

Mountains & Marshes

Winter/Spring 2013



Photograph by Paula Feldman

SCELP WORKS TO PROTECT ENDANGERED PIPING PLOVERS

SEABROOK ISLAND: The federally endangered Piping plover is a small shorebird that spends over ten months of the year in South Carolina. Specifically, Captain Sam's Spit on Kiawah Island is an area of great ecological significance for the plovers because it is a pristine and undeveloped barrier island which provides the birds with important habitat. The habitat consists of mudflats and beach overwash and has been designated as "critical habitat" for the plovers by the U.S. Fish and Wildlife Service. That critical habitat is threatened by the proposal of the Seabrook Island Property Owners Association.

The Seabrook Island POA proposes to relocate Captain Sam's Inlet by blocking the present Inlet with a wall of sand and excavating a new inlet through Captain Sam's Spit. In particular, bulldozers would dig a 300' wide by 15' deep ditch through Captain Sam's Spit. The sand would be stockpiled and then used to build a 2,250' long wall of sand on the beach between Kiawah Island and Seabrook Island, blocking the present location of Captain Sam's Inlet. The ditch would then be breached, connecting the Atlantic Ocean and the Kiawah River. This would serve as the new inlet. The purpose of the project is stated as erosion control on Seabrook Island, yet the project would facilitate movement of sand to an area of Seabrook Island that is not experiencing any erosion. *Story continued on page 8*

S.C. Environmental Law Project

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A Note from the Director



For the past several months I have been serving on the Wetlands Task Force, a group created by the legislature as part of a compromise between environmental groups and development interests. That compromise became necessary when development lobbyists appeared on the verge of legislatively erasing SCERP's win in the case of League of Women Voters v. Smith Land Company. In that case the Supreme Court ruled that citizens

have a right to enforce violations of the S.C. Pollution Control Act, and that Smith Land violated the Act by filling in an isolated wetland — part of a Carolina Bay — without a permit.

Though skeptical about the compromise, I maintained some optimism that the task force might recommend a regulatory scheme aimed at protecting isolated wetlands and Carolina Bays. That optimism was quashed at the very first meeting when the House Representative appointed to the task force (and chair of the House Ag & Natural Resources Committee) indicated that he would block the passage of any regulatory program in the House. There were five representatives from the environmental community and five from the development and industry community. It is the latter five that have powerful lobbying interests that are big contributors to campaigns of our elected officials. The unfortunate truth of the matter is that if they don't want a regulatory program, they have enough money and power to prevent it.

While those five development and business interests did come a long way in agreeing to recommend an increase in funding to the Conservation Bank, with a directive to focus new funds on acquisition of Carolina Bays and isolated wetlands, the recommendation simply does not go far enough. The Conservation Bank, along with conservation easements and other incentive-based programs, are strictly voluntary programs. In other words, people have to *want* to protect a Carolina Bay. But under the recommendation put forth by the task force, if they *want* to fill in that Carolina Bay they are free to do so.

Why? Because the only way to guarantee a level of protection for Carolina Bays and other isolated wetlands is to require that a developer avoid and minimize impacts to our iconic landscapes through a regulatory program.

While the conservation community has made progress toward advancing our conservation agenda, the funding behind development interests has far more influence over our legislators. The only way to level the playing field so that all voices are heard equally is serious reform to how campaigns are financed. Such reforms would go a long way toward transparency and sound decision-making in the legislative process.

SCERP Welcomes Nancy Vinson to the Board of Directors

Nancy Vinson lives in Charleston where recently she led a successful effort to save her historic 1839 church from being converted from a center of community activity and worship into private residential/ businesses uses. In 2011, she retired from the Coastal Conservation League where she worked on coastal policy issues since 1994. As Program Director for Water, Air and Public Health at CCL, she often enjoyed working with Jimmy Chandler on legal strategy and providing expert testimony in the courts. Her League work focused on protecting the clean waters and wildlife habitat of the lowcountry's tidal creeks, salt marshes, and beaches. Before joining the staff at CCL, she was Director of the SC chapter of the Sierra Club. She graduated with honors from the USC Marine Science Program. Honors include the Harriet Keyserling 2011 Lifetime Conservation Advocacy from the Conservation Voters of SC, the Environmental Justice Award, Rosemont Community in 2009, Charleston Magazine Watchdog Eco-Hero Award in 2007, and Women in Conservation award from the President of the National Audubon Society in 2005. We are excited to welcome Nancy to the Board!



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(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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SCELP Partners with CCL to Fight Cruise Ship Expansion in Charleston



Cruise ship at port as seen from the Market, by Don Hammontree

An issue that has received a good deal of media attention lately is the State Ports Authority's ("SPA") decision to seek a permit to expand the Union Pier Terminal in Charleston. If granted, the permit would allow SPA to increase both the size and quantity of cruise ships that dock in Charleston. SCELP has worked closely with the Coastal Conservation League, the Historic Preservation Society and Southern Environmental Law Center to oppose this permit request, which is pending before the permitting agencies. To this point, our involvement has consisted mostly of submitting comment letters, speaking at public hearings, and urging DHEC to deny the permit.

