

Mountains & Marshes

South Carolina Environmental Law Project • P. O. Box 1380 • Pawleys Island, S. C. 29585 • 843-527-0078

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Settlement Reached in Daufuskie Island Case

South Carolina's coastal management agency has been tested by two beachfront cases, and so far the agency, with a little help from the S. C. Environmental Law Project (SCELP), has risen to the challenge.

In a Daufuskie Island case that challenged the validity of the SC Beachfront Management Act, the Office of Ocean and Coastal Resource Management of the South Carolina Department of Health and Environmental Control and SCELP responded vigorously and worked out a good common sense settlement.

The case involved a suit filed in 2002 by several Daufuskie property owners whose lots were severely eroding. They wanted to build a seawall to protect their houses, but the SC Beachfront Management Act of 1990 prohibits new seawalls. The suit claimed that the Act violated several constitutional provisions and that the prohibition on seawalls had resulted in an unlawful taking of their property. In June 2002, a state court judge issued an order allowing the construction of a seawall to protect the houses pending the outcome of the suit.

SCELP intervened in the case on behalf of the South Carolina Coastal Conservation League, Sierra Club, the South Carolina Wildlife Federation, and the League of Women Voters of Georgetown County.

After early settlement discussions were unsuccessful we worked with OCRM to prepare for trial. By the time the case came up for trial on Monday, March 8, we were ready and confident.

As the trial was about to begin, both sides agreed to make one final effort to settle. With the assistance and tolerance of the judge, an agreement was reached. Under the settlement, the wall built in 2002,

which stretches across six lots, will be removed from three of the lots. The wall is allowed to remain on the other three lots, and the agreement removes these three lots from the jurisdiction of the Beachfront Management Act. The lots involved in this case are at the southern tip of Daufuskie and the plaintiffs had argued that the lots were not truly beachfront lots, but rather were river front lots and thus should not be regulated under the Act. The settlement accepted their arguments as to the three lots where the wall will remain. An additional three lots, on the river side of the lots protected by the 2002 seawall, were also removed from the Act's jurisdiction. Those three lots have a wall that was built outside the OCRM jurisdiction before the current episode of erosion began in the 1990s.

The settlement maintains the integrity of the Act. The ban on seawalls is upheld by the removal of the wall from beachfront lots. The wall that remains is now outside the Act's jurisdiction - a decision delegated to the agency and supported by scientific and legal arguments supporting the removal of the lots from jurisdiction.

DeBordieu. In a second beach case, OCRM has given



Aerial view of Bloody Point, the southern tip of Daufuskie Island, where a seawall will be partially removed under a settlement agreement.

preliminary indications that it is "leaning toward denying" a permit to mine sand from a site adjacent to the North Inlet-Winyah Bay National Estuarine Research Reserve. DeBordieu Colony is seeking a permit to renourish its beach, using the sand from the nearby North Inlet ebb tidal delta. However, no official agency action has been taken on the permit request.

Commentary

In the December 2003 issue of Mountains & Marshes, I gave some strong opinions about inadequacies of South Carolina's coastal management agency. I am pleased to report that in several recent matters, the agency's actions have tended to prove me wrong.

In the Daufuskie beachfront case, the OCRM staff did an excellent job of defending the Beachfront Management Act in the face of a difficult challenge. The staff has also shown that it is carefully weighing the issues raised by several recent important permit applications. As support staff for the Council on Coastal Futures, the agency has generally provided good information and professional advice.

I'm not ready to declare the problems solved. They're not, and we still have serious concerns about the future of our coastal management efforts. We will likely always have differences of opinion and no shortage of disagreements on legal issues. But the OCRM leadership and staff have demonstrated that they are capable of good work. We are grateful and applaud their efforts.

Jimmy Chandler

On Board for SCEL P

SCELP is proud to welcome **Bob Schofield** as the newest member of our Board. Bob's strong interest in protecting natural resources and his vision for SCELP's future, along with his previous experience on a successful board, will be assets to SCELP.

Bob currently lives on and manages his farm, Hasty Point, on the Pee Dee river and works hard to preserve and protect what is wonderful about South Carolina.

Thank you for coming on board with us, Bob!

