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Archaeological Resources Act 2010 Signed by Governor Sanford

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By Jonathan M. Leader

The Archaeological Resources Act of 2010 was signed into law by Governor Mark Sanford on June 11, 2010. This is a major step forward for the protection of archaeological sites and Native American burials on both private and public property in South Carolina. Until the passage of this act, we were the only state in the Southeast that did not have specific and statewide legal protection for terrestrial sites.

Our immediate neighbors, North Carolina, Georgia, Tennessee, Alabama, and Florida all had statutes that were encompassing and stringent. Some South Carolina municipalities, such as Beaufort and Hilton Head Island, had excellent local ordinances, but they did not carry over into state law. Similarly, several land steward agencies, such as the S.C. Department of Natural Resources’ Heritage Trust Program and S.C. Department of Parks, Recreation, and Tourism had regulations for specific properties, but again these had no effect beyond the properties identified. South Carolina land based sites were left hanging in space.

Several attempts to redress the situation had been undertaken by my immediate predecessor, Steve Smith, and I. While we were eventually able to strengthen the South Carolina Burial Act and to assist in drafting legislation ensuring the right of access by descendants to cemeteries, the underlying issue of terrestrial site preservation remained unaddressed.

Up to this last foray, the earlier legislation had emulated the statutes enacted by our neighboring states. We had believed that their track record and format would stand us in good stead. We were mistaken. The legislature’s response was very enlightening. Three concerns were repeatedly raised to our attempts and were considered sufficient to block the legislation. They were cost, growth of government, and burden on the public/hobbyist.

There could be no doubt that the surrounding state archaeology acts that we had been basing ourselves on increased taxpayer costs through dedicated staff and time. The burden on the hobbyist was more a matter of perception than fact. Nonetheless, the ability of the collector community to mobilize and frame the discussion in terms of their David to the State’s Goliath was very effective. Nonetheless, in the end, it was the unchecked activities of the collector community that tipped the balance in favor of the new legislation.

The majority of archaeological sites in any state are on private property. The ability to protect the cultural resources is therefore heavily dependent on three factors. The first is the public outreach from the archaeological community to the private landowners to encourage them to act as preservationists. The second is the decision by the landowner to act as stewards. And, the third are the laws and infrastructure that are in place making it possible for a private landowner to protect their sites. It was this last point that some unethical collectors were running over roughshod.

In 2009, I was approached by Representative Laurie Funderburk of Camden, to assist a family in her area who were the collective stewards of some of the most important privately held archaeological sites in the state. They had discovered that the trespass laws were insufficient to forestall the continuing vandalism of their property. What could we do to correct the situation? Representative Funderburk, her staff, and I gave it a great deal of thought and discussion. What we devised was an enhancement to the state Trespass Law.

The beauty of this approach was that it solved the landowners’ problem and required no additional cost to the state, didn’t grow government, and was unassailable by collector arguments. It simply insured that archaeological sites and artifacts were explicitly listed in the law and that the magistrate or judge who heard the case was provided with a full accounting of the damages and costs incurred by the landowner. This last was accomplished by placing the damages portion of the Archaeological Resources Protection Act, a federal statute, into state law. The State Archaeologist could be requested to provide the latter data to the courts.

The penalties for violating the law were based on a three strikes format. The first time is a misdemeanor with a fine and/or jail term based on the original trespass law. The second time is still a misdemeanor, but the fine increased to $1,000 and the jail up to three years or both. The third strike places the offense...
as a felony with up to $5,000 fine or imprisonment for not more than five years, or both. In addition, all equipment, vehicles, and conveyances used in the committing of the violation are seized by law enforcement and forfeited under the current forfeiture statutes.

The opponents to the bill were quick to register their desire to kill it to both the House and Senate. The major relic collecting and metal detecting internet fora were enlisted to getting the word out. Letters and calls were solicited from as far afield as Canada, Thailand, Australia, England, and Europe. Fortunately, the effect was the opposite than what was expected. It would appear that legislative members became concerned with the number of out-of-state people complaining about a law that strengthened protections for South Carolina's private landowners.

In one memorable exchange, during a public hearing, the question was asked why so many hobbyists were interested in the penalties for an act that they assured the sub-committee they were not involved in or a law that could be circumvented by simply having the landowners expressed permission?

During the Senate public hearings, an important second section of the bill was added by the sub-committee and ratified by both houses. Native American burials and mounds had always been implicitly subsumed under the state's burial statutes. At the request of several South Carolina chiefs and tribal members, this was made explicit, and a civil section was added to recoup damages from those who violated it in addition to the criminal penalties.

South Carolina has moved from a position of weakness to one of strength through the dedication and hard work of all the people who assisted Representative Funderburk in getting this legislation passed. A debt of gratitude is owed to the members of the House and Senate for supporting and strengthening the bill and for the Governor for taking an active interest and signing it. Special mention must be made of the landowners, archaeologists, Native Americans, and avocationists who came in support to the public hearings. Our sister agencies, S.C. Department of Archives and History, S.C. Department of Parks, Recreation, and Tourism, SC Department of Natural Resources, and S.C. Department of Transportation provided welcome support.

Last, but not least, a special thanks is owed to those members of the metal detecting community who saw the damage being done to their reputations by the "one percenters" and courageously spoke up in support of the bill.

ArchSite System Administrator Carmen Beard Leaves SCIAA

By Jonathan M. Leader

Ms. Carmen Beard has resigned her duties as ArchSite system administrator to take a more remunerative position in the private sector. Carmen's last day was May 14, 2010 and the Office of the State Archaeologist hosted a farewell party in her honor. Her many friends and colleagues at SCIAA will miss her.

ArchSite is a cooperative venture in site file management partnered between the South Carolina Departments of Transportation, Archives and History, and the Office of the State Archaeologist.

Additional support is provided by the University of South Carolina's Geography Department and Computing Services Division. The database encompasses both the archaeological and built environments and permits qualified subscribers the ability to search for specific sites or structures and to register their site file documents directly. Carmen's role as system administrator was vital to the success of the project.

Through talks, seminars, workshops and one-on-one training, Carmen introduced and trained people at all levels of expertise in the intricacies of ArchSite's protocols and geographic information system capabilities. In several instances, she wrote bridging code to modify command structures and enhance function. Carmen's background made her uniquely suited for the position. She had received her first Masters in Information Science through the University of North Carolina at Chapel Hill and her second Masters in Archaeological Information Systems from York University, England. It is very rare for a person of this caliber to be found outside of the private sector, and we valued the time she was with us.

The ArchSite program continues, and additional information on its capabilities and access may be found online at the ArchSite link posted at: www.cas.sc.edu/sciaa/ or by contacting Jonathan Leader at leader@sc.edu or by telephone at (803) 576-6560.

Carmen Beard, ArchSite Systems Administrator. (SCIAA photo)