

The South Carolina Environmental Law Project

Lawyers for the Wild Side of South Carolina

WINTER 2019 Inside this Issue As the Atlantic Rises **Beaufort Office Board News** ood News Current Issues **Donors Upstate Update** Wild Side In & Out of Court



The reality of life on the coast is that the shoreline is eroding, sea levels are rising, and major storm events are becoming more and more frequent. Our State's decision-makers unequivocally recognized the serious threats of sea level rise back in 1988 when they passed the Beachfront Management Act and its regulations:

"Sea level rise in this century is a scientifically documented fact. Our shoreline is suffering from its effects today. It must be accepted that regardless of attempts to forestall the process, the Atlantic Ocean, as a result of sea level rise and periodic storms, is ultimately going to force those who have built too near the beachfront to retreat."

S.C. Code Regs. 30-1 (1990)

The beach system below the mean high water mark is public property under our Public Trust Doctrine, and the law declares that it is in "both the public and private interests to protect the system from this unwise development." Yet thirty years later, our shoreline is even more at risk from erosion as we have failed to heed these warnings, "threatening life, property, the tourist industry, vital State and local revenue, marine habitat, and a national treasure" as foreshadowed by State law.

Alas, as a State we have buried our heads in the proverbial sand. Just in the last few months, the first seawall was constructed on Hilton Head since the 1988 Act's prohibition (excepting Folly Beach, which presents its own problems). Harbor Island houses were declared uninhabitable as the ocean overcame them causing them to become obstructions on the public's beach. "Super beachfront" lots on Folly Beach - lots that were wholly underwater until the latest renourishment - are under threat of development.

(continued on page 3)



South Carolina Environmental Law Project, Inc.

(a 501c3 tax-exempt non-profit corporation)

Mission Statement

To protect the natural environment of South Carolina by providing legal services and advice to environmental organizations and concerned citizens and by improving the state's system of environmental regulation.

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SCELP to Open Beaufort Office

Following the launch of a Greenville office in 2016, which has greatly enhanced our ability to assist Upstate communities in their efforts to protect and preserve environmental quality, SCELP is doubling down on our efforts to provide legal advice and services more directly to communities across the state by increasing our geographic reach and availability.

With the Sea Island Corridor and rural areas facing tremendous growth pressures, and climate change



threatening the vast estuarine system supporting coastal fisheries, along with the historic Gullah-GeeChee communities, our ability to tackle these critical issues demands our on-the-ground presence. We are excited to announce that staff attorney Jessie White will be moving to Beaufort before the end of 2018 to launch our new office! For our supporters in the region, we are anxious to hit the ground running and look forward to hosting an official opening in early 2019.

Saying Good-Bye to two Captain Sams Spit Champions

Paula Feldman and Nancy Vinson will rotate off our Board after two terms at the end of December. Both actively engaged and influential in the conservation community long before joining the SCELP Board, Paula and Nancy had an invaluable impact on our programmatic and organizational endeavors. The Captain Sams Spit saga is one of the issues they care most for. Nancy has been sparring with Kiawah developers for over a decade, since her late years at the Coastal Conservation League,



Paula Feldman and Amy Armstrong in early 2018

and Paula has been one of the most generous and energetic local supporters throughout the ongoing saga. It will not be easy to replace their competence and experience, but thanks to their efforts, our organization is stronger than ever and ready to welcome new members who will help us finish the job on Captain Sams, no matter how long it will take, and advance environmental protection and justice all over the state.

HOW YOU CAN HELP...

Your loyal support and engagement is what keep us going and makes a difference for environmental protection in our state. Visit www.scelp.org to learn more about our work, latest developments, and ways to be involved. You can make a gift online or mailing the enclosed envelope. Let us know if you see any emerging or ongoing threat to our natural resources. Share your enthusiasm for SCELP with your friend and family. Thank you!

(cover continuation)

On all these issues, SCELP has stepped in to advocate for the greater good and protection of our public trust beaches and our State's economic drivers, where the public/private tension has favored private interests over the public's.

- We successfully challenged a permit for a new seawall on Debidue Beach, resulting in withdrawal of the permit.
- We convinced DHEC that the Hilton Head seawall was built illegally and without the necessary permits.

• We have taken steps to remove houses that have become located below the mean high water mark on Harbor Island and to prevent new houses from being constructed on the freshly engineered beach at Folly.

The harsh reality is that our current coastal management is economically and environmentally unsustainable. And it is the taxpayers who are ultimately on the hook when people and structures are threatened by rising waters.

