

# Mountains & Marshes

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

December 2001

## VICTORY for our BEACHES!

**O**n June 18, 2001, the South Carolina Court of Appeals issued a ruling that is a huge victory for South Carolina's public beaches. The Court of Appeals overturned a permit for the construction of 4 new groins and reconstruction of 17 existing groins at Hilton Head Island. The Court's opinion concluded that the construction and reconstruction of groins is prohibited by Section 48-39-290(A) of the SC Beachfront Management Act.

This case began in 1996 when the South Carolina Coastal Conservation League and Sierra Club, represented by the South Carolina Environmental Law Project, appealed a DHEC/OCRM permit issued to Port Royal Plantation for the groin construction and reconstruction. The League and Sierra

Club lost at every stage of the case prior to the ruling of the Court of Appeals. The SC Administrative Law Judge Division, the Coastal Zone Management Appellate Panel, and the state circuit court all upheld the groin permit.

The unanimous Court of Appeals opinion was authored by Judge M. Duane Shuler, with the concurrence of Chief Judge Kaye G. Hearn and Judge C. Tolbert Goolsby, Jr.

Unfortunately, the victory in the Court of Appeals has not ended the controversy over groins. OCRM and Port Royal Plantation have asked the South Carolina Supreme Court to hear another appeal. And proponents of groins are mounting a effort in the General Assembly to rewrite the Coastal Zone Manage-

ment Act to allow groins on the beaches of South Carolina.

Chris Brooks, Director of OCRM, has joined with the pro-groin forces and is actively lobbying for the groin amendment. In his public statements supporting groins, Brooks has cited the need to protect ocean-front homes. This position appears to be directly contrary to the policies of the Beachfront Management Act, which make the public beach the paramount concern and call for homes to retreat.

SCELP believes that OCRM has no valid basis for overturning the court's ruling or amending the Beachfront Act. OCRM's position appears to be based more on politics than sound coastal management policy. We will continue our efforts to protect our beaches by opposing OCRM's actions.

## SCELP offices destroyed by FIRE

EDITOR'S NOTE: The fire described below, its aftermath, and the time devoted to recovery, have prevented SCELP from publishing this newsletter as we normally do. We hope you will excuse this abbreviated, graphics-challenged version of *Mountains & Marshes*.

**L**ate on the evening of August 13th, as he was preparing for bed, SCELP director Jimmy Chandler's phone rang. Paige Sawyer, whose home is in the same block as SCELP's Highmarket Street office, was on the line. "Jimmy, your office is on fire. The fire department is on the way." As Chandler drove to Georgetown from his Pawleys Island home, a fierce thunderstorm raged, slowing his progress. When he reached the office, it seemed like a war zone. Multiple fire trucks with lights flashing, firemen running everywhere, flames in the office, and thunder and lightning still raging. The fire was not put out until 3 a.m.

The fire, started by a lightning strike, almost completely destroyed SCELP's office. The recovery has entailed much hard work. But we've had a lot of wonderful help. **Bill Duncan**, a Georgetown attorney, gra-

(Continued on page 2)

## Myrtle Trace Decision Protects Wetland Buffer

**T**he DHEC Board ruled in March that once a tract of land is set aside as a protected buffer area, the agency cannot later eliminate the protected status of the buffer in the absence of "compelling reasons." The ruling overturned a DHEC/OCRM staff decision that had been upheld by an Administrative Law Judge. The staff and ALJ decisions would have allowed a Myrtle Beach developer to pave over and build on a tract set aside as a protected buffer in 1990, as mitigation for earlier wetland alterations.

SCELP represented a group of citizens who had purchased homes in the Myrtle Trace subdivision with reliance upon the buffer area, which shielded their residences from the noise and lights of the Conway Hospital complex. After the land was designated a protected buffer, International Paper Realty sold the land to Myrtle Beach developer Thomas Roe and his development group, Hospital Land Partners. Roe promptly clear-cut all timber from the tract. Although Roe claimed to have no knowledge of the buffer requirements, the testimony clearly demonstrated his awareness of the protected nature of the land. DHEC/OCRM granted a permit for development of the tract, requiring only that Roe purchase credits from a wetlands "mitigation bank."

The DHEC/OCRM staff decision had thrown all DHEC/OCRM buffer tracts into a state of uncertainty. The decision of the DHEC Board restores the integrity of the agency's mitigation buffer requirements.

The developer has appealed, but SCELP will continue to fight its effort, and will seek restoration of the clear-cut property.

