

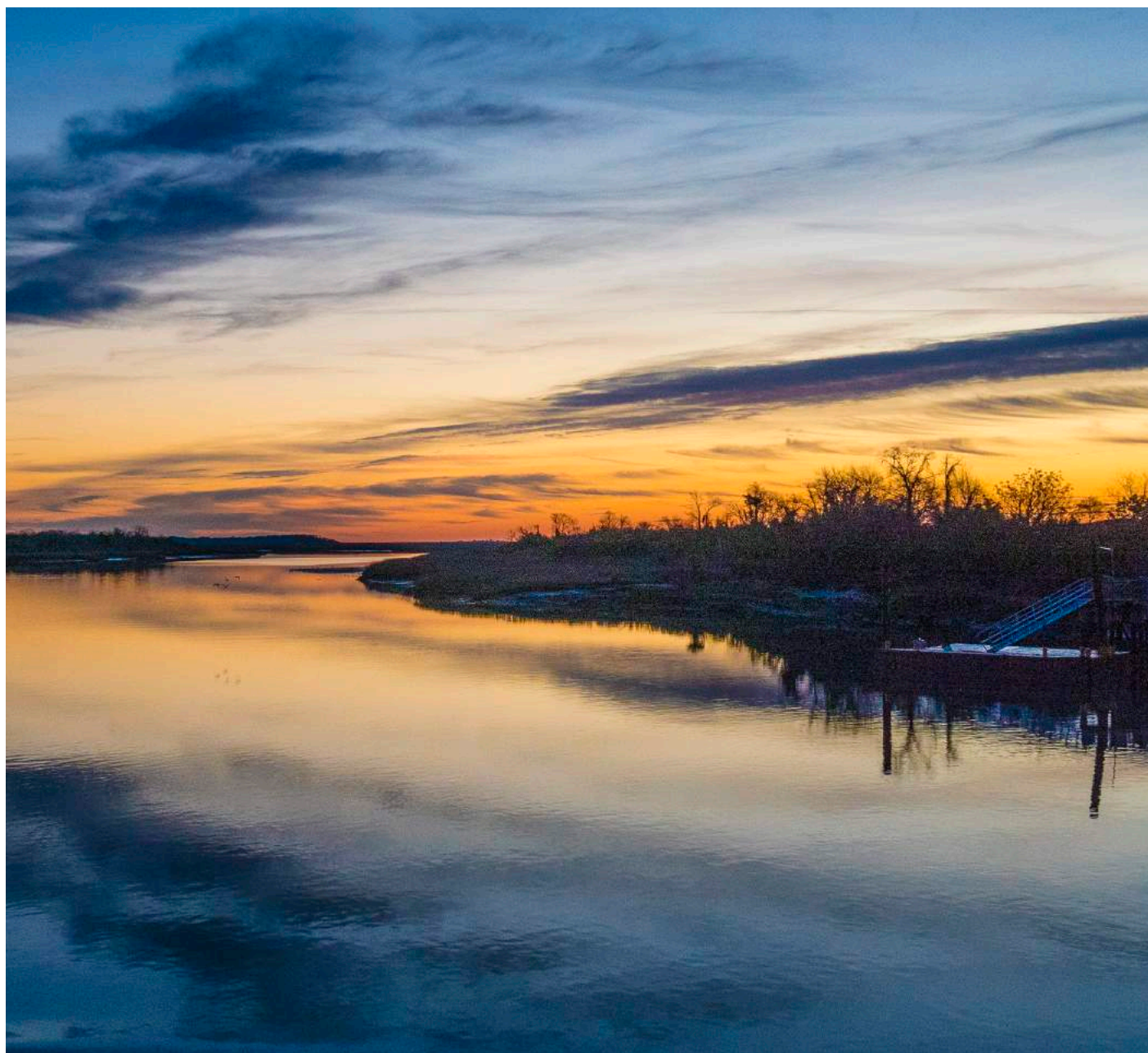


**SOUTH CAROLINA  
ENVIRONMENTAL LAW PROJECT**

*Lawyers for the Wild Side*

Seismic Blasting and Offshore Drilling Defeated | Holding the Line on Bay Point Island  
Upstate Rural Land Protection at a Critical Junction | Case Updates

