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Lawyers for the Wild Side

*Victory for Mountain Streams | Coastal Protection
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WINTER 2023



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and communities across South Carolina.*

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MAILING ADDRESS

P.O. Box 1380

Pawleys Island, SC 29585

Telephone: (843) 527-0078

Website: www.scelp.org

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Wild Side Recap



Director's Note

It's hard to believe that 2022 is quickly coming to a close. With several important successes, much legal work and one outstanding celebration behind us, we are eager for what is ahead of us.

We gathered together with many new and familiar faces on September 17 in Georgetown for our 13th annual Wild Side, an event near and dear to my heart as it honors SCEL P's founder Jimmy Chandler as well as the daily work of our *Lawyers for the Wild Side*. You can find a recap of the event along with some great photographs in the final pages of this publication.

In October, we publicly announced our first Capital Campaign in our 35 year history: **Building Up Our Defense**. The Campaign is a major strategic investment in our organization's capacity to take on critical cases and issues across the state, enabling us to increase the number of lawyers we deploy into our communities, execute more structured and resourceful legal strategies, and improve SCEL P's sustainability over the long term.

In addition to continuing to serve as the last line of defense against environmentally catastrophic projects, we are also turning attention to innovative approaches to tackle long-standing problems. We know that water and hazardous chemicals still mix too easily, too frequently and too predictably in certain zip codes. And despite the successes enabled by the Clean Water Act, we are still very far from achieving the ultimate goals of restoring the chemical, physical and biological integrity of our nation's waters. More is needed, and the SCEL P team is launching new cases and initiatives aimed at these goals. Read on for more details!

Many of you have already donated or committed to supporting our efforts, and for that, I am incredibly grateful. Through this early campaign support, we have already hired a new attorney and communications staff, and are preparing to add another attorney and an environmental justice and equity specialist in early 2023 to allow us to dedicate more energy and attention to our state's environmental inequities, where we can find some of the most systemic solutions to many of our environmental problems.

Even with all of this year's excitement, we are sad to say goodbye to Board members **Bill Holt, Lisa Allen and John Barton** – each of whom brought wisdom, thoughtfulness and energy in charting our path forward. We will miss them, though we know they will stay engaged and connected.

While the challenges that lie ahead will not be easy, we couldn't accomplish any of our wins or important work to protect our land, water and communities from destructive projects and degradation without our partners – and that word encompasses anyone who comes alongside us as a donor, volunteer, member of our Board of Directors, partner organization, staff person or simply an unwavering champion of what we do. Thank you!

Amy E. Armstrong
Executive Director



Protecting our state's rivers and tributaries from pollution.

Major Victory

4th Circuit Win for Clean Water

On July 20, 2022, the United States Court of Appeals for the Fourth Circuit ruled in favor of Naturaland Trust and South Carolina Trout Unlimited, two groups represented by SCELPA. As a result of this victory, we are returning to the United States District Court to hold Arabella Farm, an event venue, accountable for its repeated dumping of literal tons of sediment into a critical tributary of the Eastatoe River in Pickens County. The District Court originally dismissed our complaint on jurisdictional grounds, finding that DHEC's issuance of a notice of alleged violation—sent solely to Arabella Farm—barred our citizen suit.

In a 2-1 decision, the Court of Appeals reversed this dismissal and returned the case to the District Court in Greenville, agreeing with our arguments that an entirely private

notice of alleged violation—without more—cannot “commence” an administrative penalty action that bars citizens’ suits. This decision will help ensure that citizens and conservation organizations can seek redress for Clean Water Act violations when state agencies completely exclude the public from the administrative enforcement process.

This decision is a major victory for South Carolina but will also benefit the other four States in the Fourth Circuit’s jurisdiction.

Conservation groups like Naturaland Trust and South Carolina Trout Unlimited serve a critical role in discovering and enforcing violations of our environmental laws. At a time when regulatory agencies are overburdened or, worse, apathetic to these violations and environmental protections are regularly diminished, efforts of conservation groups to protect our land, water, and communities becomes all the more essential.