Sea level rise is bringing the conflict between private property and public resources, between short-sighted profitseeking and long-term general welfare, to a boiling point and great risks lie ahead for both people and the environment. However, one thing has been certain for decades and will remain so: allowing the beach to migrate naturally without trying to permanently fix its location is in the public's best interest.

The foresight and commitment of people like you allow SCELP to keep fighting for our beaches, the public interest and common sense. Thank you!

GOOD NEWS

Fishing Creek Quarry Plans Thwarted!

ermit requests for Fishing Creek Quarry, which we vigorously opposed from the beginning, have been withdrawn! This critically important outcome was fostered by the concerted action of SCELP and its partners in the administrative permitting process.

- The mine was proposed within the floodplain of Fishing Creek, requiring an earthen berm to keep floodwaters out of the pit. Significant draw-down of groundwater would have degraded many acres of wetlands, and significant stormwater discharge from the mine into the Creek would have ensued.
- The affected portion of Fishing Creek is occupied habitat for the Carolina Heelsplitter, an endangered freshwater mussel with only dozens of individual animals known to exist, as well as eight species on the South Carolina Wildlife Action Plan, which are state-designated species with the highest conservation need.
- The proposed mine was in close proximity to a major natural gas pipeline.
- Native American sites and artifacts are present on the property, as well as historically significant farm structures.
- Local roads are inadequate and the project was inherently incompatible with the surrounding agricultural community.

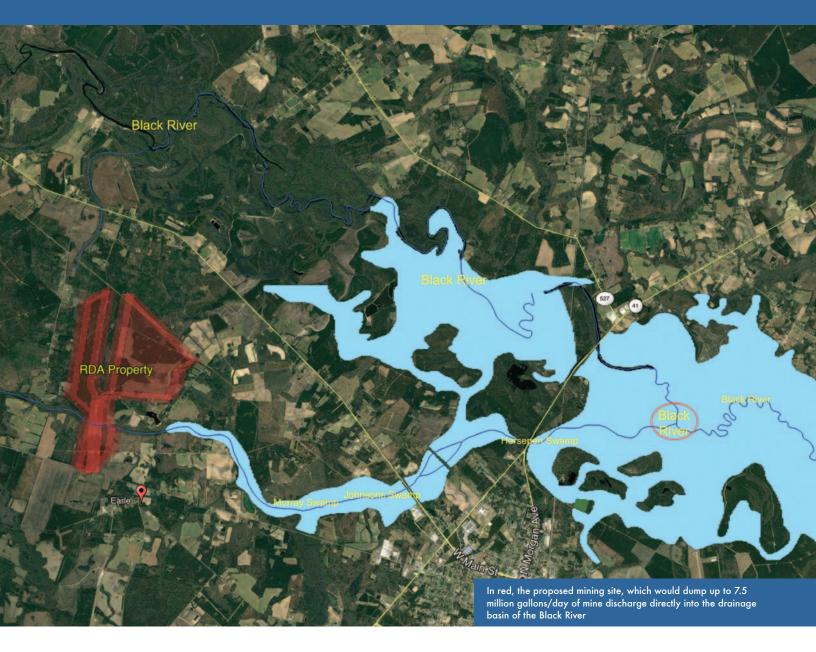
Tagged Carolina Heelsplitters in their Natural Habitat

The dire potential impacts on wildlife and water quality led American Rivers, the Catawba Riverkeeper, and the South Carolina Wildlife Federation to partner with SCELP. We also had the privilege of working most closely with a group of engaged local citizens known as the Friends and Farmers of Fishing Creek, who were particularly keen in preserving the natural and historic heritage of their community.

While the list of problems was long, a favorable outcome was by no means guaranteed. We spent the last eight months communicating with federal, state, and local agencies in order to influence the permitting process for this project, providing legal authority and ensuring full and accurate factual consideration by these entities. We were successful in persuading a few agencies to revoke or revisit their earlier positions on the project.

Coupled with the media and public outreach efforts undertaken with our partners, all of this work eventually led to the demise of this project. We are celebrating this success, which your support of our expanded Upstate capacity made possible.

CURRENT ISSUES



Williamsburg Limestone Mine Update

nearly 1,000-acre limestone mine is threatening to wreak havoc to the pristine and unique natural characteristics of the Black River ecosystem in Williamsburg County along with the community's quality of life. Working with our partners the Coastal Conservation League, Winyah Rivers Foundation and SC Wildlife Federation, as well as local community leaders, we have publicly detailed our concerns and objections to this harmful proposal to state and federal resource agencies. Yet DHEC has issued draft permits authorizing the activity and we anticipate issuance of the final permit to be forthcoming.

