



South Carolina Environmental
Law Project

Lawyers for the Wild Side of South Carolina



Compromise Reached in Fight for the Angel Oak

SCELP is pleased to announce that the years-long fight over the proposed development adjacent to the majestic Angel Oak has been resolved. This resolution provides many important protections for the Angel Oak tree, and it would have been impossible without the energetic work and cooperation of the Coastal Conservation League, Save the Angel Oak and many passionate individuals.

The initial proposal for development in the shadow of South Carolina's oldest, most famous, most honored, and most visited tree was truly appalling. On the 42 acre site adjacent to the Angel Oak, the developer proposed to build 630 residential units; to build 80,000 sq. ft. of retail, including big box retail; to fill 5.42 acres of the 6.46 wetland acres onsite; and to provide almost no buffer around the Angel Oak. Through the concerted efforts of many over several years, this proposal was gradually chipped down. The fight culminated in a case filed by SCELP in the Administrative Law Court, which eventually prompted the beneficial settlement. Keep reading on **page 6** for the details of the compromise.

Mountains & Marshes

Summer/Fall 2013

A Note from the Director

I'm excited to announce that SCELPA has expanded our staff for the first time since 2002, hiring a third attorney. What Jimmy Chandler started as a one-man show in 1987 has slowly, but steadily, grown over our 26 year history. Jimmy was SCELPA's sole employee for 11 years, until he added a paralegal in 1998. Four years later, in 2002, I joined SCELPA as the second attorney. After Jimmy's death, Michael Corley joined SCELPA.



While Jimmy's death raised some questions about SCELPA's fate, I see this expansion as a decisive indication that our work is as important and relevant as it always has been. SCELPA's expansion in fact could not be better timed, as our state faces many pressing environmental issues, including proposals for massive new landfills that would put out-of-state waste in our backyards; threats to wildlife and wetland habitats from development pressures; and threats to publicly valuable pristine and undeveloped areas.

If you are receiving this newsletter, you understand the important role SCELPA has played and continues to play in natural resource protection. We are particularly thankful to those of you who recognized the need for SCELPA to expand and meet the growing demand for environmental legal services in South Carolina and supported us in our effort to hire a third lawyer.

After months of searching, reviewing applications, and conducting interviews, we finally found the perfect fit with Jessie White. Jessie graduated from USC School of Law in 2012 and was highly recommended by former SCELPA board member, Professor Josh Eagle. Jessie joined SCELPA in April, and has energetically and enthusiastically taken on her new responsibilities. As you will see from this newsletter, SCELPA has been very busy in the first half of 2013, and we are grateful to have much-needed assistance with our case load. You can read more about Jessie on **page 8** of this newsletter.

Thanks again for sharing our vision to increase our ability to bring and win important cases for the protection of our state's natural resources.

In Loving Memory of Billie C. Houghton

SCELPA mourns the loss of Billie Carr Houghton.

Billie was very active in conservation and in protecting the environment, and she held leadership positions with the Coastal Conservation League and Winyah Conservancy. Billie was dedicated to the Episcopal Church, active in the Democratic Party, with the League of Women Voters, and an active supporter of The Family Justice Center. We at SCELPA owe gratitude to both Billie and her husband, Alan, for their generous support of our work. Our hearts go out to Billie's family during this difficult time.



**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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Captain Sams Spit

Supreme Court Decides to Hear Oral Arguments for a Third Time

We have had some unusual developments in our Captain Sams Spit case since our December newsletter. First, on February 14 2013, we received an Order from the S.C. Supreme Court in which the Court reversed its prior decision overturning the permit for a half-mile long, 40-foot wide concrete block wall along the banks of the Kiawah River.

While extremely disheartened at this loss, we quickly developed a strategy for asking the Court to “rehear” its decision. Working with Professor Robert Bockman at the USC School of Law, we filed a Petition for Rehearing on March 14. We also worked with several outdoor, recreational, educational and tourism groups who filed Amicus Curiae Briefs in support of our rehearing request. On May 2 the Supreme Court notified us that it granted our Petition for Rehearing, which means the Court will hear arguments in this case for the third time on June 5. We are cautiously optimistic about the Court’s decision to rehear this important case.



Inlet Relocation Trial Complete

Since our last newsletter, we completed a three-day trial over whether Captain Sams Inlet could be relocated by cutting a new inlet and filling in the existing inlet with sand. At issue in the case is the impacts to the endangered piping plover – a bird that spends over 10 months a year foraging and roosting at Captain Sams. Our expert witnesses – Rob Young, PhD. in coastal geology, and Jim Fraser, PhD. in wildlife – were instrumental in the presentation of this case.