Yet, this role is severely undermined when State laws and policies exclude the public entirely from the administrative enforcement process, resolve violations behind closed doors, and then prevent the public from pursuing legal action based on that improperly secretive, informal process.

The District Court's flawed ruling dismissing our lawsuit despite a deficient, exclusionary and opaque process would have significantly impeded the public's ability to enforce violations of one of the nation's most important environmental laws. On behalf of our clients, SCELPA appealed this flawed ruling, urging the Court of Appeals to rule that

our Clean Water Act enforcement action must proceed in the face of such faulty state action. SCELPA's appeal sought to protect the invaluable role that Congress gave the public to seek enforcement of CWA violations and hold polluters accountable.

Securing such a victory for citizen rights was a great way to prepare for the 50th anniversary of a cornerstone of modern environmental law. The Clean Water Act has been a wild success worth of much celebration, but the reality is that its implementation has failed to reach the key goals. While rivers do not catch on fire any longer, far more is needed if we are truly to restore the chemical, physical and biological integrity of our nation's waters. An engaged and empowered citizenry is an essential precondition for achieving this vision.

Arabella Farm has indicated it will petition the Supreme Court of the United States to hear the case. In the unlikely event the Supreme Court agrees to hear the case, SCELPA will continue to advocate for our clients' and the broader public's right to pursue legal action in federal court when state and federal agencies fail to act to protect our waterways. Until then, SCELPA looks forward to proving that Arabella Farm's egregious destruction of our state's waters violated the Clean Water Act and holding them accountable.



Congress gave the public a valuable role in seeking enforcement of Clean Water Act violations.



The boneyard beach at Bulls Bay is part of Cape Romain National Wildlife Refuge.

New Case

Fighting for Rural Awendaw

On behalf of the Coastal Conservation League and the Charleston Waterkeeper, the SCEL P team has taken decisive legal action in the fight against ill-placed septic systems.

With limited amounts of undeveloped land remaining, private developers—often large, national corporations—are increasingly targeting rural, agricultural and/or forested tracts for large-scale residential subdivisions. These areas are typically on the outskirts of urban growth boundaries and are not serviced by public sewer, leading developers to turn to individual septic systems for high-density neighborhoods.

Two major projects in Awendaw fit this mold and quickly captured our attention earlier this year. Together the two proposals, known as White Tract and Romain Bay Preserve, would result in the installation of over 400 individual septic systems east of Highway 17, in close proximity to the pristine natural ecosystems of Cape Romain National Wildlife Refuge, including designated Outstanding Resource Waters.

Traditionally, septic tanks have been used to provide on-site wastewater treatment in rural areas where sewer is not available, and can be effective when properly sited, installed and maintained; however, our state has no requirements that property owners maintain and service these systems. And importantly, coastal areas present inherent challenges for septic, including shallow water tables, inappropriate soil conditions, sea level rise, and saltwater inundation. These risks are compounded with high density installations. Yet DHEC, the administrative agency

tasked with oversight of wastewater treatment, routinely rubber-stamps septic permits without any consideration of such risks.

Even though the Coastal Tidelands and Wetlands Act requires DHEC to “review all state and federal permit applications in the coastal zone, and to certify that these do not contravene” the Coastal Management Program, DHEC has failed to undertake this review for septic tank installation applications. As a result, septic permits are not examined for cumulative impacts, including proximity to sensitive estuarine waters, rising water tables or other geographical features. Further, the agency fails to publicly notice applications or permits, creating a system where no transparency exists and timely information is nearly impossible to obtain.

The risks inherent with large scale septic installation could not be higher: untreated domestic wastewater breeds pathogenic bacteria, contaminating ground and surface water, polluting shellfish beds, and degrading water quality so it is unsafe for recreational use. SCEL P and our partners recently filed a Complaint for Declaratory Judgement in Charleston County asking the Court to order DHEC to review septic tank permits for consistency with our Coastal Management Program, and to place such permits on public notice. As part of our new strategic objectives, we are committed to enforcing laws designed to prevent pollution and degradation of our sensitive coastal waters, and fighting the mass installation of ill-placed, densely situated septic systems along our coast. We appreciate the support of so many engaged citizens and look forward to having our day in court on this crucial topic.

