



**SOUTH CAROLINA
ENVIRONMENTAL LAW PROJECT**

Lawyers for the Wild Side

Resounding Win For Captain Sams Spit | Fighting Plutonium Pit Expansion

Victories for Waters, Wetlands and Public Health | Case Updates

SUMMER 2021



**SOUTH CAROLINA
ENVIRONMENTAL LAW PROJECT, INC.**
(a 501c3 tax-exempt non-profit corporation)

MISSION STATEMENT

*We use our legal expertise to protect land, water
and communities across South Carolina.*

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12th Annual Wild Side



Director’s Note

The South Carolina Environmental Law Project has emerged from the last trying year stronger than ever. In the first half of 2021, we performed a major amount of legal work, including: preparing three cases for trial; initiating or briefing four cases in our state’s appellate courts; filing two new cases; favorably settling five cases; and filing an appeal in the Fourth Circuit. I also had the privilege of representing the public’s interest before the state Supreme Court twice in the last few months. The June 2 decision on Captain Sams Spit was the best reward for our hard work and your loyal support.

You will get a glimpse of all this in the following pages, but I also want to mention that with increasing frequency citizens alert us about new and emerging issues threatening their communities. In the first four months of 2021, we received online help requests through our website exceeding the total for the entire year in 2018 and 2019 and amounting to nearly 90 percent of the total requests in 2020.

This is a major testimony to the success and growing impact that you made possible throughout the state, but is also highlighting the continuing and growing need for the service of your Lawyers for the Wild Side. Keeping our limited, albeit expanding, resources in mind we are thus increasingly keen on being as strategic and intentional as possible in our program and organizational development. And I am glad to report that we have already made great strides on both fronts this year.

In addition to hiring **Michael Martinez** as new staff attorney in Greenville and **Jennifer Weinbach** as legal assistant, five great new members joined our Board of Directors (see pictures below). We wasted no time to harness their energy and dove into a thorough strategic planning process that, thanks to the generous and insightful participation of over 100 stakeholders, is leading SCELPL to take a new and bold strategic direction for the next five years in pursuit of our mission.

Our vision for environmental protection and justice is premised on an improved legal infrastructure conducive to a healthier future. To protect our land, water and communities, South Carolina’s laws and policies must prioritize natural systems that sustain life. I look forward to telling you more about our new plans, goals and strategies, and I hope I will be able to do so in person at Wild Side on October 2.

On behalf of our Board and staff, thank you for helping make our vision a reality every day!



Amy E. Armstrong
Executive Director



Bess Lochocki of Pawleys Island, Marilyn Hemingway of Georgetown, Rajan Govindan of Kiawah Island, Gerald Schulze of Beaufort, Amy Fabri of James Island



Sunk by huge cost overruns and mismanagement, the MOX facility is the site for unprecedented plutonium pit production. Photo: High Flyer © 2020

New Issue

Fighting Plutonium Pit Expansion

SCELP has partnered with Savannah River Site Watch, Nuclear Watch New Mexico and Tri-Valley CAREs to push the U.S. Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) to fully examine the health, safety and environmental justice impacts of their plans to vastly increase the production of plutonium pits at the Los Alamos National Laboratory in New Mexico and the Savannah River Site.

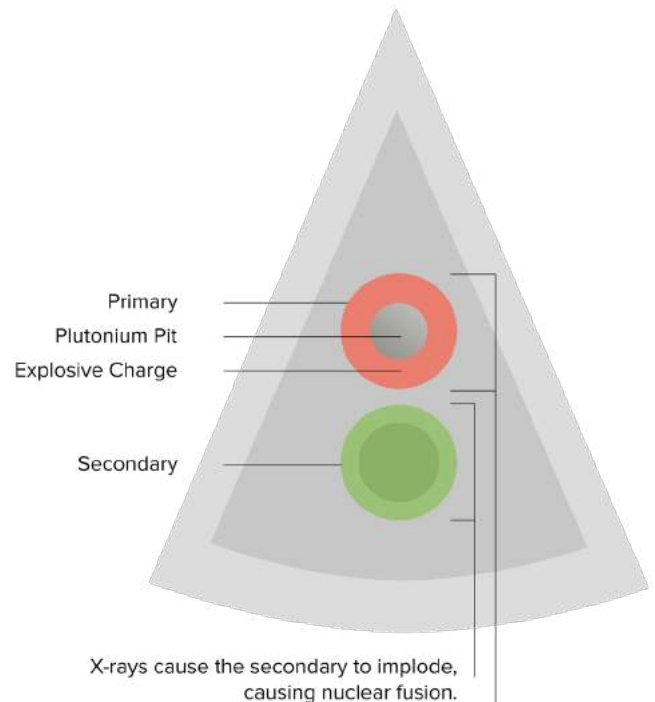
Plutonium pits are the bowling ball-sized combustible core of nuclear weapons and have been produced at a very limited level for years solely at the Los Alamos site. This production involves the extensive processing and handling of extremely hazardous materials. In 2018 the federal government moved to expand production of nuclear weapons, calling for the production of pits at a rate of at least 80 per year by the year 2030. This increase would require not only more production at Los Alamos, but also the resurrection, and complete overhaul, of a failed project known as the Mixed Oxide (MOX) Fuel Fabrication Facility at the Savannah River Site. The MOX project was originally intended to convert plutonium into fuel for commercial nuclear reactors. After a decade in the making and the wasting of \$7 billion in taxpayer dollars, the project was finally abandoned by NNSA in 2018.

