

Local Wetlands Protection

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**SOUTH CAROLINA
ENVIRONMENTAL
LAW PROJECT**

Lawyers for the Wild Side



Background of Wetland Loss in South Carolina

- A study from the U.S. Fish & Wildlife Service published in 1999 showed that between 1982 and 1989, South Carolina lost 2,920 acres of wetlands.
- Already, the Clean Water Act had been limited several times, calling into question whether its protections extended to more “isolated” wetlands of South Carolina.
- By the early 2000s, SCELP and our partners were already fighting for statewide protection of and permitting programs for the wetlands that fell outside of the Clean Water Act.

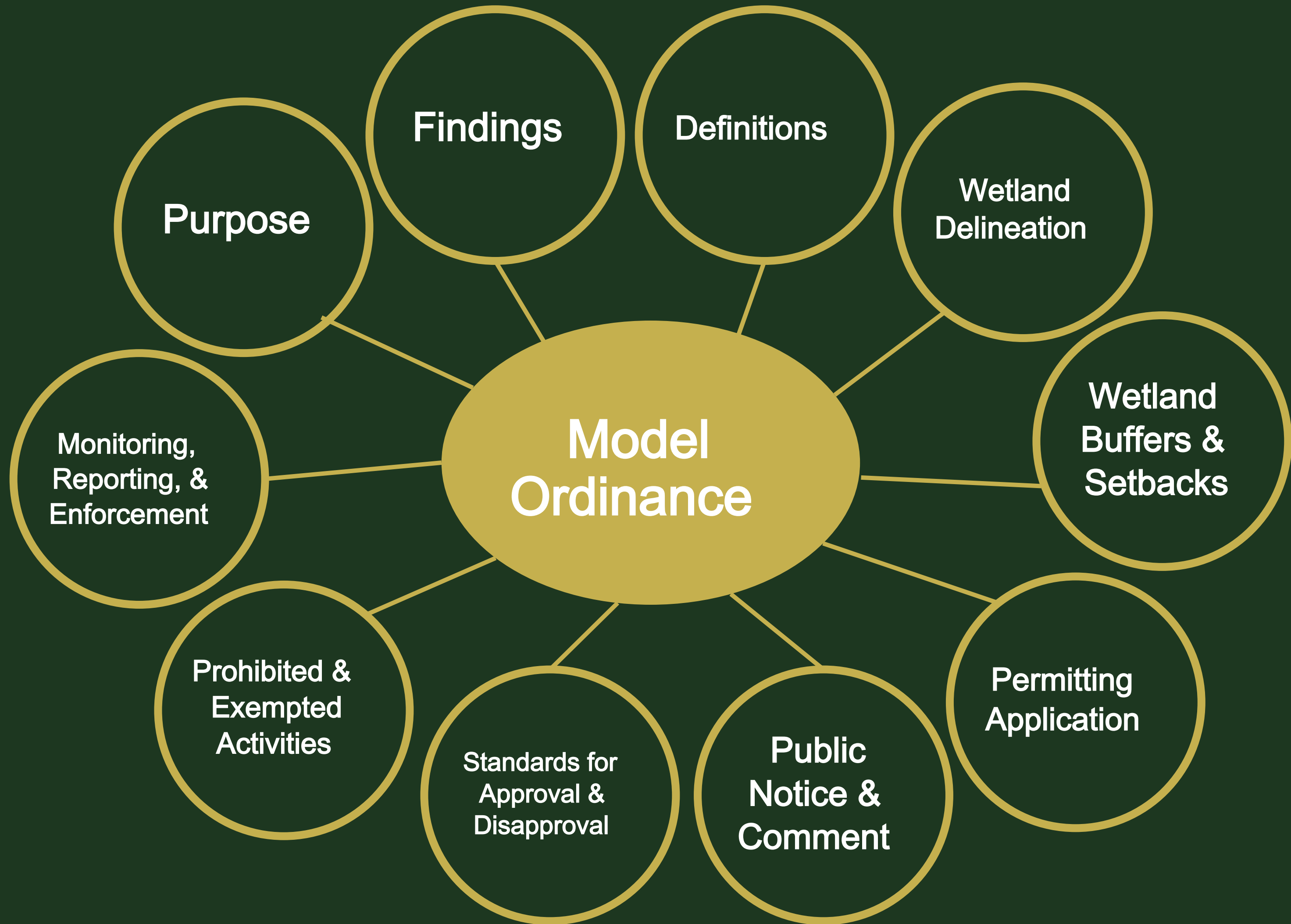


Leaning into Local

- Despite many attempts to pass wetland protections through the South Carolina General Assembly, these efforts have not yet been successful.
- To this day, South Carolina has no independent permitting authority over wetlands.
- By 2022, when *Sackett* was being argued before the United States Supreme Court, SCELP knew that pushing for a wetlands bill could not be our entire approach.
- Therefore, we drafted an ordinance that counties and cities could adopt to protect the wetlands within their jurisdiction.



Our Model Wetlands Ordinance





Bringing the Model to Bluffton

- SCELPA understood the model would need to be adapted to every local jurisdiction that might be interested, depending on their needs.
- The Town of Bluffton was the first jurisdiction to express interest in our model. However, with over 90% of the town in planned unit developments, the model needed to be carefully tailored in this case.
- We also wanted to make sure that the ordinance was not overly burdensome to individual landowners of smaller properties that do not contain wetlands, but did not want to reduce the ordinance's efficacy.