Awaiting Decision

Gadsden Creek

In June, SCEL P tried a contested case over the fate of Gadsden Creek, one of the last remaining tidal creeks on the Charleston peninsula. SCEL P represents Friends of Gadsden Creek, a local nonprofit, and several of the Friends testified at trial. Our witnesses included residents of the Westside neighborhood who live near Gadsden Creek and enjoy the wildlife that lives there and the flood relief it provides, an educator who uses the creek to help teach local students about flood resiliency and habitat, and others who lead walks to share the history of Gadsden Creek and the neighborhood that has long valued its presence.

In addition to all of those witnesses, SCEL P called Professor Christina Butler, a historian, and Joshua Robinson, an engineer. Professor Butler testified about how Charleston historically floods in places where it previously filled in tidal creeks and wetlands as well as the historical connection of the neighborhood with Gadsden Creek. Mr. Robinson testified about alternatives that could be pursued that would allow Gadsden Creek to remain while still addressing some of the concerns in the area. Mr. Robinson also testified about all the ecological and stormwater management benefits Gadsden Creek continues to provide to the community.

This case is important not only to our client and the local

community because of the shared history and the benefits Gadsden Creek provides but also because Gadsden Creek and its wetlands are critical area.

South Carolina law is supposed to afford the greatest protection to critical areas, but the DHEC decision allowing the elimination of Gadsden Creek could create a dangerous precedent and erode protections for these sensitive areas.

This is especially problematic in the face of rising sea levels when we need to allow more space for marsh migration, rather than eliminating the marsh altogether.

We submitted our proposed order to Administrative Law Judge Ralph K. Anderson, III, who heard the contested case and await his decision. Meanwhile, Friends of Gadsden Creek, along with the Charleston Area Justice Ministries, has continued working to raise awareness about this issue and speaking with local elected officials in hopes of saving Gadsden Creek and addressing the environmental justice concerns of the proposal and the actions of the City toward this neighborhood. Thanks to your support, we remain committed to see justice prevail.



Gadsden Creek is one of the last remaining tidal creeks on the Charleston peninsula. | Photo: Olivia Rae James

Thank You for Supporting Environmental Protection and Justice!

Contributions received from November 1, 2021 – October 31, 2022.