To date, DOE and NNSA have refused to conduct a thorough environmental analysis of their plan to drastically increase plutonium pit production as required under the National Environmental Policy Act. This plan would create massive quantities of dangerous and radioactive material, put hundreds of billions of taxpayer dollars on the line and violate the nation’s environmental law ensuring comprehensive evaluation of such actions.

We have formally asked DOE and NNSA to undertake a Programmatic Environmental Impact Statement to give a “hard look” into the plan to increase production at Los Alamos and to repurpose the Savannah River Site to produce pits here in South Carolina. The federal government is required to involve the public in the review and decision-making process and to evaluate the environmental impacts of the plan, in particular the environmental justice implications for the communities most directly affected by these facilities. These communities in South Carolina have long been promised liberation from legacy radioactive waste. Aside from legal technicalities, committing to grow an already mismanaged and mostly unmanageable nuclear waste stockpile is among the most reckless and irresponsible actions our government could take.

This will remain a developing story so please check out our website for more details and updates at: scelp.org/cases/plutonium-pits

The Essentials of a Thermonuclear Warhead



In the first stage, explosives compress the plutonium pit, creating a fission reaction and releasing X-rays.



Captain Sams Spit is one of the last three undeveloped and publicly accessible barrier islands in the state.

Good News

Resounding Win for Captain Sams Spit

June 2 was one for the books as we celebrated a crucial victory for the well-loved and widely used public trust resources of Captain Sams Spit on Kiawah Island. In a unanimous decision, the South Carolina Supreme Court reversed the Administrative Law Court's authorization of a 2,380-foot steel wall and other infrastructure that would facilitate construction of a 50-home private development on the 170-acre pristine barrier island spit.

Building on an important precedent set in one of SCELCP's first cases in 1988, the Court ruled that economic interests, and specifically increased tax revenue and temporary construction jobs, cannot outweigh the public's right to access, use and enjoy the spit's sandy shoreline.

According to the opinion authored by Justice Kaye Hearn, "while economic interests are relevant, relying on tax revenue or increased employment opportunities is not sufficient justification for eliminating the public's use of protected tidelands."

The state's highest court has now ruled in our favor on three separate permit appeals in this winding and complex legal saga that we initiated 13 years ago with our partners at the Coastal Conservation League. Although we hope the Supreme Court's ruling will shut down this project for good, the developer has relentlessly sought to build homes on Captain Sams for over a decade, even in the face of rising sea levels and increasing storms. In fact, we are currently fighting the ongoing attempt to challenge the jurisdictional lines established by the South Carolina Department of Health and Environmental Control (DHEC), in a Hail Mary attempt to revive the chances to develop the spit.

However, the Court emphasized that Captain Sams is one of only three pristine and publicly accessible barrier island beaches in the state, and our laws are designed to protect these valuable public trust resources and keep them open for all.

You can rest assured that with your continued support and encouragement, we will keep fighting and we will keep winning.



Unrestrained suburban sprawl has a negative impact on residents and natural systems.

Continuing Issue

A Greener Way to Grow

Greenville County is one of the fastest growing counties in South Carolina in part because of its scenic vistas of rolling farmlands and the Blue Ridge Mountains. In an attempt to address suburban sprawl into rural and agricultural lands, Greenville County Council enacted Article 3.1 in its land development regulations.

The regulation serves to protect quality of life and these scenic areas by requiring developers to meet basic criteria to ensure their projects will not: detrimentally impact our roads and infrastructure; destroy environmental features such as endangered species; or drastically change the area's existing character.