WINTER 2021





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

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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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Page 3

**Director's Note  
Chandler Legacy Society**

Pages 4-5

**Seismic Blasting**

Page 6

**Upstate Rural Lands**

Page 7

**Bay Point Island**

Pages 8-9

**Donors**

Page 10

**Coal Plant NPDES**

Page 11

**Long Savannah  
Super Beach Front Lots**

Pages 12-13

**Debidue Groins  
Captain Sams Spit  
Yom Tov  
Dominion Pipeline**

Pages 14-15

**Daufuskie Sand Mine  
Wild Side 2020**



## Director's Note

Like many of you, this has been a year of change for the South Carolina Environmental Law Project. Over the summer, we officially moved into a new headquarters on Georgetown's busy Church Street, just a few blocks away from our longtime home office where I spent my first 18 years with SCELPL. Around the same time, we officially opened our Mount Pleasant branch, where our Charleston-based attorneys and staff are busy at work with their cases and causes. Then, in June, we happily welcomed **Alison Geer** as our first Donor Relations Manager, rounding out our total staff to nine—the largest the team has ever been. But as the year ends, we are saying goodbye to two stalwart Board members, **Leon Rice** and **John Barton**, both of whom have helped us make significant advances in our conservation efforts.

While much of the way we work has changed due to the ongoing COVID-19 outbreak, the demand for our work has not. As a legal service provider, SCELPL is considered an essential service and you'll find in this newsletter that our many active cases have maintained the course through the pandemic.

Although threats to South Carolina's natural environment are ever-present and unrelenting, Your Lawyers for the Wild Side are stronger than ever and always ready to fight back. As we look beyond 2020, we realize that environmental protection and justice across South Carolina does not just mean providing legal services and advice—it also means building a vision for a healthier future, and the legal infrastructure to enable it.

Of course, we could not do any of this without your support. After many months of sheltering in place and social distancing, we were fortunate to celebrate the 11th Annual Wild Side, in person and virtually. At Wild Side, I also had the honor to announce the creation of the Chandler Legacy Society and I am thrilled to report that we have already enlisted over a dozen cofounders. Even in these challenging times, you all inspire and encourage us to be vigilant and fierce advocates for our state's natural environment and the health of the people and wildlife it supports.

On behalf of our Board and staff, thank you for all you do to help us make a difference!

Amy E. Armstrong  
Executive Director

## *Founding the Chandler Legacy Society*

Announced at Wild Side this year, the Chandler Legacy Society honors our devoted donors who, like the society's namesake and SCELPL founder, James S. (Jimmy) Chandler, Jr., are staunch advocates for the environment and are making a difference now and in the future. Thanks to their legacy gifts, SCELPL's work will continue for many generations to come.

By naming SCELPL in your estate plans as a direct or contingent beneficiary of specific assets, a portion of your estate, or your residual estate, you can help bring our vision of environmental protection and justice into reality.

Two of the simplest legacy gifts can be made as a bequest through your will or trust or through a beneficiary designation of your retirement plan, life insurance policy, bank account, brokerage account, or certificates of deposit. Have you already included SCELPL in your estate plans? Please let us know and thank you! We'd love to welcome you to the Founders Circle of the Chandler Legacy Society.