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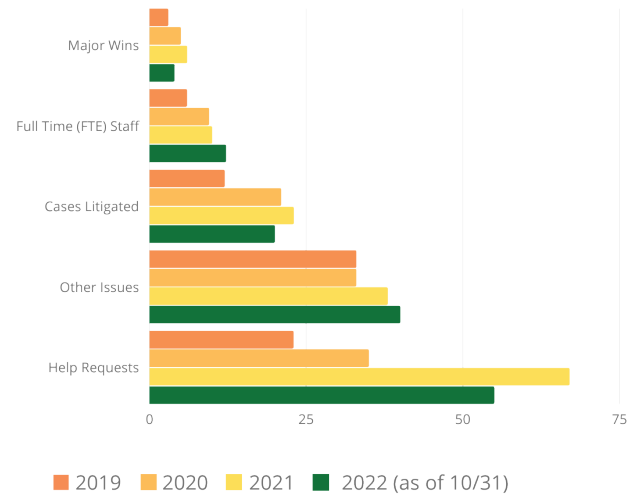
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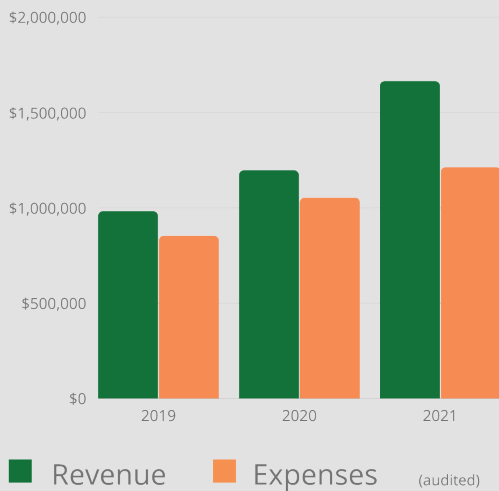
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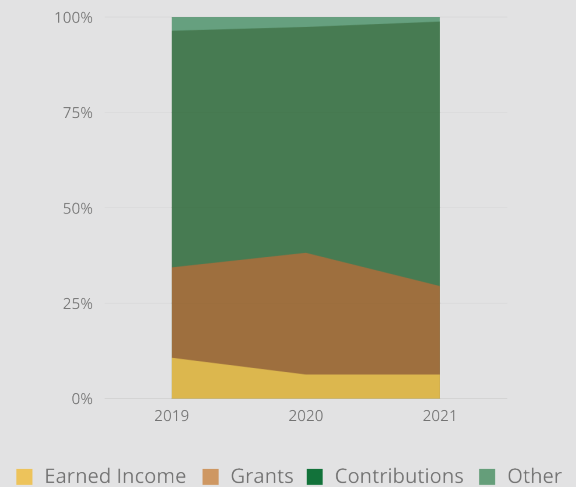
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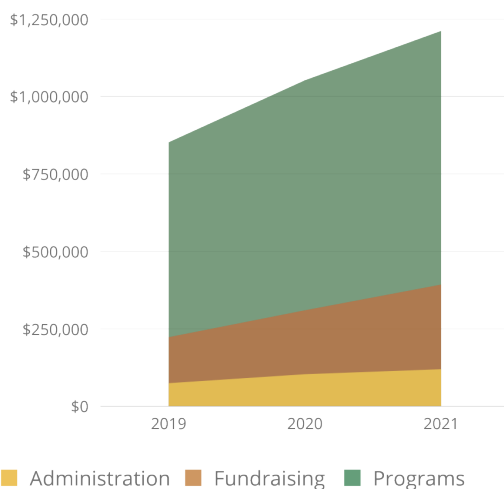
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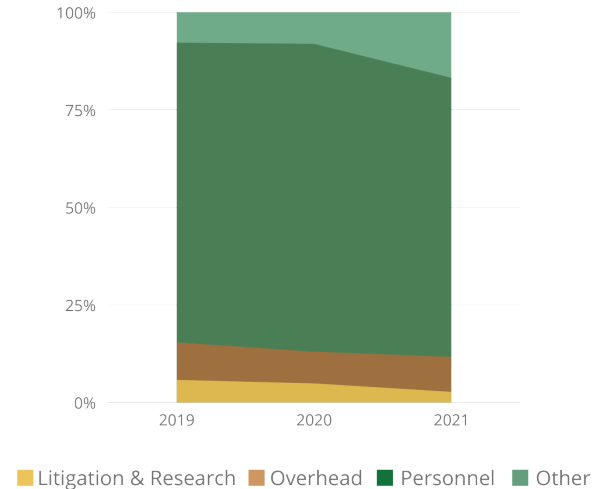
REVENUE COMPOSITION



FUNCTIONAL EXPENSES



EXPENSES COMPOSITION





Coastline protection is crucial for threatened migratory birds and the future of our barrier islands.

Focus Area

Protecting Our Coastline

As more and more people flock to South Carolina's Lowcountry, we are seeing and feeling coastal squeeze and the dwindling loss of habitats that support a healthy coastal ecosystem. Between endangered sea turtles and threatened and endangered migratory birds, development has had a harmful impact on these species' ability to survive and thrive.

Early on, private and public partnerships resulted in protection for some of our most valuable barrier islands – from the Yawkey Wildlife Center to Cape Romain National Wildlife Refuge to Capers Island and so many others. Yet some of the last remaining undeveloped shorelines that provide a critical haven for wildlife, while also protecting inland structures from harm, have been on the chopping block for years.

SCELP has been instrumental for the protection of three of these last remaining, privately-held beachfront properties for decades. These three barrier island habitats are critical for the survival of species like the endangered red knot and piping plover, which rely on constantly shifting shorelines with little human disturbance, to rest and build up their fat stores for the long migration. These islands provide habitat for strand-feeding dolphins, diamond-backed ter-

rapins, red foxes, and so much more.