Despite the obvious value of these common-sense protections, the homebuilders lobby and related interests challenged the regulation in court and mounted a concerted effort to repeal Article 3.1 without offering any proposed replacement. A simple repeal of the rule would disregard the considerable time, effort and input from hundreds of residents on the county's Comprehensive Plan. This is why a coalition of concerned rural citizens, Upstate Forever and SCELPA promptly proposed a sensible approach for replacing Article 3.1 that addresses the goal of preserving our rural areas.

In addition to retaining the requirements that anticipated developments be compatible with the existing infrastructure and environmental conditions on the site, our propos-

al incentivizes developers to design and build "conservation subdivisions."

Conservation subdivisions seek to preserve contiguous open space by allowing tighter grouping of houses, so long as at least 50 percent of the total subdivision tract is set aside.

Research has shown that conservation subdivisions are mutually beneficial by producing:

- (1) increased access for residents to open space;
- (2) reduced infrastructure and engineering costs to the developers by eliminating the need for large tracts to be cleared and graded; and
- (3) environmental benefits.

Greenville County has the responsibility to govern local development in the best interest of all its residents and the opportunity to lead by example by adopting innovative and sensible land development ordinances. SCELPA and our allies will continue to advocate forcefully for rural land, water and communities and will continue engaging with County Council and other stakeholders so that Article 3.1 and other measures better protect quality of life and the natural systems that sustain it.



We secured stricter bacteria standards for Shem Creek, pictured here.

Rule Change

Better Water Quality Standards

Working with the Charleston Waterkeeper, SCELPA successfully petitioned DHEC to raise the water quality standards for Class SB saltwaters all over South Carolina, making them consistent with the five times more stringent standards of Class SA saltwaters. Both saltwater classifications are used for the same recreational purposes, such as paddling and swimming.

The new regulations became effective in January of this year, granting more protection for at least 20 salt waterways on our coast and setting a correspondingly higher bar for local governments under Clean Water Act requirements designed to improve the state of impaired waterways like Shem Creek in Mount Pleasant and Ellis Creek in James Island, among others.

On a related note, DHEC passed new septic system regulations, introducing a tiered licensing system for service providers. Although they do not address our specific recommendations for adequate supervision and enforcement of septic tanks, especially near saltwaters, the new rules are laying the groundwork for a long-overdue upgrade of onsite wastewater treatment systems regulation.

If we want to have a chance at adapting to sea level rise along the coast, we must dramatically escalate the priority of improving our sewer and septic systems and their regulation.

Victory

Coal Plant NPDES

On behalf of the Sierra Club, SCELPA filed suit against DHEC to force the agency to issue decisions on three expired coal power plant permit applications that had languished for many years. DHEC never filed an answer and instead immediately sought to negotiate to remedy its failure. After several months of negotiations, we were finally able to secure a settlement requiring DHEC to issue its decisions on the Winyah, Cross and Wateree power stations later this year. We also secured provisions so that if the law currently regulating plant effluents is invalidated or otherwise withdrawn or rescinded, DHEC still has an enforceable timetable to issue decisions on the permits.

In addition to failing to require compliance with current pollution standards, DHEC's lack of action also prohibited the public from being involved in the permitting process. The citizens who live near these plants have been left voiceless, and the suppression of public participation is even more troubling given that these plants are located in communities of color and low-income communities already saddled with long-standing environmental injustice.

The inclusion of a robust public engagement process is a victory for the impacted communities and we will make sure that they are heard loud and clear when the time for public comments finally comes. Finally, the settlement is a great step on the path to ending our reliance on dirty fuel in our state by retiring these outdated facilities.



Gills Creek is a Richland County stream that drains into the Congaree River. Photo courtesy of Charles Egleston

New Case

American Scrap

On March 4, American Scrap Iron & Metal received special approval from the City of Columbia Board of Zoning Appeals to operate an automobile recycling center and scrap yard. The site is about 400 feet from Gills Creek and immediately adjacent to a ditch that drains to the creek, which ultimately flows into the Congaree River.

We are representing the Congaree Riverkeeper and Gills Creek Watershed Association in a legal challenge to the BOZA decision. Collectively we are concerned that the discharges of fuel, oil and grease, heavy metals and other pollutants from the facility's operations would threaten the water quality of Gills Creek and its tributaries; deprive citizens of the full enjoyment of the waterbodies; and negatively impact subsistence fishers who regularly fish in the creek.

BOZA ignored these concerns despite the company's history of environmental violations, including leaking of hazardous waste and spilled fuel from the cars being broken

down, which contaminates groundwater and surface waters—the precise risk of this new project.