Good News

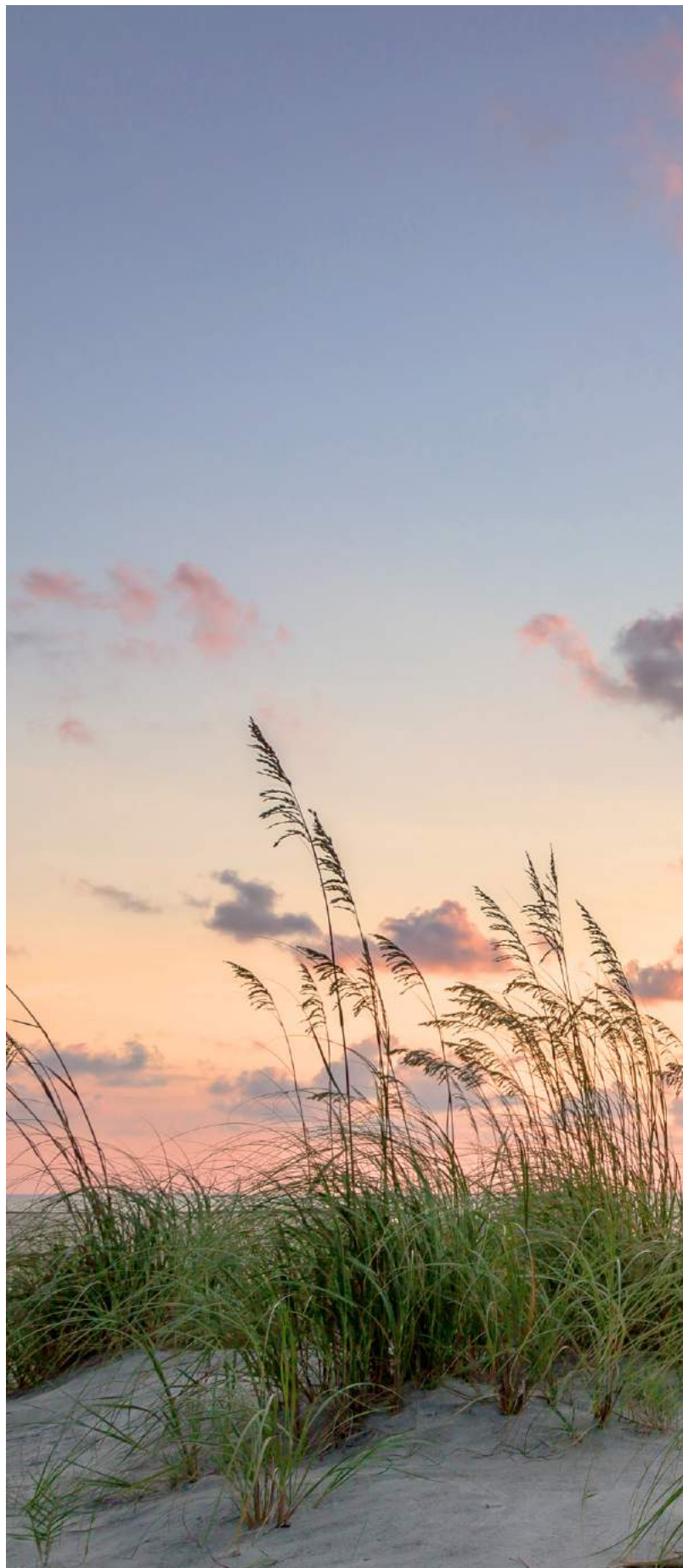
## A Victory for Our Coast!

On October 6, we breathed a tremendous sigh of relief when our legal challenge to seismic blasting authorizations —the precursor to offshore drilling— ended, eliminating the immediate threat of this dangerous activity. The Order from District Court Judge Richard Gergel dismissing the case marked a victory for the countless individuals, businesses, organizations, coastal communities, and local, state and federal elected officials who have fought tirelessly for years against bombarding our marine life with extremely loud and harmful sonic blasts.

The case began in late 2018, when we challenged the National Marine Fisheries Service's (NMFS) issuance of five Incidental Harassment Authorizations (IHAs) that would have allowed harassing and killing protected marine mammals and reptiles, from sea turtles to dolphins to majestic whales, as well as harming our fisheries and all means of marine life. We filed the case in federal court on behalf of 16 coastal municipalities and the Small Business Chamber of Commerce, alleging that the IHAs violated the Endangered Species Act, the Marine Mammals Protection Act and the National Environmental Policy Act.

Along with a broad coalition of environmental groups, we battled NMFS at every turn, from seeking an injunction to challenging deficiencies in the “Administrative Record,” which contains the documents that NMFS utilized in arriving at its decision to issue the IHAs. The IHAs are only valid for up to two years after issuance, and the seismic companies also needed permits from the Bureau of Ocean and Energy Management. As our case wore on, the time frame to conduct these harmful activities closed. The seismic companies ultimately conceded that testing had become infeasible due to time constraints, and NMFS conceded that it could not extend or reissue the authorizations without restarting the review process from square one.