Council on Coastal Futures Completes Work

"Setting a New Course for the Coast"

The 18-member Council on Coastal Futures has completed its work with the issuance of a report calling for improvements in coastal storm water management, expansion of coastal permitting authority, a new freshwater wetlands statute, improved public notice procedures, and the maintenance and enhancement of our beaches, waters and habitats.

The report, entitled "Setting a New Course for the Coast," was presented to the Board of the South Carolina Department of Health and Environmental Control at a special Board meeting on June 10, 2004.

The report is available through the web site of the Office of Ocean and Coastal Resource Management, www.scdhec.net/ocrm.

The Council rejected proposals to impose more stringent "standing" requirements for citizen appeals of permits and to eliminate the "automatic stay" provision of current DHEC regulations that prevents

work under permits that are being appealed.

Some of the Council's recommendations, such as improved public notices and a new permit provision clarifying the continuing requirement to obey special permit conditions, are already being implemented by OCRM. Others, such as new wetlands protections, will require legislative action and continuing political commitments to be properly implemented.

In recent years, the coastal agency's work load has substantially increased while its budget and staff have been reduced. The Council's report recognizes the renewed commitment to coastal protection that is essential if the state's special coastal resources are to be properly protected: "This commitment must be shared, supported and understood by every citizen and resident who appreciates the quality of life and clean environment of our coast."



Pictured from left to right: Kellye Kingsmore, Vic Pyle (USC Law School students who assisted in the preparation and trial), the Honorable Diane Goodstein, Amy Armstrong and Jimmy Chandler following settlement of the Daufuskie seawall case.

New Cases

Sierra Club Challenges Radioactive Waste Landfill Permit

Does the Barnwell landfill employ adequate safeguards?

SCELP has joined with Columbia attorney Bob Guild to represent Sierra Club in an appeal of the renewal of the permit for the Chem-Nuclear low level radioactive waste landfill near Barnwell.

The landfill has a convoluted history and is a symbol of South Carolina's status as the nation's dumping ground. Now the only low level radioactive waste landfill in the country, it was limited to regional use and slated for closure in 1992 under the

former Governor Richard Riley's 1982 Southeast Interstate Low Level Radioactive Waste Management Compact. The closure deadline was extended twice by former Governor Carroll Campbell, and then former Governor David Beasley scrapped the Compact and opened the facility to the entire nation.

Under a law promoted by former Governor Jim Hodges, it is now limited to waste from the Atlantic Compact states of New Jersey and Con-

necticut, and a limited amount from other states.

Our appeal challenges the operating conditions of the permit. The landfill operates under an old design that does not incorporate all appropriate modern safeguards to protect the environment and human health from radiation.

If the landfill is to continue operating, we believe that it is time for it to employ the safest practical safeguards.

Inlet Oaks

In November, SCELP appealed a dredging, boat ramp and bulkhead permit issued to Inlet Oaks Development Corporation for a proposed Murrells Inlet development. The appeal was filed on behalf of the S.C. Coastal Conservation League, the League of Women Voters of Georgetown County, and the Sierra Club.

The project is located on a man-made tributary to the Murrells Inlet creek. Over the years this tributary has evolved into a naturalized condition and supports a healthy salt marsh ecosystem.

The developer wants to provide deeper water access to raise lot prices. The proposed dredging and boat ramp construction could result in destruction of marsh grass, oysters, and nursery habitat, and could cause water quality problems by creating a stagnant water pocket with low dissolved oxygen levels.



Pictured above is the man-made tributary to the Murrells Inlet creek that a developer wants to dredge to provide deeper water access to raise lot prices.

Creekside Cottages

The Coastal Conservation League and League of Women Voters of Georgetown County, along with two Murrells Inlet residents, have appealed a wetland fill permit issued to a Murrells Inlet development.

The wetlands are part of a natural drainage system for the development parcel and surrounding properties. The developer plans to build roads and homes on the wetlands.

In our appeal, we are challenging the wetland determination that was approved by the Army Corps of Engineers and accepted by the SC Department of Health and Environmental Control (DHEC). We believe that DHEC failed to meet its duty to consider impacts to all state waters when it relied on a wetland determination that does not include all wetlands on site.

Wayne Hill

On behalf of the Coastal Conservation League, SCELP has intervened in an enforcement action against a developer in the Cherry Grove section of North Myrtle Beach.