This cruise ship issue has been, and likely will continue to be, a hot-button topic, particularly in the greater Charleston area. SCELP made the decision to be involved in opposing the expansion based on the host of environmental and social impacts created by the increased presence of docked cruise ships. Those impacts include increased air shed emissions, traffic volumes, traffic noise, and health impacts, along with depressed property values.

Particularly troubling is the spike in sulfur dioxide ("SO₂") emissions that comes from a docked cruise ship. Cruise liners utilize a fuel high in sulfur that generates SO₂ when burned, and these emissions become very problematic when the ship is in port and the SO₂ emissions are not being diffused. SO₂ is a major component of acid rain and also is known to create a variety of health issues, particularly in those with breathing problems. The temporary spike in SO₂ levels created by a docked cruise ship has been linked to a corresponding spike in breathing maladies and other health problems, which generates a corresponding spike in medical costs, a diminishment of property values, and a number of other "cumulative" impacts. If you would like more information on the troubling impacts of this proposed expansion, the Coastal Conservation League has assembled a wealth of relevant information at <http://coastalconservationleague.org/projects/cruise-ships-in-charleston/>.

SCELP Takes on New Case to Protect Beach and Inlet

SCELP continues its efforts to curb construction of groins along South Carolina's beaches, this time by opposing a groin proposed for 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. The aim of a groin is to trap migrating sand on the "up-drift" side of the groin so that the beach on that side is built up. In addition to being a visual and physical barrier to enjoyment of the beach, the major problem with groins is that they disrupt the natural migration of sand and thereby negatively affect "down-drift" beaches. As stated by Rob Young, director of the Program for the Study of Developed Shorelines at Western Carolina University, "if a groin does its job and is holding sand, conservation of mass tells you it is depriving some place else of sand." South Carolina law prohibits groins, unless the applicant can prove that there won't be down drift impacts, i.e., that the groin will not deprive another place of sand.

Unfortunately, recent history has shown that this strict requirement is not being enforced as written and that groins are being approved. The Pawleys Island groin would be the southernmost of 25 groins on the south end of Pawleys Island and would be south of the southernmost house on the Island. The purported justification for construction of the groin is protection of the public parking lot on the southern end of Pawleys, but that parking lot enjoys a substantial buffer of sand and is not threatened by erosion in any way. In short, there is no particular justification for imposing this harm on downdrift beaches by spending the public funds to construct this groin. SCELP has recently filed an appeal challenging this project before the S.C. Administrative Law Court.



Groins on Pawleys Island

Our heartfelt thanks for the commitment of this year's supporters.

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SCELP's 3rd Annual Wild Side Event and Celebration of 25 Years of Environmental Protection!

On October 13, 2012, SCELP hosted its third-annual Wild Side event at the beautiful Hobcaw Barony near Georgetown. This year's event held particular significance as it also marked the 25th anniversary of SCELP's founding by Jimmy Chandler. The event was a resounding success, and we are humbled by the amount of support that came together for this special evening. This year's Wild Side had more corporate sponsors, individual sponsors, attendees, and donated silent auction items than ever before. While there are many more



Rudy Macke releases butterfly as crowd looks on, by Tanya Ackerman

people than we could name here who had a part in creating this success, it all started with our Wild Side committee members, who began meeting back in early summer to plan this event. A special thanks goes out to those members, and especially Paul Kenny, who chaired the committee for the second-consecutive year.

SCELP rolled out two brand new features at this year's event. First of all, we were lucky enough to have Rudy Mancke (at left), our State's preeminent naturalist, as our first-ever keynote speaker. Most know Rudy Mancke from NatureScene, a television program he created in 1978 that has been airing continuously on ETV ever since. NatureScene garnered Rudy a legion of loyal fans, and certainly a number of them were in attendance at the Wild Side event. Rudy led a walking tour of the Hobcaw grounds, delivered a keynote speech on the connections in the natural world, and mingled with his enthusiastic fans throughout the night. We could not be more grateful for Mr. Mancke's participation in the event.

Also for the first time we were able to offer boat tours of Winyah Bay from the Hobcaw House's newly completed dock (at left). Rover Tours of Georgetown was generous enough to donate two hour-long tours of the Bay, both of which were filled to capacity. We hope to add both the keynote speaker and the boat tours as regular features of future Wild Side events.

Particularly striking at this year's event was the number of new faces in the crowd. If you have not joined us for Wild Side, we hope that you will be a "new face" next year. Certainly, this event is critical to the financial viability of SCELP. But apart from this, we see the Wild Side as our chance to meet, greet and show our appreciation for those people who stand behind our work throughout the year. Please join us at next year's Wild Side to support SCELP's mission of protecting our State's creeks, rivers, beaches, forests, and natural places of beauty and tranquility.