BOZA failed to apply the law arising from special exceptions and other legal requirements due to the site's location in a floodplain overlay district. For instance, the applicant never conducted the engineering review required by the city ordinance for uses proposed within designated flood plains.

American Scrap's noncompliance history and the increased potential for significant environmental damage highlights the importance of challenging the Board's approval of this scrap yard.

By enabling SCELP to take on cases like this, you ensure critical natural resources like Gills Creek and the Congaree River are preserved for the community's use and protected from dangerous contamination. **Thank you!**



Sediment runoff from Arabella Farm.

Appeal

Arabella Farm

In 2020, we filed a Clean Water Act citizens' suit on behalf of Naturaland Trust, Upstate Forever and Trout Unlimited seeking to remedy Arabella Farm's illegal discharge of polluting sediments and runoff into numerous trout streams and tributaries of the Eastatoe River along Highway 11 in Pickens County. Before we could get to the merits of our appeal, however, the event venue's owners asked the court to dismiss our case despite the staggering level of pollution.

Earlier this year U.S. District Court Judge Joseph Dawson, III ruled with the defendants and dismissed our case. Consequently, we filed an appeal to the U.S. Court of Appeals for the Fourth Circuit challenging the order of dismissal.

While we prepare legal briefs in our fight to protect the beautiful Upstate places our supporters relied on to escape from coronavirus isolation, we have no doubt that SCELPA is needed to better protect communities and natural resources now more than ever.

We will do all we can to ensure that polluters are held accountable in this case.

Active Case

King Tract Mine

Since the King Tract mine filed an application to mine 1,330 acres between the Francis Marion National Forest and the Cape Romain National Wildlife Refuge, SCELPA has opposed the mine on behalf of the Coastal Conservation League. Once the Mine Operating Permit was issued in late 2020, we challenged that permit, including an appeal to the state Mining Council.

At the March hearing before the Mining Council, we presented evidence on the 21 water quality violations the mine incurred from 2017-2019 while operating its previous, five-acre mine on the same tract. In addition to these violations, which included a lack of monthly discharge monitoring reports and pH violations, we also presented evidence on unauthorized wetland impacts and violations at another mine run by the same operator. Two senators, Senators Chip Campsen, III and Stephen Goldfinch stood up for the Lowcountry and testified that the mine was not compatible with the protection of this precious and sensitive location in Awendaw. Nevertheless, the Mining Council voted to uphold the permit for the mine's expansion.

We have asked the Mining Council to reconsider its ruling and continue to use our legal expertise to protect South Carolina's most sensitive landscapes and communities from harmful mining practices.



Sand mining is a growing issue throughout the state.



Wetlands are so valuable because they filter water, protect coastal communities from flooding and provide habitat for wildlife.

Brief Updates

Active Cases

Pickens County Landfill - In the face of our victory in the Court of Appeals, the landfill company MRR and DHEC asked the Supreme Court to reverse the Court of Appeal ruling which found that DHEC evaded public notice and comment requirements prior to modifying the landfill permit. The modification would convert a construction and demolition landfill into a lined landfill that can accept other wastes, likely including coal ash. The Supreme Court held oral arguments on May 25 and we remain optimistic that it will uphold the Court of Appeal ruling.

Bay Point Island - Following the developer's appeal of the Beaufort County Board of Zoning Appeals' decision to deny it a special exception, we filed a motion to intervene in the appeal on behalf of the Gullah/Geechee Fishing Association. That appeal is pending in Beaufort County Circuit Court.

Debidue Groins - On May 17, we filed our initial brief in the Court of Appeals on behalf of the Coastal Conservation League, challenging the Administrative Law Court's decision to affirm the permits for the construction of three groins on the public beach on Debidue Island. We are opposing this decision because the very stringent criteria for new groin construction in South Carolina have not been met and thus groins should not be permitted here, immediately adjacent to Hobcaw Barony and a National Estuarine Research Reserve.

Recent Settlements

Tradeport - After a year of work on behalf of the Coastal Conservation League over the proposed industrial park in Berkeley County, starting with our initial comment letter, and following with extensive negotiations precipitated by our legal challenge in the Administrative Law Court, the developer, NorthPoint, has agreed to fund a new community center for the New Hope community and to make more concessions and contributions, including \$850,000 to the Lord Berkeley Land Trust for future conservation within the Wassamassaw/Great Cypress Swamp watershed, significantly mitigating the impact of their project.