We cannot let this project go forward as proposed and, on September 17, 2018, we filed a 60-day notice letter with the U.S. Army Corps of Engineers notifying them of our intent to sue in federal court over violations of the Clean Water Act and Endangered Species Act, including the Corps' failure to consider impacts to the endangered Atlantic sturgeon and the Black River as part of its critical habitat. Stay tuned.

Fighting for the Last Natural Place in North Myrtle Beach

ngram Dunes is one of the highest and oldest relic dune systems left in the State of South Carolina, with ancient maritime forested dunes up to 50 feet above sea level and up to 80,000 years old. As the largest section of undisturbed natural land remaining in the City of North Myrtle Beach, the Dunes are geologically and culturally significant, in addition to being used and cherished by community members for over 70 years.

"Some of my fondest memories of growing up are playing in the hillside dunes. They are a treasure of North Myrtle Beach and should be preserved."

- Vanna White, North Myrtle Beach native and TV legend



When a proposed development threatened Ingram Dunes, SCELP stepped in to help the community find ways to save them. The developer's plan to clear cut the mature maritime forest vegetation and level the ancient dunes in order to construct a 31 single-family residential subdivision with roads and other infrastructure would obliterate a unique piece

of South Carolina's natural heritage. We objected to the project in writing and at a public hearing, in addition to working with the community to identify funding sources for acquisition of the Dunes, which continues to be an ongoing effort. A decision from the state permitting agency is expected soon.



No News is Good News on Seismic Airgun Surveying

he solid opposition of our communities helped the Trump administration set a record for the longest delay in deciding over proposed incidental harassment authorizations, which would allow seismic airgun surveying to be conducted along the Atlantic Outer Continental Shelf. SCELP is ready to challenge any permits that would endanger our environment, economy and way of life. Each day that seismic airgun surveying is not authorized off of our coast is a victory for South Carolina, and you are empowering SCELP to play a critical role in the protection of our coast and marine environment.

THANK YOU FOR SUPPORTING SCELP'S 31ST YEAR OF PROTECTING OUR NATURAL ENVIRONMENT

(Financial contributions received from Nov 20, 2017 to Nov. 16, 2018)

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UPSTATE UPDATE

The Bramlett Clean Up is No Easy Job

he "Bramlett site", a coal tar pit that has festered just beneath the surface on Greenville's west side for over sixty years, is a reminder of the chronic environmental abuse and neglect suffered by the Southernside community. It is one of the worst-contaminated properties in Greenville County, caused by a coal gasification facility decommissioned in the 1950s, whose contamination legacy was never addressed. Thanks to financial vsupport from the Jolley Foundation and The Graham Foundation in 2017 and the SC Bar Foundation this year, our advocacy cast a spotlight on this quintessential environmental justice problem, and we are committed to secure an effective clean up.

The significance and urgency of our Bramlett project has recently been heightened by the City of Greenville's pursuit of plans for development of Unity Park, which is to be a signature project for the City with a budget in excess of \$40M.



The proposed Unity Park will be sited on property immediately downstream of the Bramlett site, with the site's primary discharge point adjacent to the Park's upstream boundary. A primary function of the park will be to bring residents into more direct contact with the Reedy River and to improve the overall health of the River, yet the project lays in the literal shadow of hazardous, unresolved land and water contamination.

A critical issue in the process is **the extent to which Bramlett's contamination is discharging directly into the Reedy River**. Testing commissioned by the polluter has at times seemed designed to avoid this exact question. In consultation with experts, we have now established that the site's hydrologic regime practically guarantees that such discharge is ongoing. Independent testing could prove it and we are working to have this reflected in the clean up process.





Standing with Greenville County to Protect Rural Land

erhaps more than anywhere else in the state, suburban sprawl into rural and agricultural lands is plaguing Greenville County, not just in terms of environmental quality but also in terms of overall quality of life. We worked for months with citizens groups in the southern and northern parts of the County, and we are now in court on their behalf.

In an unprecedented move to curb inappropriate development, Greenville County recently amended its Land Development Regulations in order to allow rejection of subdivisions that are not "compatible with the surrounding land use density" or the site's environmental conditions. Accordingly, the planning commission rejected several new subdivisions proposed in rural areas. Unsurprisingly, the developers are screaming bloody murder and, in the case of a project in northern Greenville County, have sued the planning commission. This litigation threatens not only to disfigure the affected rural tract, but also to eviscerate the new land planning regulation and the County's power to protect rural lands in general.