***Thanks to your support, we are able to provide the legal muscle needed to prevail in the fight to protect the health and quality of our coastal environment which in turn supports a healthy and thriving economy and way of life. We ensure it will stay that way.***



The sun rises on the South Carolina coast.







Greenville County's rural lands and communities are facing increasing encroachment from suburban sprawl.

## Case Update

# Fighting for Upstate Rural Lands and Communities

More than a year ago, we began working with a coalition of community members and environmental groups to close a hole in Greenville County's land development regulations that has allowed a disorganized explosion of subdivisions into the rural landscape. This type of haphazard suburban-style development of rural land comes at a great cost to the environment and to the overall quality of life.

Our goal and solution is an orderly system of regulation for subdivisions in the most rural and environmentally significant parts of the County. Our strategic work is now bearing significant fruit.

In previous newsletters, we discussed our attorneys' regular arguments before the Greenville County Planning Commission and our participation in several subdivision appeals pending before the Circuit Court. In addition to this publicly visible work, we have also been very busy behind the scenes, using all available means to push for change in the County's system of land use.

***We selectively engaged in individual disputes in order to advance our broader objective, which is to compel the County to create a new, viable system for regulating subdivision intrusion into the rural landscape.***

Thanks to your unfailing support and our coalition partners, we made great strides toward the desired effect, as a new proposal for rural subdivision control is now before County Council for consideration. It is now up to us to finish out this initiative and we will continue utilizing every means at our disposal to ensure that the ordinance moves forward and is ultimately enforced.

If you would like to help us advocate for sound rural land use in the Upstate, please consider signing the petition on our website.



Bay Point Island is a culturally and environmentally important barrier island at the mouth of Port Royal Sound.

## Good News

# Holding the Line on Bay Point Island

The power of the people should not be underestimated. The overwhelming public outcry against an ill-fated and ill-advised luxury resort on the dynamic and fragile Bay Point Island is a case in point. Bay Point is a pristine, undeveloped 400-acre barrier island at the mouth of Port Royal Sound in Beaufort County. Bay Point is designated as an Audubon Important Bird Area and is used by the Gullah/Geechee nation for harvesting fish and shellfish. And it is the site of a proposed luxury resort featuring 50 cabins, restaurants, spas and shopping under the guise of “ecotourism.”

In collaboration with the Gullah/Geechee Fishing Association, the Coastal Conservation League and a broad local coalition who also enlisted the support of Senator Chip Campsen and Governor Henry McMaster, SCELPA worked to educate the public about Bay Point’s important cultural, historic and environmental values that would be degraded and destroyed by the proposed resort.

We successfully urged the Beaufort County Board of Zoning Appeals to deny a special use permit that would have allowed construction of the proposed luxury resort on this state treasure. On October 9, the Board issued an Order handing the citizens of South Carolina a tremendous victory in denying the special use permit.

***Alas, the developer is not accepting the outcome and has challenged that denial. But we will continue fighting until Bay Point is permanently protected.***

On behalf of the Gullah/Geechee Fishing Association, we filed a motion to intervene to help defend the Board of Zoning Appeals’ decision. We have also asked the court to allow us to participate in a mediation requested by the developer.



# Thank You for Supporting Environmental Protection and Justice!

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, Jr., Esq.	Albert Lee	Perry & Marlene Molinoff	Anne Pollok	Letitia Short	Mark Tomblin	Keith Wood
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Xavier Boatright of the Sierra Club's Beyond Coal campaign near the Cross Generating Station located just minutes from his home.

## New Case

# Coal Plant NPDES

On behalf of the Sierra Club, SCELPA filed a Petition in Richland County Circuit Court seeking an order requiring the South Carolina Department of Health and Environmental Control (DHEC) to stop shirking its responsibilities in regulating our state's coal-fired power plants. Three of these coal-fired power plants have been operating without valid National Pollution Elimination Discharge System (NPDES) permits for between 8 and 10 years. Those facilities include the Wateree Steam Station, the Cross Generating Station and the Winyah Generating Station.