Favorable Development in Pawleys Island Groin Case

As discussed in our last newsletter, DHEC granted Georgetown County a permit to construct a groin on the southern end of Pawleys Island. Groins are structures, most often constructed of large boulders and metal or wooden sheets, which run perpendicular to the shoreline. Groins are designed to hold sand on the beach and to benefit the particular area of beach where the sand is held. But groins also exacerbate erosion and beach nourishment problems on neighboring beaches, and form a visual and physical obstacle to beach enjoyment. In short, “hard structure” beachfront erosion devices like groins are an outdated and scientifically disfavored means of solving beach erosion problems.

SCELP’s efforts to fight the Pawleys Island groin was recently bolstered by Georgetown County’s decision that it would not participate in defending its own permit. In other words, the County will not participate in SCELP’s pending administrative challenge, which will determine the validity of the groin permit. SCELP has filed a motion arguing that the County’s refusal to have any participation in this case warrants revocation of the permit. We are optimistic that either the court or DHEC will take action as a result of our motion. As we stated in the motion, we believe DHEC should revoke or suspend the permit, rather than casting State resources behind a disinterested and disengaged permittee.

Yes, that is new! We are happy to introduce our new SCELP logo. This is the first true logo in the history of SCELP. It features the Ibis, a fun bird to spot in our State’s coastal marshes.

SCELP Welcomes New Board Members: Dr. Paula Feldman & Robert Schofield



Paula Feldman holds the C. Wallace Martin chair in English and the Louise Fry Scudder chair in Liberal Arts at the University of South Carolina in Columbia. She is the author, editor, or co-editor of eleven books, and teaches British literature, environmental literature, and writing on the graduate and undergraduate levels. For many years, she served on the Board and as education chair for the Columbia Audubon Society. Her photographs and articles concerning human interaction with the environment have appeared in South Carolina Wildlife Magazine and other publications.

In recent years, Paula has been active in environmental advocacy in the Lowcountry. She has a passion for conservation, and brings many creative new ideas to the SCELP Board. We hope you have the opportunity to meet Paula.

Bob Schofield is a native South Carolinian with a long history of environmental conservation and preservation work. His home on Hasty Point, a plantation on the Pee Dee River, fueled his passion for his environmental advocacy efforts. That passion led him to pursue conservation efforts and coastal policy issues as a board member of the Coastal Conservation League.

Bob also served on the SCELP Board for several years, working with Jimmy Chandler. Upon returning to his home in Georgetown, Bob eagerly agreed to rejoin the SCELP Board. Bob brings much energy and enthusiasm for, as well as knowledge and understanding of, SCELP's work. We are excited to welcome Bob back!



Commencement Address at Appalachian State University

SCELP's Amy Armstrong recently had the great honor of delivering the commencement address to the 2013 graduates of Appalachian State University's College of Fine and Applied Arts. That College, which features majors varying from Dance to Environmental Design, is home to more than 2,700 students and 200 faculty and staff. Amy previously had no connection to Appalachian State, but was contacted by a University representative who had been informed of SCELP and Amy's work.



Amy's comments focused on turning challenges into opportunities for growth, a philosophy we certainly attempt to implement at SCELP. Across the country, Amy was competing with other commencement speakers that day, but we have it on good authority that the graduates listening to speakers like Bill Clinton, Tom Brokaw and Annie Lennox could not help but feel somewhat slighted.

Laurens County Proposed Landfill

On March 11 the S.C. Supreme Court granted our Petition for Certiorari on behalf of Engaging and Guarding Laurens County’s Environment (“EAGLE”), which means that the Supreme Court has found that there are special and important reasons to consider this landfill case. We initially prevailed when Administrative Law Judge Trip Anderson overturned the DHEC decision to approve the new landfill in Laurens County. DHEC’s approval was based on its conclusion that the proposed landfill is “needed.” Judge Anderson concluded that the existing excess landfill capacity indicated that the proposed new landfill was not needed, but the Court of Appeals, in a one-page opinion, overruled Judge Anderson. We are optimistic that the Supreme Court will give careful and thorough review to this case, particularly in light of the fact that Laurens County has enough existing capacity to meet its needs.

Carolina Bays Case

SCELP’s legal battles are often complex and protracted, and it can be easy at times to feel distant from the resources we are fighting to protect. That is why we feel a particular thrill when we actually get to witness the “rubber hitting the road,” as you are seeing in the picture at right.

Several years ago, without a permit, a developer in Pawleys Island cleared and filled portions of a unique Carolina Bay wetland for the purpose of creating a residential lot. You may recall from past newsletters that SCELP challenged this fill in a case that went all the way to the South Carolina Supreme Court. SCELP prevailed in a landmark Supreme Court decision, but subsequent legislative undercutting left the fate of the Carolina Bay in doubt.

Time passed without the fill being removed, and the lot was actually posted for sale. That is when SCELP stepped in with a Motion for Enforcement, asking the court for an order requiring timely removal of wetland fill. The court agreed and issued an order setting the terms of removal. What you are seeing above is water from the Carolina Bay returning for the first time to the area that had been filled and compacted under the tracks of a bulldozer. We are hopeful that this portion of the Carolina Bay will quickly revert to its original condition.