*(Continued from page 1)*

ciously offered an entire floor of his building as temporary office space, and **Sam Grayson**, owner of Sam's Office Furniture in Georgetown, provided the furniture necessary to set up temporary offices. SCELP's **Linda Ketron** organized a crew of volunteers to help duplicate the files we recovered, which were all water and smoke-damaged. Please see our insert for the list of the many who came forward to assist us in the aftermath of the fire.

Cleanup is complete and reconstruction has begun at 430 Highmarket Street. We plan to be moving back by next summer and hope everyone will join us for an office-warming celebration!

In the meantime, we are enjoying our temporary office.

## Amy Armstrong to join SCELP

**I**n a year filled with trials and tribulations here at SCELP, we are thrilled to announce that **Amy Armstrong** will be joining our staff next September.

During the summer of 1999, after completing her first year at USC law school, Amy worked as a law clerk at SCELP. Since then, Amy has been completing her legal education in the joint degree program with a Master's in Earth and Environmental Resource Management.

Last summer, Amy applied to the National Association of Public Interest Law for a two-year fellowship. The news came last week that Amy had been chosen from a field of nearly 300 candidates.

Amy's interest in the environment started at an early age with a love of the outdoors. An animal-lover as well, Amy's mother once said she thought Amy liked animals more than people. After completing college at the University of Michigan, Amy went to work for the Department of Natural Resources, as part of DNR's endangered species program, with her work focused on the red cockaded woodpecker.

Amy is now excited with the prospect of protecting the environment from the courtroom and honored to have been chosen for this fellowship.

After completion of the bar exam in July, Amy plans to spend August vacationing with family and preparing for the move to Georgetown. In the meantime, Amy will provide part-time assistance to SCELP.

Under the terms of Amy's fellowship, her work will focus on coastal issues. With our current coastal caseload, we're sure Amy's 'in' box will be full when she arrives!

## SCELP Welcomes New Board Member

SCELP's newest Board member is Greenville attorney Sandy Stern. Sandy joined the SCELP Board at our February 2001 meeting.

Sandy and SCELP director Jimmy Chandler were classmates at USC law school in the 1970s, but only recently became reacquainted. Sandy's law practice includes a variety of types of cases, including environmental cases. He is a partner in the firm of Covington, Patrick, Hagins, Stern & Lewis, P.A.

Sandy is an avid outdoorsman, having recently retired from mountain climbing.

*Mountains & Marshes*

*was written and edited by Kathy Thomas and Jimmy Chandler.*

*Page 2*

*This edition has been copied using recycled 100% chlorine free paper.*

# Case updates . . .

## Coastal Management Cases:

**C HERRY GROVE:** At press time, we are diligently working to conclude a settlement of this case. This case involves the proposed development of filled-in marsh in the Cherry Grove section of North Myrtle Beach. See the 1999 and 2000 editions of *Mountains & Marshes*, which featured this case, for background and information about SCELPA's victory overturning the coastal zone critical area permit for this project.

The proposed settlement would reduce the size of the development by about 30 to 40 percent, with the remaining property turned over to the City of North Myrtle Beach and dedicated as a public recreation area. All lawsuits and appeals, including two SLAPP suits filed by the developer against SCELPA's clients, would be dismissed.

We believe that the settlement is a good resolution of this case, and that our hard work and earlier successes made the settlement possible. We hope to wrap things up by the end of the year.

**M YRTLE TRACE:** A big victory before the DHEC Board in March. See article on page 2.

**B EAUFORT COUNTY DOCK ORDINANCE:** On behalf of the S. C. Coastal Conservation League and the Northern Beaufort County Committee, we have intervened in a suit which challenges the new Beaufort County Dock Ordinance. The County's ordinance limits the proliferation of docks in sensitive, pristine coastal ecosystems. Our intervention provides assistance to the county in defending the ordinance. This important legal battle will deter-

mine whether counties and municipalities can limit dock construction.

**B ULL POINT DOCKS:** After careful assessment, we dropped the appeal of the OCRM permits in this case to concentrate on helping Beaufort County defend its new dock ordinance .

**D AUFUSKIE ISLAND MARINA:** On behalf of the SC Coastal Conservation League, SCELPA is working to overturn a permit for a large lock-harbor marina on Daufuskie Island. This permit was originally issued in 1985 but the marina has not been built. When recently renewed by OCRM, we filed our appeal. The hearing will be in January 2002 .

**B IG LANDING:** This case is an appeal of a permit allowing multiple private docks after the developer had agreed that no individual docks would be allowed. Our clients include individuals who built homes relying on the original agreement. The Administrative Law Judge upheld the agency decision, and the Coastal Zone Management Appellate Panel affirmed that ruling. Based on the DHEC Board's decision in the Myrtle Trace case, we have filed a motion for rehearing.