Long Savannah - The parties are continuing to work to finalize a settlement agreement. In keeping with this process, SCELP agreed to dismiss the challenges to the 401 Water Quality Certification and the Coastal Zone Consistency Certification that were pending before the Administrative Law Court. We hope to be able to share news about a definitive resolution in this matter soon.

Yom Tov - On the day trial was set to commence, the developer presented us with a settlement that was acceptable to our client, the Coastal Conservation League. Yom Tov, LLC agreed to increase mitigation of wetland impacts, reduce onsite wetland impacts and reconfigure the proposed commercial facility so that it was farther away from the critical area wetlands. The details of the settlement have yet to be concluded but this represents a good result for our client, our mission and conservation of South Carolina's valuable wetlands.

Celebrate With Us

12th Annual Wild Side

Although we have big successes to celebrate, we have no doubt that much work lies ahead of us. One way—the most enjoyable way—to support our work is by attending our glittering annual fundraiser Wild Side on Saturday, October 2 at the beautiful Kaminski House in Georgetown. Enjoy a spectacular evening of dinner, live music, a silent auction and meaningful company.

This year our guest speaker is J Henry Fair, a Charleston-born artist and environmental activist known for his breathtaking aerial photographs of Earth's landscapes, including the very image of Winyah Bay on the cover. Mr. Fair graciously took the time to speak with us about his work, his passion for the environment and how this year's theme "Wildly Resilient" could not be more fitting.

What environmental issues concern you most?

Everything is ultimately going to be about the climate crisis and the extinction crisis. I care deeply about people and injustice. In some ways I try to go where there is need. If there is legislation that's coming up about coal ash, then I'll work on coal ash and work with the people that are working on coal ash to make change happen there.



Artist J Henry Fair

How does your work highlight these concerns?

I feel like we have to act quickly and resolutely. And we can! That's the irony here. People look at my pictures and they say, 'Oh my god, they're so despairing.' In fact, no they are not. They are about hope. We can't make the changes that are necessary until we know what the issues are. What's really apparent—glaringly apparent—is that we can make great changes and make great changes quickly.



Mr. Fair's photograph of Frampton Inlet will be available for auction.

Would you say that the aim of your work is to raise awareness?

Yes, exactly that. I want people to ask questions. I want people to look at the pictures and say, 'What the heck is that?' and then that prompts an openness for considering other information that straight dialogue does not. If I tell a denier that the climate crisis is real and urgent and going to change their lives within the next 10-20 years, they won't likely pay attention. But if I can show them a piece of art which makes them go, 'Wow, what is that?' it's a much more effective way to create dialogue.

How does our Wild Side theme "Wildly Resilient" connect with you?

"Wildly Resilient" evokes such a plethora of thoughts. The first one is the amazing resilience of the natural world to rebound when we stop the negative impacts. When you stop dumping sewage into a bay, that bay springs back to life really quickly. The other is about people—the hidden reserves of people and their ability to stand up when it's time and put their collective feet down and demand change.

You're currently based in New York. How does it feel to come back to the South Carolina coast?

I love the South. I love the Lowcountry. I travel everywhere but I consider myself a Charlestonian. The Santee especially is very dear to me.

What was your reaction when Amy asked you to be our Wild Side guest speaker?

I love you guys. I have the privilege of being able to make parallel what I do with doing good. I'm thrilled.

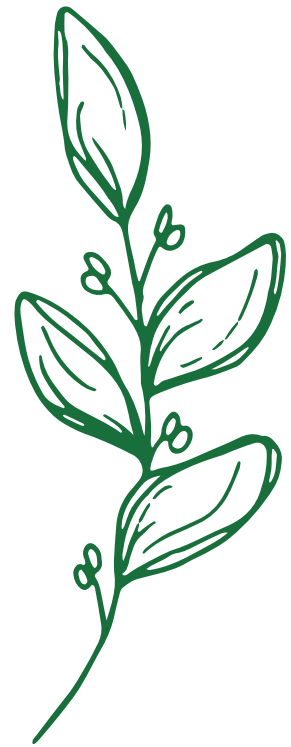
We hope you join the fun! Visit scelp.org/wildside for more details.

South Carolina Environmental Law Project
P.O. Box 1380
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12th Annual Wild Side

You're
Invited!



*Saturday, October 2, 2021
Kaminski House, Georgetown*

Demonstrate your business' commitment to protecting South Carolina's land, water and communities—and reach new audiences—by sponsoring Wild Side. Or add your support to our online auction with an experience or other in-kind donation. Contact Alison at alison@scelp.org or (843) 527-0078 to discuss.