Each of these coal plants have been operating under expired NPDES permits with absolutely no action taken by DHEC to either approve or deny the new applications, or even make a formal determination of whether the applications are complete, since at least 2012. Without up-to-date NPDES permits, these facilities can continue to discharge toxic wastewater, significantly impacting the environment and public health, without regard to existing strengthened effluent limitation guidelines.

These power plants discharge wastewater containing vast amounts of toxic pollutants, including arsenic, mercury, selenium, chromium and cadmium, and these toxins can accumulate in fish and drinking water. Potential public health dangers include cancer, cardiovascular disease, neurological disorders, kidney and liver damage and lowered IQs in children.

In addition to failing to require compliance with current pollution standards, DHEC's lack of action also prohibits the public from being involved in the permitting process.

***Failure to review the renewal applications also negatively impacts the communities living near these plants, contaminating their well water and preventing them from recreating safely in these waters, among other hazards.***

The citizens who live nearby these plants have been left voiceless. 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 injustices.

Our case can establish an important precedent regarding DHEC's legal responsibilities in reviewing and processing NPDES permits. By allowing the plants operate under outdated and obsolete permits, DHEC is acting inconsistently with the law and vitiating the fundamental goal of the Clean Water Act: to drive the nation towards cleaner water. Finally, as some of the largest contributors of hazardous air and water pollutants and greenhouse gases, we ultimately hope to see our oldest and dirtiest coal plants become a thing of the past.



## New Case

## Long Savannah

On behalf of Sierra Club and the South Carolina Wildlife Federation, we appealed DHEC's Water Quality and Coastal Zone Consistency Certifications that would allow developers to fill and excavate over 200 acres of wetlands in and near the already flood-prone Church Creek Basin in West Ashley. The developers claim that they have no alternative but to destroy these wetlands even though the proposed mixed-use development spans over 3,000 acres. The design is far from a modest endeavor with thousands of housing units proposed in addition to commercial, institutional and recreational development.

We believe that this proposed development can and must be altered to: (1) Significantly lessen or eliminate wetland destruction; (2) Guard against an increase in flooding in the vicinity of the development; (3) Protect water quality, not only within the creeks and wetlands adjacent to the development, but also in the Stono River where the developer proposes to re-route a significant amount of stormwater.

After the DHEC Board declined to review this gargantuan project, we filed a challenge in the Administrative Law Court and now we are building our case. In late October the developer filed a motion to lift the stay to allow construction before our case is heard. We have opposed this motion and will continue fighting to preserve vital wetlands that, in addition to providing habitat for wildlife and filtration to improve water quality, also serve as important water retention areas that mitigate against flooding.



Fill-and-build development risks more flooding in West Ashley.



A super beach front lot on Folly Beach.

## Case Update

## Super Beach Front Lots

One of SCEL P's primary objectives is to push our state toward sound policies on beachfront development in order to mitigate the mounting crises precipitated by building too close to the ocean. In light of the growing evidence all along our coastline, one would expect that risky new beachfront development would be out of the question entirely.

*Yet, a small group of speculators on Folly Beach insists on developing the most ephemeral of beachfront land—that which is created by artificial beach renourishment—and the state has done nothing to intervene.v*

Representing the City of Folly Beach and some of its most affected residents, SCEL P initiated litigation seeking a declaration that the public owns new beachfront land created during publicly funded renourishment. In other words, if a public beach is converted to dry land because of a renourishment project, we believe the area should remain in the public domain and not be open to private development. Despite the fact that this legal theory of "avulsion" is recognized in many other jurisdictions, our case was dismissed by the trial court before it even began. We have now appealed to the Court of Appeals, and briefing will continue over the next few months. If we, as a state, cannot prevent this most short-sighted and indefensible type of development, our long-term prospects for protecting and preserving healthy public beaches are dim.

## Case Update

# Debidue Groins

Despite the pandemic, in late August Your Lawyers for the Wild Side trooped up to Columbia and, on behalf of the Coastal Conservation League, challenged the permit issued for the construction of three groins just above the Belle W. Baruch Foundation property, which is home to the North Inlet-Winyah Bay National Estuarine Research Reserve.