**E DISTO ISLAND OPEN LAND TRUST DOCKS:** On behalf of the Edisto Island Open Land Trust, we are appealing the issuance of an OCRM permit to construct a private dock and boardwalk over marshland owned by the Trust. We have also filed suit to confirm the Trust's title to the marsh.

**R ACETRACK—FOUR HOLES SWAMP:** We filed an amicus brief on behalf of the SC Coastal Conservation League, Sierra Club, National Audubon Society, and the South Carolina Wildlife Federation. Our brief addresses the developer's argument that the SC Coastal Management Program was never properly adopted and is, thus, invalid. The outcome of this issue could have dramatic effects on the state's ability to protect coastal resources outside the salt water critical areas. The case was argued before the S. C. Supreme Court on December 12th and we await their decision.

**V ILLAGES AT BURNT CHURCH:** We have intervened in this matter on behalf of the Sierra Club, SC Coastal Conservation League, SC Wildlife Federation and the League of Women Voters of Georgetown County. This suit is another developer's challenge to the validity of the SC Coastal Management Program, one of our most valuable tools for protection of coastal resources.

**P ARKER ISLAND:** This matter involves a developer's appeal of OCRM's denial of the issuance of a permit to construct a bridge for a single-family home on the Wando river north of Mt. Pleasant. We represent the SC Coastal Conservation League, which has made the impacts of bridges to small coastal islands one of its priority issues. The trial will be in January, 2002.

**P ORTRAIT HOMES:** On behalf of the SC Coastal Conservation League, we have challenged the decision of DHEC/OCRM to issue a coastal zone certification allowing the

(Continued from page 3)

filling of wetlands at a residential development in Horry County.

**COOPER WELLONS:** Working with our clients, we persuaded this developer and OCRM to dramatically scale back a proposed dredging project, protecting critical area in Murrells Inlet.

### Hazardous and Solid Wastes:

**SAFETY-KLEEN/GSX/LAIDLAW LANDFILL:** Our work helped close this hazardous waste landfill on the shores of our state's largest lake; we're now defending a federal lawsuit filed by the landfill's owner, and pursuing a petition for attorneys fees.

**ANDERSON COUNTY LANDFILL:** This summer, Circuit Judge Alexander Macaulay

overturned the DHEC permit for vertical expansion of this landfill. He ruled that there was no evidence supporting the large capacity limit allowed by DHEC for the landfill. The landfill operator appealed and the appeal is now pending before the Court of Appeals. We also filed an appeal of a DHEC 401 Water Quality Certification for the proposed expansion. That appeal is now pending in the ALJ Division and scheduled for a January hearing.

**PREE DEE REGIONAL LANDFILL:** This case was the landfill authority's appeal of DHEC's denial of the landfill permit. We intervened on behalf of landfill opponents. The week before trial, the landfill authority withdrew its appeal. We learned that the landfill authority and DHEC had entered into a secret agreement that could eventually lead to issuance of the landfill permit. On our motion, the Administrative Law declared the agreement invalid.

### Air Quality:

**PORT ROYAL METALS:** On behalf of members of the Northern Beaufort County Committee, we challenged an air quality permit for a waste metals smelting operation in Sheldon. After a hearing at the Administrative Law Judge Division, DHEC asked the judge to send the air quality permit back to the agency so that it can be revoked. The plant has ended its operations, and we continue to monitor further potential activities.

### Surface Mining:

**WAKE STONE MINE:** We represent a group of concerned citizens in this challenge to a permit for an open-pit limestone mine in Horry County's Round Swamp community. The mine is expected to cause sinkholes and flooding. Our case was dismissed by the SC Mining Council but appeals will continue.

## South Carolina Environmental Law Project, Inc.

The South Carolina Environmental Law Project, Inc. (SCELP) is a South Carolina non-profit corporation approved by the IRS as a 501(c)(3) tax exempt organization. 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.**

SCELP was created in 1987 as part of Energy Research Foundation and became a separate entity in 1995. SCELP'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. SCELP's clients have included the Sierra Club, South Carolina Wildlife Federation, League of Women Voters, South Carolina Coastal Conservation League, Natural Resources Defense Council, Friends of the Earth, and many local groups throughout South Carolina. In addition to legal advocacy, SCELP promotes environmental law education through publications and seminars, and is a source of continuing legal advice to the state's environmental leaders.

James S. (Jimmy) Chandler, Jr., is President and General Counsel of SCELP. Kathy Thomas is the Assistant to the President. The members of the Board of Directors of SCELP are:

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