Roper Pond Development Adjacent to Arcadia Lakes

On March 6 the S.C. Court of Appeals issued an Opinion upholding permit issued to Roper Pond, LLC, authorizing the excavation of Roper Pond on Trenholm Road. As many of you have seen, the pond and its lily pads have been destroyed and the high density apartment complex largely complete. While we are disappointed that we were not able to prevent this destruction, the case remains important both because the Court issued an opinion on “standing” (the requirements that a party must have in order to get in the courtroom door) that is contrary to well-established standing law and because of the water quality implications of this case and others like it.

SCELP Challenges Problematic Wetland Fill in Pawleys Island

Along Highway 17 in Pawleys Island, what started as mature hardwood wetlands where wading birds and wildlife were often viewed, slowly fell to bulldozers and multiple applications of fill dirt. SCELP was quickly contacted by a number of citizens and groups in the community who were concerned about the loss of yet another tract of wetlands fronting this stretch of Highway 17. As we continue to lose wetlands along this important coastal highway, the flooding problems have become an emblematic reminder of the result of filling in wetlands along our coastal plain to create buildable high ground.



In this case, SCELP believes that the developer failed to obtain proper permits before filling these wetlands, which had also provided valuable filtering functions for the already impaired Pawleys Island/ Litchfield salt water marsh system. Among other problems, the developer’s permit application identifies a tidal saltwater creek as the receiving body for the wetlands, but the permit that was issued would be invalid for wetlands adjacent to tidal saltwater creeks. The developer submitted plans for the construction of two fast food restaurant chains on the property, but the tract was put up for sale immediately following the fill, potentially allowing the developer to turn a quick profit off of the destruction of this valuable wetland. SCELP is pursuing removal of the wetland fill through federal Clean Water Suit action.

New Case in Progress! Live in the area and want to know how you can help with this new SCELP project? Contact Michael: michael@scelp.org

continued... Compromise Reached in Fight for the Angel Oak

The overriding goal of everyone involved in the opposition to this project was for the development to be tailored to match the unique community of Johns Island and to account for its unique proximity to this treasured natural landmark. While the nature of compromise is not getting every single thing you want, we believe that the settlement accomplishes that goal.

The main feature of the settlement is that one-half of the 42 acre site — the so-called Phase 2 of development — is set aside to be purchased by the Lowcountry Open Land Trust. In addition, all commercial development has been eliminated from the project, and the density of the residential development has been reduced, with 274 total residential units. The total wetland fill has been reduced from 5.42 acres to 2.23 acres. Specific to the Angel Oak, the development will have a minimum 300 foot buffer from the tree, and Angel Oak Park has been expanded by 6.5 acres (from 2.2 to 8.7). We believe that this settlement is a victory for anyone who believes that the Angel Oak has a value for future generations that exceeds short-term development profits.

During SCELP's trial of this case, we presented expert witnesses who expressed their opinion that the proposed development would impact the roots, hydrology and overall health of the Angel Oak, shortening the tree's remaining life. We are happy to have reached this cooperative settlement that aims to avoid these impacts to one of our State's truly special places.

Former Chief Judge Alex Sanders Entertains at SCEL P Event



Judge Sanders addressing guests

On May 1, 2013, SCEL P friends gathered at Board Chair Francie Close's home to enjoy an evening of good food and good company, highlighted by comments from Alex Sanders.

Alex is the former chief judge of the South Carolina Court of Appeals and was the 19th president of the College of Charleston. In 2002, he was the Democratic candidate for the U.S. Senate seat left vacant after the retirement of Strom Thurmond. Alex grew up in Columbia, SC and attended AC Moore Elementary School, Hand Middle School, and Dreher High School. He received degrees from the University of South Carolina and the University of Virginia, later teaching in the Political Science Department at Harvard University. As one of five founders, Alex has been the president of the Charleston School of Law since its founding in 2002 and currently teaches courses in the Political Science Department at the College of Charleston.

SCEL P was honored to have Judge Sanders offer remarks at this event, and everyone was captivated by his entertaining story about a frantic search for Ivory-billed Woodpeckers in the depths of Santee Swamp. Back in 1971, Alex Sanders was a young state legislator desperate to stop the clear-cutting of 10,000 pristine acres of the Swamp. With contracts in place and lumber companies ready to move, Alex led a motley crew of interested parties into the Swamp, armed with the only known recording of the bird, which had been declared extinct for decades. With only the expectation of generating publicity, the group headed out with two members of the local press. As they reached the interior of the Swamp, every member of the group was thrown into dumfounded silence as the ivory-billed's recorded call was returned exactly. The call was played again and returned again, over and over, at least a dozen times.