***This case is important not only because of the risk that these sand-trapping structures will increase erosion and harm downdrift beaches, but also because affirming DHEC's lax interpretation of the statute that restricts new groins could lead to more of these ill-conceived structures plaguing our coast.***

After a lengthy discovery period that included depositions of a host of expert witnesses, we tried this case against DeBordieu Colony Community Association and DHEC over three days in Columbia. We called several members of the Conservation League who reside in DeBordieu Colony and who oppose the project. We also called Dr. Rob Young, a coastal geologist and professor, who did a fantastic job as our expert witness. We are grateful to all of our witnesses for their time and commitment. We have submitted our proposed order to the Administrative Law Court, as have the other parties. Now we await a ruling from the Court.

## Brief Update

# Captain Sams Spit

In August we submitted our written legal arguments, called briefs, to the Supreme Court in our challenge to a DHEC permit authorizing construction of a 2,380' steel sheet pile wall, along with a road and other infrastructure needed to facilitate a 50-house development on the dynamic and pristine Captain Sams Spit on Kiawah Island. We will be before the Supreme Court for oral arguments in the case on December 8 asking the Court to rule consistently with its prior decisions on this risky development.

Although this is the last permit standing in the long and complex litigation that began over 10 years ago, this summer we also sought to intervene in the developer's attempt to have the beachfront jurisdictional lines moved further seaward. If the developer prevails, the width of the narrow access corridor where the wall and road are proposed might increase, weakening one of our arguments in the case pending before the Supreme Court. The Administrative Law Court denied our motion to intervene, and we filed a notice of appeal with the Court of Appeals. We are in the process of preparing our briefs for the Court.



Captain Sams Spit is a fragile sandy inlet at the southern end of Kiawah Island.





## Brief Update

### Yom Tov

We recently succeeded in defeating DHEC's Motion to Dismiss in our Yom Tov case, which seeks to overturn DHEC's issuance of a permit to fill Beresford Creek wetlands for a commercial development. Earlier this fall, we deposed DHEC representatives and are now in the process of reviewing additional discovery.

## New Issue

### Dominion Pipeline

On behalf of the Blue Ridge Environmental Defense League, we submitted comments objecting to Dominion Energy's application for a permit to install a 14.5-mile gas main pipeline through Florence County. Dominion is proposing to impact 27 wetland areas and two tributaries, and is using eminent domain to take land—including heirs property and lands held by families for generations—from residents to build the pipeline.

Pamplico residents are also concerned about the possible environmental impacts of the project due to Dominion's history of damaging South Carolina's water supply. For example, in 2018, Dominion was cited for failing to control sediment on a construction site near a 55-mile pipeline it had built in the Upstate.

Nevertheless, the Corps of Engineers recently indicated its intention to review Dominion's permit application under a laxer Nationwide Permit (NWP). The NWP is allowed only if construction will have minimal adverse environmental impacts. On April 15, the U.S. District Court in Montana vacated the NWP based on the Corps' failure to consult with the Fish and Wildlife Service and the National Marine Fisheries Service as required by Endangered Species Act. After heated debate, on July 6, the United States Supreme Court partially reversed the district court's decision, temporarily reinstating the permit.

***Dominion's history indicates its proposed construction would have more than minimal environmental impacts. The Corps should require an individual Clean Water Act permit, instead of the lax NWP. We will continue to advocate against use of the NWP to condemn these rural and historic family properties.***





The proposed sand mine is sited in Daufuskie's Historic District near culturally important Gullah homes, buildings and landmarks.

New Issue

## Daufuskie Sand Mine

On September 24, the Beaufort County Board of Zoning Appeals (BZOA) voted to reject a developer's plan to dig a 3.9-acre sand mine right in the center of Daufuskie Island.

*The mine would have been the first and only mine on the island since the inception of the South Carolina Mining Act in 1974.*

We worked with the Coastal Conservation League and many of the Daufuskie residents to speak out against this unwise project, which would negatively impact natural resources, the character of the island and its residents' quality of life.