The developer, Wayne Hill, is charged with violating his coastal bulkhead permit by filling up to 31 feet from the highland boundary of his property into the salt marsh. The case went to trial in April and we are awaiting a decision from the Administrative Law Court.

You can now make your donations using Visa or Mastercard on-line at www.scelp.org or by telephone at 843-527-0078, ask for

Updates

2004 Legislative News

2004 session has ended with our environmental protection laws relatively unscathed

Despite multiple attacks by lobbyists for the development community and anti-environmental legislators, the 2004 session of the South Carolina General Assembly has ended with our environmental protection laws relatively unscathed.

After thwarting attempts to divert funds to other programs, the Senate approved full funding – \$10 million – for the Conservation Bank. The fund will be used to purchase naturally or historically significant lands and will help protect South Carolina's unique areas.

The hard work of conservationists state-wide was required to defeat a bad wetlands bill that would have cut back existing wetlands protections. Although passed by the House, the bill was successfully stalled in the Senate. Proposed new wetlands

regulations supported by the conservation community were vetoed by the House. SCELPA will assist with continuing efforts to build consensus for a true wetlands protection bill to be presented to the 2005 legislature.

Attempts were also made to weaken home rule, which allows local governments to set environmental standards that will give more protection to its citizens. A proposal to prohibit local governments from enacting stronger standards was passed by the House but died in the Senate.

Developers' efforts to curb citizens' rights in environmental permitting cases were also defeated. A bill to give the state-wide grand jury jurisdiction to investigate complex environmental cases was not passed.

“Standing” Cases

SCELPA scored its first unanimous victory before the Coastal Zone Management Appellate Panel in January, when the Panel voted 10 to 0 to remand a dock permit case to the Administrative Law Judge Division for a hearing on our motion to intervene.

We had appealed a ruling that had concluded that the SC Coastal Conservation League lacked “standing” to appeal the permit despite evidence that the dock would block a navigable stream used by League members. Unfortunately, the property owners who want the dock permit have appealed and the case is now in state circuit court.

In our other standing case, involving an Isle of Palms beach excavation permit challenged by a daily user of the beach, we have filed briefs in the SC Court of Appeals and now await a hearing date.

Recent Local Events

Two Pawleys Island events helped raise money for SCELPA's work, and spread the word about our programs. The events were sponsored by the **League of Women Voters of Georgetown County** and SCELPA board member **Linda Ketron** and her **Art Works** gallery.

Members of the local League sold raffle tickets for chances to win a week at an oceanfront house on Pawleys Island and other generously donated prizes. The winners were selected at a party hosted by the League at the Belle Isle Beach house on May 3rd and everyone had a great time. Many thanks to everyone who participated in this event!

On April 30th, local actor **Bill Oberst** performed “Lewis Grizzard: In His Own Words” to benefit SCELPA. Bill's performance was memorable and the event was well attended. Many thanks to Linda Ketron and Art Works, and to **Guerry Green of Screen Tight**, and **Glen Hall of Hall Custom Homes** for co-sponsoring the event.

South Carolina Environmental Law Project, Inc.

SCELPA is a 501c3 tax exempt non-profit corporation. Our mission is 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. SCELPA's cases have saved wetlands, improved water quality, reduced hazardous waste risks, protected other natural resources, and helped enforce penalties against those who have violated our environmental laws. SCELPA's clients have included local state and national groups. We also provide continuing legal advice to concerned citizens and promote environmental law education.

James S. (Jimmy) Chandler, Jr., is President and General Counsel of SCELPA. Staff members are **Amy Armstrong**, Equal Justice Works Fellow and staff attorney, and **Kathy Taylor**, Assistant to the President. Our Board members are:

Jimmy Chandler, Pawleys Island ~ **Frances Close**, Columbia ~ **William S. Duncan**, Murrells Inlet
Daryl Hawkins, Columbia ~ **Trish Jerman**, Columbia ~ **Linda Ketron**, Pawleys Island ~ **Bill Marscher**, Hilton Head Island
Virginia Prevost, McClellanville ~ **Bob Schofield, III**, Georgetown ~ **T. S. (Sandy) Stern, Jr.**, Greenville

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