Waites Island, Captain Sams Spit on Kiaawah Island and Bay Point Island. Spanning our coast from Horry to Charleston to Beaufort County, these tracts symbolize hope for our future.

SCELP has gone all in to keep these habitats in their natural, undisturbed state both because of their ecological fragility but also because we believe that some things are too precious to be lost forever.

We are thrilled to announce that our recent work on behalf of one of the Tilghman descents, Olivia Boyce-Abel, who shared ownership of a large portion of Waites Island, led to a conservation sale to the Open Space Institute. While the family donated the Southern end to Coastal Carolina University years ago, the Northern end has been unprotected and thus susceptible to development. Olivia's life work was to see a conservation outcome for her portion of Waites, and after we resolved a quiet title lawsuit this

summer she was able to realize that goal. Hopefully this conservation sale is the first domino chip to fall, and more of the island will be protected over time – especially if state officials step up and prioritize such outcome and other private players follow the recent example of Google, who contributed half a million dollars to help with the preservation of the remaining parcels on Waite Island.

Similarly, SCELPA has been able to use our legal expertise to stave off the threats of development on both Bay Point and Captain Sams Spit, for now. But the war is still being waged on both fronts.

For Bay Point, we intervened on behalf of the Gullah/Geechee Fishing Association to successfully defend Beaufort County's denial of a special use permit for a high-end luxury resort this summer – a decision that we expect to be appealed by the developer. At the same time, we challenged a DHEC permit for a septic tank on the island. The Administrative Law Court dismissed our appeal for lack of timeliness, even though DHEC hid the permit decision from us despite our Freedom of Information Act requests. We recently filed an appeal of the ALC's faulty decision in the Court of Appeals. Thankfully, our Governor and state senators and representatives have voiced their concerns about this ill-conceived project, and we can only hope that such concerns help drive a conservation outcome for this

fragile barrier island.

For Captain Sams, even though we have defeated every permit ever sought since 2009, the developer is trying to resuscitate its plans for a 50-house development on this dynamic sand spit. The Town of Kiawah Island granted the developer yet another extension for the preliminary plat approval well past the extension period and, ever vigilant, we filed an appeal on behalf of Preserve Kiawah. That case is now pending before the Charleston County Circuit Court, with briefs having been filed in November. Suffice it to say that battles over development are contentious and protracted.

We must hold the line on some of our last remaining unprotected and fragile natural systems, and SCELPA is dedicated to doing just that.

But it will also take the will and effort of public and private players sharing our long-term vision of land conservation to achieve the ultimate conservation goal for these three islands. Thanks to you, SCELPA will continue doing our part. We expect our elected officials to do theirs, too.

Donor Feature

Why We Give



For many years we have enjoyed nature travels in Africa, Asia, US National Parks and across South Carolina. Being close to nature provides a unique opportunity for relaxation, reflection, and rejuvenation. From our travels we are very aware of the effect of climate change on the environment and support a number of organizations, including SCELPA, in the effort to protect and sustain our world.

SCELPA is especially important in the battles for the environment here in South Carolina. When all else fails, it picks up the 'ball' and carries it to court. The organization has a record of competence, resilience and persistence, and has won many battles for South Carolina over the last 35 years, challenging some well-funded development and industry interests and successfully protecting the state's environmental treasures.

Moving forward by helping the organization to hire more lawyers through the Capital Campaign means more support for them to do what they do so well. We have loved walking on Captain Sams Spit (sometimes with dolphins!) since we were first there around 1980; SCELPA's work to resist development of the spit has been particularly meaningful to us. In the next years we hope SCELPA will do even more to publicize the need for public awareness of threats to the environment in South Carolina and hopefully enlist more support.

Susie Thorpe and John Baynes | Columbia



Relentless development in Greenville County continues to threaten the quality of life for rural residents and wildlife.

Brief Updates

Cases to Watch

Point Farm - We are working with the Coastal Conservation League and local residents in challenging a DHEC permit authorizing dredging and excavating critical area salt marsh in order to convert a unique and highly valuable brackish and freshwater pond and wetland system into a saltwater mitigation bank on Wadmalaw Island in Charleston County.