Significantly, the island is listed on the National Register of Historic Places and the proposed site adjoins many culturally important Gullah homes, buildings and landmarks, including Oyster Union Society Hall and Mary Field Cemetery, the largest Gullah cemetery on the island.

The project was brought before the BZOA without the County's Historic Preservation Board having an opportunity to review the project. A petition with over 300 signatures was submitted to the BZOA at the hearing and thankfully the board members voted 4 to 1 against the developer. SCELPA will remain vigilant over further efforts to thrust this mine upon the Daufuskie community.

Celebration

## 11th Annual Wild Side

This year, our signature fundraiser was celebrated in person and virtually—and it was a success! Under the Kaminski House's twinkling lights and impressive decorations, or from the comforts of home, our guests enjoyed poignant remarks by award-winning cartoonist Robert Ariail and a rousing set from one-man blues band Ben Prestage.

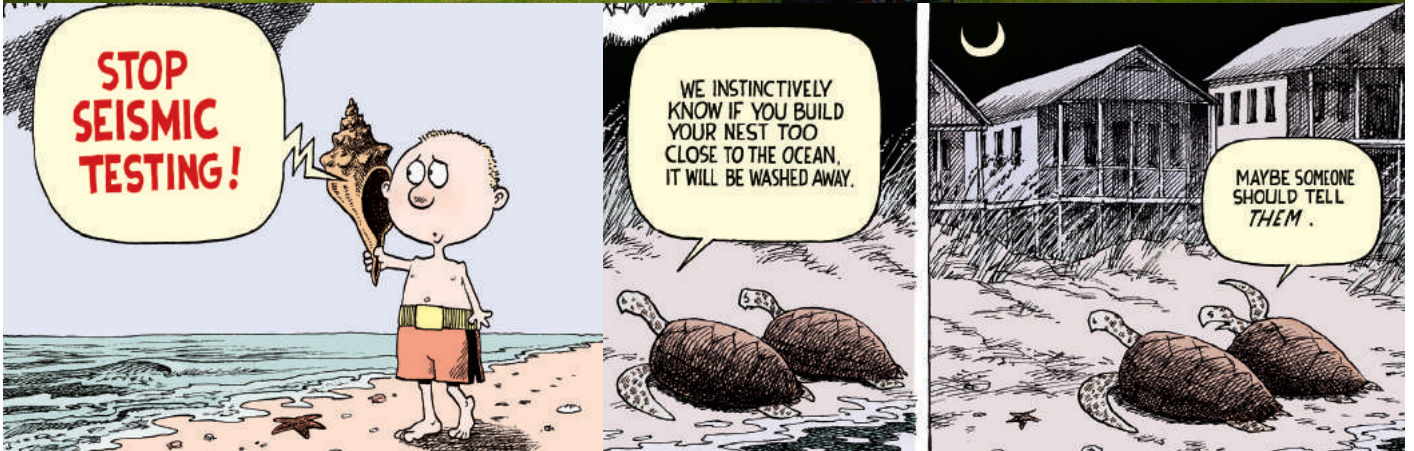
For more than three decades, Your Lawyers for the Wild Side have worked on almost every environmental issue evoked in our featured speaker's presentation, from Denmark's water woes to unchecked coastal development to toxic landfill pollution.

*Our donors and supporters' engagement at Wild Side and throughout the year is critical for us to keep fighting and winning on all these important issues.*

This year, we experimented with new technology for live-streaming the event and bringing our silent auction online, and we even hosted an Ariail-approved cartoon caption contest, won by our own Board member John Barton.

Although masks and social distancing made the event look and feel quite different from celebrations of prior years, we are grateful to everyone who made this special gathering possible and for helping us raise more than \$83,000 to further boost our work in protecting South Carolina's natural environment.







Get Involved

## How You Can Help

Your loyal support and engagement is what keeps us going and makes a difference for environmental protection and justice in the state.

Visit the brand new [www.scelp.org](http://www.scelp.org) to learn more about our work, get involved and sign up for our monthly e-news. You can make a gift online or mailing the enclosed envelope. Let us know if you see any emerging or ongoing threats to our natural resources and communities. Share your enthusiasm for SCEL P with your friends and family. Thank you!



*We are grateful to our Wild Side supporters!*

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