The event made worldwide news, drawing scores of visitors and an extended investigation by Life magazine. Though the subsequent exhaustive search turned up nothing, the timbering contracts were cancelled, the trees were saved, and the fledgling environmental movement in South Carolina was off and running. We join Alex in hoping that the next time we need that ivory-billed, its call will again emanate from the mist.

We would also like to give a special thank you to *Our Local Catch*, *Blue Marlin* and *Rosewood Market* for donating food for the evening. *Our Local Catch* is family-owned and provides exclusively local, chemical-free seafood caught using sustainable fishing practices. *Rosewood Market* similarly supports local food, including carrying *Our Local Foods* products. *Blue Marlin Restaurant* is a Columbia tradition, as well as a partner in the *Sustainable Seafood Initiative*.



You may recognize the Lorax, who "speaks for the trees." Pictured here with the Larax is SCEL P staff, who similarly speak for the trees.



Did you know: The ivory-billed woodpecker is/was the largest woodpecker in North America, measuring 20 inches in length and 30 inches in wingspan. The last undisputed sightings of the bird were on Louisiana's Singer Tract in the early 1940s. That old-growth forest was logged to support U.S. efforts in WWII. The bird depends on mature forests with many dead and dying trees.



Note from Jessie White, new SCEL Staff Attorney:

First and foremost, I must admit that after joining the SCEL team about a month and a half ago, I am still pinching myself and wondering when I will wake up from this dream. As a 2012 graduate from the University of South Carolina School of Law, my fellow classmates and I were quickly exposed to the realities of life beyond the classroom as we faced the daunting task of actually securing a job. So, a year later, I am thankful to have a job, and for that job to be with such an outstanding and impressive organization as SCEL is truly too good to be true. I am so deeply moved by the opportunity to work alongside of Amy and Michael and Phyllis and to take part in furthering Jimmy Chandler's legacy at SCEL. This organization embodies everything and more that I have aspired toward from a young age and throughout my education.

Growing up with two brothers and a father who wishes he had followed his dream to play professional ball, I remember falling asleep to the jingle of Sportscenter from the television in the other room and being cornered into claiming particular sports teams as "my favorite." Looking back now, I can see that while I did not necessarily share my family members' passion for the ball game, I was indirectly influenced and empowered by it in cultivating my own passion. I must have been born with a gene that develops an affinity for the environment, especially for the coastal zones. Or perhaps I was a marine organism in a former life. Either way, I have been passionate about protecting the environment and its valuable resources for as long as I can remember and it has spread like wildfire. From requesting to adopt endangered species as birthday gifts, to scolding others when they let the faucet run, to plucking plastic bottles out of the garbage can, and to claiming the Miami Dolphins as "my favorite" football team, this passion has been an ever present and defining force in shaping who I am as an individual and driving me to pursue a career in environmental law.

I was born in Burlington, Vermont, but when I was about six years old we moved to Charlottesville, Virginia, where my parents are still living today. I attended the University of Virginia for college. After a brutal first semester of hard science and math, I decided to shift gears away from ambitions in the field of marine biology and began the path toward policy and the law. I graduated in the Spring 2009 with a B.A. in Environmental Thought and Practice and a B.A. in Psychology. Shortly thereafter I moved to Columbia for law school starting the following fall. From day one at USC I was determined to practice environmental law, but I can say without hesitation that it was only through meeting and coming to know Professor Josh Eagle as a mentor that I was introduced to members of the environmental community in South Carolina and, most importantly, provided the opportunity to join SCEL.

I am constantly amazed by the ways in which Amy and Michael manage such detailed and critically important cases with ease and analytic prowess. Just to be standing among their ranks is an honor beyond comparison. I am so grateful for my family for instilling the importance of passion as a guiding value in my life and for the friends, teachers, and professional acquaintances who helped me foster my goals along the way. I am so thrilled to be with SCEL and I greatly look forward to meeting all of you as we work together to preserve the beautiful treasures of the state of South Carolina!

Save the Date! Mark Your Calendar for the 2013 Wild Side

We have already begun preparations for the 4th annual Wild Side Event, and we are happy to report that another stellar lineup of events! We have confirmed Patrick McMillan as our guest and keynote speaker. Patrick is host, co-creator, and writer of the popular, Emmy-award winning ETV nature program *Expeditions*. We have also confirmed boat tours by Carolina Rover and dinner by Bistro 217, and music by Danielle Howle, each of which were very well received at last year's event. The event will take place in the same unmatched setting as last year, on the grounds of Hobcaw House in Georgetown, overlooking Winyah Bay.

Previous Wild Side events would not have been possible, much less a success, without the generous support of our event sponsors. If you are interested in a business or personal sponsorship for this worthwhile event, please contact us for more information. We urge you to make plans to join us on October 5, 2013!