The sole purpose of this project is economic benefit to the developer, Point Farm Investors, which has already entered into an extremely lucrative contract with the County for over \$19 million in order to sell mitigation “credits” to offset marsh impacts associated with future road projects. We have appealed the DHEC permit to the Administrative Law Court and expect a hearing to occur in early 2023.

We are also fighting in the zoning arena. Point Farm and the County, the beneficiaries to the multi-million-dollar contract, are trying everything to keep the public out of the zoning process, but SCELPA is determined to keep a seat at the table for the public, also on the local government front.

Upstate Land Use - Relentless development in the Upstate continues to press forward, along with its associated detrimental impacts on water quality, wildlife habitat, and quality of life for residents. SCELPA successfully advocated for a replacement to the much maligned Article 3.1, to pro-

tect the unzoned areas of Greenville County. Yet the County and its Planning Commission continue to ignore the requirements of their own regulations and approve clearly noncompliant developments.

This past summer, SCELPA challenged the approval of a development along the Reedy River because the design failed to account for onsite waterways, a clear regulatory requirement. Although the South Carolina Circuit Court ruled against our client, a citizen group organized to protect the rural setting of southern Greenville County, SCELPA has filed a notice of appeal in the South Carolina Court of Appeals and will continue to fight to ensure that local governments properly enforce the laws that protect our land, water, and communities.

Dominion Pipeline - On behalf of the Blue Ridge Environmental Defense League, SCELPA continues its challenge of the natural gas pipeline that Dominion Energy seeks to build in Pamplico, South Carolina. The impacted community has voiced widespread opposition but Dominion is undeterred and has actually stepped up the offensive by filing lawsuits to take property from the residents in the way of the pipeline expansion. We have already begun discovery in our appeal of DHEC’s water quality certification and will conduct depositions throughout the fall, with trial in the new year set to commence on February 27, 2023.

Celebration

13th Annual Wild Side

This year's Wild Side was record breaking! Thanks to nearly 250 guests and the support of others who weren't able to attend, the total event revenue exceeded \$150,000 for the first time. This fundraiser helps SCELPA attorneys to keep fighting for the Wild Side of South Carolina that we all know and love so dearly.

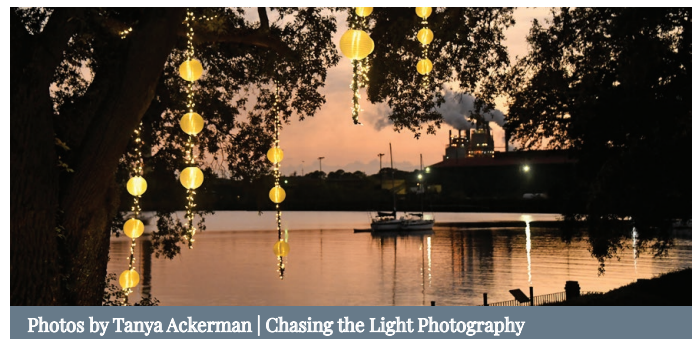
September 17 was a beautiful evening under the oaks of the Kaminski House in the heart of Georgetown. Pop-folk duo *Prettier Than Matt* entertained while guests dined on delicious cuisine from Root and bid on fabulous items in the online auction. This year's featured speaker, author Virginia Christian Beach, shared her insight and appreciation of the importance of protecting land, water and communities, and offered her own compelling, personal reasons for being an advocate for the Wild Side.

The sun setting across the river created a beautiful background as Staff Attorneys Emily Neller-moe, Leslie Lenhardt and Ben Cunningham shared a little about their current work. Executive Director Amy Armstrong touched on SCELPA's strategic goals and mission, including a reflection on the 50th anniversary of the Clean Water Act, and SCELPA's commitment to both clean water and environmental justice, two critical issues that remain deeply intertwined.

It was a wonderful and meaningful occasion, and we are so grateful to the many businesses, organizations, volunteers,

friends and family who have made this event possible and more successful year after year since 2010.

