this section.

(C) The income received and accruing from the fund must be spent only for the acquisition, restoration, enhancement, or management of property for mitigation for adverse impacts to natural resources.

(D) The Trustees of the Mitigation Trust Fund are authorized to disburse funds to the South Carolina Center for Birds of Prey to fund construction of the Avian Conservation Center in Charleston County.

(E) The proceeds from this fund may be carried forward from year to year and do not revert to the general fund of the State.

S.C. Code Ann. § 50-1-310.

Interestingly, in our research, we discovered section 50-3-180 of the South Carolina Code (2008) to be almost identical to the above provision. The only difference between the two is that section 50-3-180 does not contain the provision presented as subsection (D) in section 50-1-310. According to your letter, the Legislature added this provision in 2004, but apparently its was added in the form of a new statute, as the legislative history of section 50-1-310 indicates this statute was adopted in 2004. Regardless, it appears that section 50-1-310 controls because it is the latest expression of the Legislature's intent. See Williams v. Town of Hilton Head Island, S.C., 311 S.C. 417, 429 S.E.2d 802 (1993) (stating "the Last Legislative Expression Rule requires that in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment."). Thus, in order to answer your question, we must determine whether section 50-1-310 allows the DNR to grant funds or title to interest in real property purchased from the Fund to other entities.

Initially, we must clarify that section 50-1-310 does not give authority to the DNR. This provision states that the Board of Trustees for the Mitigation Trust Fund (the "Board") has "full authority over the administration of the funds deposited in the fund." The Board is comprised of the members of the DNR's Board, but the authority given under these provisions is to the Board, not to the DNR or its Board. Nonetheless, we will address your question based on the authority of the Board to grant funds or property to local land trusts. To do this we look to the authority given to the

Board pursuant to section 50-1-310. In interpreting section 50-1-310, we keep in mind the rules of statutory interpretation. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” Sonoco Prod. Co. v. South Carolina Dep’t of Revenue, 662 S.E.2d 599, 602 (2008). “The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation.” Id. Furthermore, because the Board is a creature of statute, it has “only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged.” S.C. Coastal Conservation League v. South Carolina Dep’t of Health and Env’tl. Control, 363 S.C. 67, 610 S.E.2d 482 (2005).

The only references in section 50-1-310 touching on the Board’s ability to expend money from the Fund are found in subsections (B) and (D). Subsection (B) indicates that some expenditures may be made from the Fund as it calls for the reimbursement of monies expended from the Fund. Id. § 50-1-310(B). However, we believe this provision assumes that expenditures from the Fund will be reimbursed. Because disbursements to a non-profit land trust would not be a reimbursed expenditure, we do not believe this provision allows for such disbursements. Furthermore, in subsection (D), the Legislature specifically gives the Board the authority to disburse funds to the South Carolina Center for Birds of Prey. Id. § 50-1-310(D). However, we find no provision generally giving the Board the authority to grant funds or property to any type of organization, public or private.

In addition, “[t]he canon of construction ‘expressio unius est exclusio alterius’ or ‘inclusio unius est exclusio alterius’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’” Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting Black’s Law Dictionary 602 (7th ed. 1999)). As you point out, in 2004, the Legislature specifically gave the Board the authority to disburse funds to the South Carolina Center for Birds of Prey. This act of the Legislature indicates that the Legislature, through the enactment of the other provisions of section 50-3-180, which are now contained in section 50-1-310, did not give the Board the general authority to disburse funds without reimbursement. Moreover, by allowing disbursements to the South Carolina Center for Birds of Prey, this addition indicates that the Legislature intended to allow only this type of expenditure. Accordingly, we are of the belief that section 50-1-310 did not give the Board the authority to grant funds or property to a local non-profit land trust.

### **Conclusion**

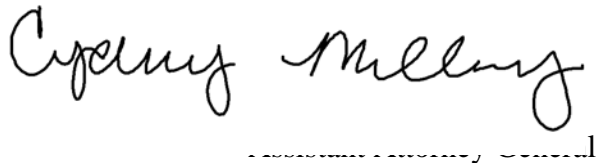
Based on our analysis above, we do not believe the Board has authority to make grants of funds or property from the Fund, other than as specifically provided in section 50-1-310(D), allowing the Board to disburse funds to the South Carolina Center for Birds of Prey. Such authority to make grants to other non-profit entities would require express statutory authorization, which the

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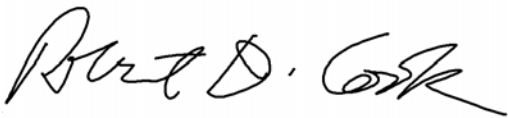
Board does not possess. Accordingly, we do not believe the Board can disburse funds or property to a local non-profit land trust.

Very truly yours,

Henry McMaster  
Attorney General

A handwritten signature in cursive script, appearing to read "Henry McMaster". Below the signature is a horizontal line with a small mark at the end, possibly a date or a reference number.

REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, appearing to read "Robert D. Cook".

ROBERT D. COOK  
Assistant Deputy Attorney General