Ethan Richard Estates envisions 31 homes on a 23 acre property along Tigerville Road in an unincorporated part of the County. In stark contrast, the adjoining properties are 10 and 14 acres each, both with a single residence and mixed agricultural use. The existing property density and usage are typical of the area, and community opposition to this aberrant subdivision has been strong and persistent. Appropriate land use regulation is a critical tool for environmental protection, and our local overnment must be empowered to use it for the greater good.



The proposed development would clear the forested area in the center









THE BEST WILD SIDE YET!

f you did not make it to Hobcaw Barony this year, you missed the lively crowd, the sunset vistas, and another memorable event. If you did join us, thank you: you made the 9th Annual Wild Side truly special! We had record attendance and for the first time crossed the threshold of \$100,000 raised from our celebration of Jimmy Chandler's continuing legacy.

Special guest and keynote speaker was Mary Alice Monroe, whose best-selling novels have covered several environmental issues in the Lowcountry, including sea turtle protection, which was the theme of the event in honor of SCELP's success earlier in the year in getting plastic seawalls removed from our State's beaches.

The looming threat of offshore oil and gas drilling, riding a wave of brazen environmental deregulation, warranted some dire warnings: "We are facing our darkest hour" said Monroe, but SCELP stands strong as the last rampart of legality and common sense. Monroe's message that when people learn to care, they learn to take care is timely, as are her parting words: "I actually don't care if people know who I am in a hundred years, if my work disappears," she said. "I want to make a difference now."

Thank you for making a difference for South Carolina's natural environment and for supporting your Lawyers for the Wild Side.

IN & OUT OF COURT

The Ongoing Battle to Save Captain Sams Spit

'he Supreme Court has been clear: public trust tidelands like the sandy banks of the Kiawah River must be used for the maximum public benefit rather than solely economic benefit to a private developer. Converting ever-shifting sand into a hardened fixed shoreline in order to facilitate a 50-house development is wrong and eliminates public access of those tidelands. Yet once again, Administrative Law Judge Tripp Anderson green-lighted another hard erosion control structure adjacent to the riverbank and additional infrastructure.

Thanks to your outstanding support, we mobilized immediately and filed a motion asking Judge Anderson to stay the effect of his decision in order to protect the iconic barrier island spit from irreparable harm until we can challenge his latest ruling.



On behalf of the Coastal Conservation League, we will continue to utilize all legal tools available to vigorously defend one of our State's most beloved natural treasures for the use and enjoyment of this and future generations.



Ready for the Next Legislative Session

The **South Carolina Conservation Coalition** was formed in 2014 in order to help organize and empower conservation organizations on state legislative issues. In November, SCELP's legal team joined over 50 advocates at the Coalition's annual leadership summit, where we strategized about our 2019 priorities:

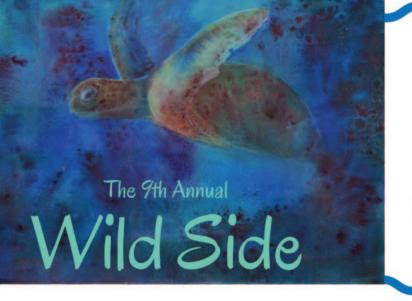
- The major storm events of the previous three years have highlighted the importance of **coastal zone management** and we must remember that beaches are meant to move. We must plan for long-term, sustainable solutions that allow for natural processes and keep people and structures out of harm's way.
- **Flooding** has become a major issue for the people of our state. The FEMA hundred-year flood maps are, quite simply, inaccurate and inadequate to inform smart development and growth in our state. We must adapt our communities, and provide better options for those impacted by flooding.
- As our opposition to offshore oil and gas stands strong, we eagerly encourage cheaper, more reliable and more sustainable energy solutions, where sound economics and environmental protection are one and the same. Solar and renewable energy must be unleashed, while dirty and costly alternatives must be muzzled.

SCELP brings unique perspectives and expertise to the legislative and policy tables, which are urgently needed and vitally important in the current political climate. This is sometimes overlooked, but you are truly helping us make a difference for South Carolina's land, water and wildlife, inside and outside the court system!

Cruise Ship Terminal: A Big Step Forward

n August 21st, the South Carolina Supreme Court agreed to review the Court of Appeals' ruling that our clients, Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control, did not have the right (or legal standing) to challenge DHEC permits authorizing the construction of a new home-base cruise ship terminal on peninsular Charleston. On October 9th we filed our brief in the Supreme Court, with the State Ports Authority and DHEC's responses and our reply all due before the end of the year.

This is an important win for citizens' rights and we are confident that the Supreme Court will right the wrongs in the Court of Appeal's ruling



THANK YOU to our wonderful sponsors for the best celebration!

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