***The 14th Annual Wild Side will be on
October 7, 2023 at the Kaminski House.
If you are interested in a business sponsorship,
please contact Alison Geer
at alison@scelp.org or 843-527-0078.***



Photos by Tanya Ackerman | Chasing the Light Photography

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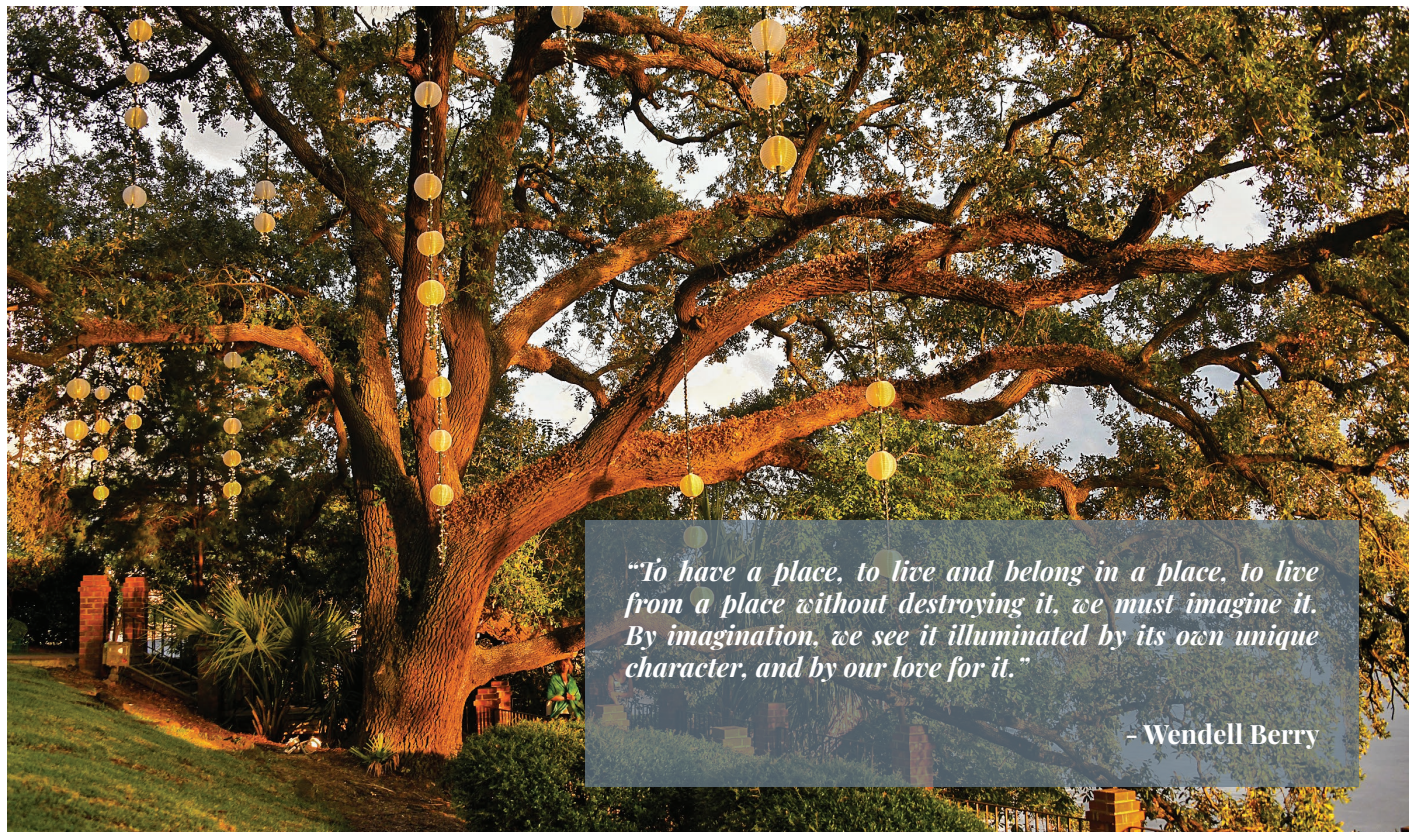
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"To have a place, to live and belong in a place, to live from a place without destroying it, we must imagine it. By imagination, we see it illuminated by its own unique character, and by our love for it."

- Wendell Berry