Photo by Mary Rucker



Wild Side sponsors enjoyed a boat ride through Winyah Bay hosted by Carolina Rover Boat Tours

Remembering John Bracken

SCELP, along with many in the conservation community, mourns the loss of John Bracken — stalwart of environmental advocacy in our state. John was known by many through his service on the Sierra Club executive committee, his leadership in Senior Scholars, and his monitoring of sea turtle nests near his home on North Litchfield Beach, which were but some of his many



interests. John was the first to volunteer for nearly any activity aimed at protecting our natural resources, whether speaking at public hearings, organizing speakers, or helping SCELP stuff envelopes! He and set an example of a dedicated advocate, and will be greatly missed by family and friends, especially here at SCELP.

In Memory of John C. Bracken

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UPDATE: CLEAN WATER ACT CASE HEARD BY 4TH CIRCUIT

On October 25, 2012, SCELP's Amy Armstrong argued before the United States Court of Appeals for the Fourth Circuit in our ongoing Clean Water Act challenge on behalf of residents of Deerfield Plantation in Surfside Beach. In addition to being an important step in protecting our clients' interests, it was a notable professional accomplishment for Amy, who was arguing before this prestigious Court for the first time. The Fourth Circuit sits just one step below the United States Supreme Court.

Amy presented an important legal argument to the three-judge panel, challenging the Army Corps' narrow interpretation of what waters on Deerfield Plantation are subject to federal jurisdiction. The arguments centered on the distinction between standing and flowing water under the Supreme Court's Clean Water Act precedent. While the details of this legal distinction may seem obtuse, the repercussions of the Fourth Circuit's decision on this issue could be significant. Under the interpretation utilized by the Corps and adopted by the lower court, many ecologically-valuable standing water bodies would be left without any federal protection and opened to wholesale destruction without a permit. We await the Court's order, but in the meantime congratulate Amy on presenting an excellent argument in this lofty forum.

(CON'T) SCELP WORKS TO PROTECT ENDANGERED PIPING PLOVERS

SCELP is involved in a challenge to the DHEC/OCRM permit authorizing this project, and the challenge focuses primarily on the impacts to Piping plovers. We believe that the DHEC decision violates state regulations, which require DHEC to deny approval “if the proposed activity adversely impacts waters containing State or Federally recognized rare, threatened, or endangered species” and require the POA to demonstrate an “overriding public interest” in the project.

The dredging and diking associated with this project would render much of Captain Sam's uninhabitable for piping plovers – particularly the tidal lagoon, Captain Sam's Spit and portions of Seabrook Island, which are important foraging areas. The proposed new inlet would eliminate vital feeding areas for piping plovers and other shorebirds. In issuing its Biological Opinion, the U.S. Fish and Wildlife Service recognized that the project will have adverse impacts on the Piping plover and its critical habitat. Nevertheless, DHEC authorized this massive landscape alteration. We are in the process of preparing this case for a November hearing in the Administrative Law Court. Check back on our website for a case update at www.scelp.org.



SCELP FIGHTS BIG BOX STORE SLATED FOR PAWLEYS ISLAND



SCELP's Amy Armstrong addresses the media prior to a public hearing. CCL's Nancy Cave, at right, organized the press conference.

SCELP has been involved in a number of capacities with challenging a big box store proposed in the heart of Pawleys Island. While the developer continues to be elusive, county employees and others close to the project have indicated that it is a Wal-Mart that is planned. There are currently no “big box” stores in Pawleys Island or adjacent communities.

The proposed 119,500 square foot store would dwarf the largest of nearby development. SCELP and many others in the community believe that opening Pawleys Island to big-box development would irrevocably degrade the environmental quality and change the character of this unique beach town. This sentiment was expressed loud-and-clear to County staff and the developer when 1,400 residents showed up for a public hearing on this issue, almost 100% of which were strongly opposed to the project.

The first Pawleys Island big box store, proposed around seven years ago, was beat back through massive public outcry and advocacy efforts. On the strength of this public opposition, Georgetown County's zoning ordinances were amended to establish an overlay zone around Highway 17 and to limit the size of retailers within this zone to 60,000 square feet. The developer is attempting to bypass these restrictions by artificially severing its property into two tracts along the overlay zone border and contorting the County's off-site parking ordinance by presenting adjacent parking as “off-site.” While it has been universally acknowledged that the developer is circumventing the intent of both the overlay zone and off-site parking ordinances, the developer's proposal has gained traction among County planning staff and some members of County Council.

To this point, SCELP has been involved in opposing this project through the presentation of arguments at the public hearing on behalf of the Coastal Conservation League; through Amy Armstrong's presence on the “Don't Box the Neck” committee; through the submission of a legal position paper to County Council and staff on behalf of opposition groups; through the organizing of numerous meetings with representatives of the County and the developer; and through countless informal communications and advocacy efforts. To find out more, or to get involved in this opposition, please visit www.dontboxtheneck.com.



How you can help...

You can help us continue our work with your financial contributions. Please log on to our website www.scelp.org to donate or use the enclosed envelope to mail you gift today.