Challenges: Development Agreements

Town Development Agreements include the following language:

“Owners and Developers shall adhere to any and all future ordinances or regulations of the Town governing detention, filtration, and treatment of storm water provided that those ordinances and regulations apply Town wide and are consistent with sound engineering practices.”

The Town’s wetland ordinance was included under the stormwater section of our UDO to ensure its applicability Town -wide, including the PUDs.

That statement is followed immediately by an important and controlling caveat:

“It is specifically agreed, however, that any such ordinances of the Town that directly or indirectly affect the setback, buffer or open space requirements pursuant to the Zoning Regulations will not be applicable to the Owner and Developers and the Property without the Owners and Developer’s express written consent....”

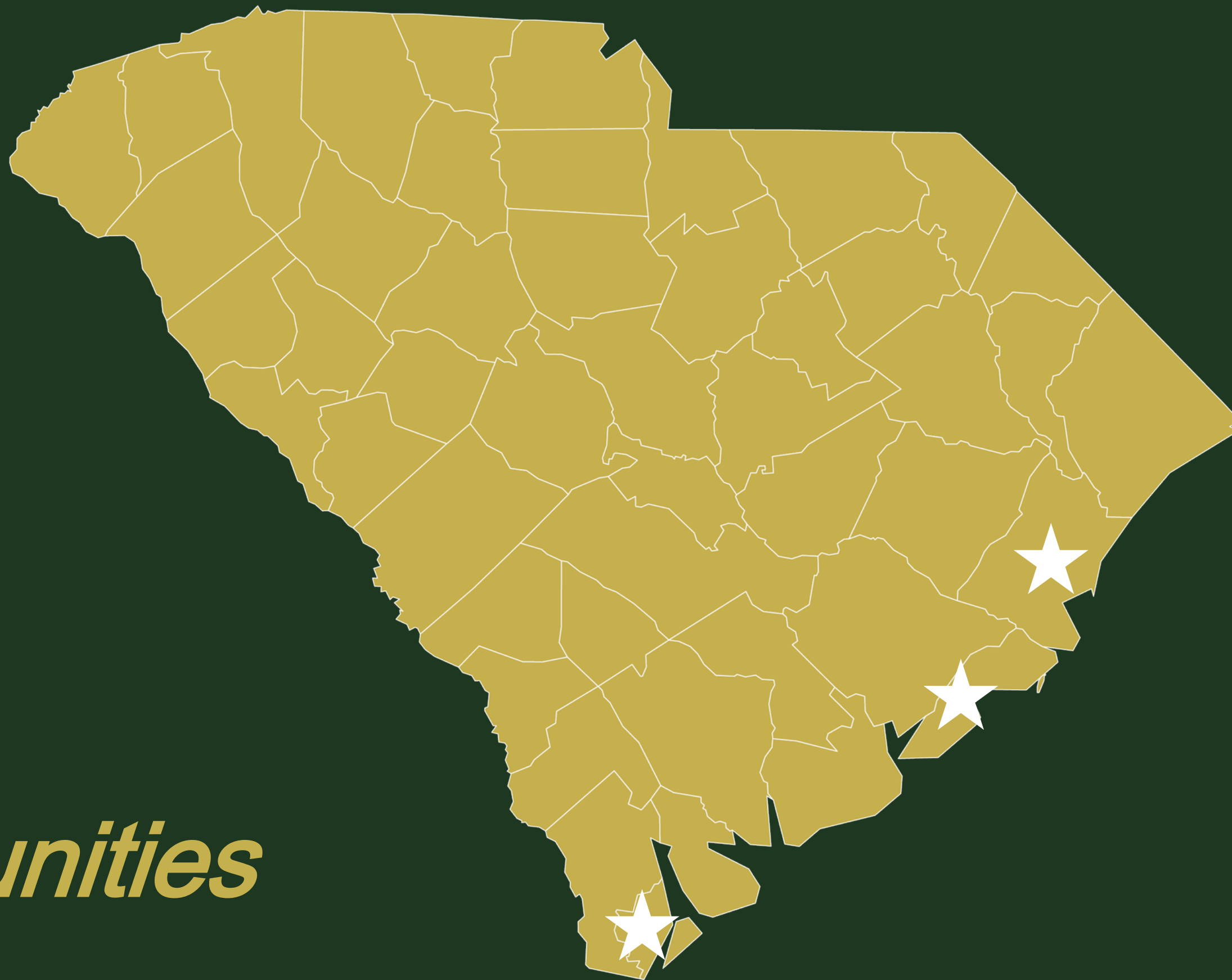
Regardless of its location with the stormwater section of the Town’s UDO, PUDs are not subject to the Town’s 50’ wetland buffer.



Sharing the Model Ordinance

- The Towns of Bluffton and Awendaw have both passed wetland protection ordinances based on SCELP's model, and Georgetown County is currently moving its version through the approval process.
- The news of a model ordinance is spreading across South Carolina! We are meeting the moment with a comprehensive outreach strategy for bringing the model to other counties and cities.
- SCELP is here to do more than just share a model ordinance. We aim to be a trusted resource that can help mold the ordinance to the specific locale, answer any questions that come up in the process, and remain a partner for the local jurisdiction afterwards.

Future Opportunities



Thank you!

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