

University at Buffalo School of Law

Digital Commons @ University at Buffalo School of Law

Journal Articles

Faculty Scholarship

Fall 2006

Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources

Kim Diana Connolly

University at Buffalo School of Law

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/journal_articles

 Part of the [Environmental Law Commons](#)

Recommended Citation

Kim D. Connolly, *Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources*, 15 S.E. Env'tl. L.J. 1 (2006).

Available at: https://digitalcommons.law.buffalo.edu/journal_articles/362



This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Journal Articles by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

BRIDGING THE DIVIDE: EXAMINING THE ROLE OF THE PUBLIC TRUST IN PROTECTING COASTAL AND WETLAND RESOURCES

KIM DIANA CONNOLLY*

Many esteemed environmental law scholars have delighted in exploring the public trust doctrine over the past few decades.¹ This pastime was initiated in large part from what most view as a seminal article by Professor Sax in 1970² in which he declared “of all the concepts known to American law, only the public trust doctrine seems to have the breadth and substantive content which might make it useful as a tool of general application for citizens seeking to develop a comprehensive legal approach to resource

* Associate Professor of Law, University of South Carolina School of Law; Associate Faculty, University of South Carolina School of the Environment. The author can be reached at connolly@law.sc.edu. Appreciation for comments on an earlier draft is extended to both F. James Cumberland Jr. and Josh Eagle.

¹ It would be a near impossible task to compile a complete list of such works for this article. For a sampling of the academic endeavors in this area, however, in addition to the scholarly works assembled in this journal volume see, e.g., Joseph L. Sax, *Liberating the Public Trust Doctrine from Its Historical Shackles*, 14 U.C. DAVIS L. REV. 185 (1980); Jan S. Stevens, *The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right*, 14 U.C. DAVIS L. REV. 195, 222 (1980); Charles F. Wilkinson, *The Public Trust Doctrine in Public Land Law*, 14 U.C. DAVIS L. REV. 269 (1980); Richard J. Lazarus, *Changing Conceptions of Property and Sovereignty in Natural Resources: Questioning the Public Trust Doctrine*, 71 IOWA L. REV. 631 (1986); James L. Huffman, *A Fish Out of Water: The Public Trust Doctrine in a Constitutional Democracy*, 19 ENVTL. L. 527 (1989); Gary D. Meyers, *Variation on a Theme: Expanding the Public Trust Doctrine to Include Protection of Wildlife*, 19 ENVTL. L. 723 (1989); Charles F. Wilkinson, *The Headwaters of the Public Trust: Some Thoughts on the Source and Scope of the Traditional Doctrine*, 19 ENVTL. L. 425 (1989); Richard Delgado, *Our Better Natures: A Revisionist View of Joseph Sax's Public Trust Theory of Environmental Protection, and Some Dark Thoughts on the Possibility of Law Reform*, 44 VAND. L. REV. 1209 (1991); Alison Rieser, *Ecological Preservation as a Public Property Right: An Emerging Doctrine in Search of a Theory*, 15 HARV. ENVTL. L. REV. 393 (1991); Carol M. Rose, *Joseph Sax and the Idea of the Public Trust*, 25 ECOLOGY L.Q. 351 (1998); Peter Manus, *To a Candidate in Search of an Environmental Theme: Promote the Public Trust*, 19 STAN. ENVTL. L.J. 315 (2000).

² Joseph L. Sax, *The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471 (1970).

management.”³ Since then, this doctrine has fascinated sufficient numbers of scholars to spawn books,⁴ blogs,⁵ and academic conferences,⁶ in addition to myriad law review articles.⁷ And it seems there is always more to say.⁸

The public trust doctrine reflects the deceptively simple concept that certain resources (usually coastal, including both land and waters) are held by the government in trust for the people.⁹ Such a trust preserves the

³ *Id.* at 474.

⁴ See, e.g., MOLLY SELVIN, THIS TENDER AND DELICATE BUSINESS - THE PUBLIC TRUST DOCTRINE IN AMERICAN LAW AND ECONOMIC POLICY 1789-1920 (Garland Publishing 1987); JACK H. ARCHER ET AL., THE PUBLIC TRUST DOCTRINE AND THE MANAGEMENT OF AMERICA'S COASTS (Univ. of Mass. Press 1994); DAVID C. SLADE, PUTTING THE PUBLIC TRUST DOCTRINE TO WORK (1997); BONNIE J. MCCAY, OYSTER WARS AND THE PUBLIC TRUST: PROPERTY, LAW, AND ECOLOGY IN NEW JERSEY HISTORY (Univ. of Ariz. Press 1998).

⁵ See, e.g., OnTheCommons.org, *public trust doctrine*, <http://onthecommons.org/taxonomy/term/14/all/page/blog> (last visited Apr. 10, 2007) (“Since Roman times, courts have held that certain resources are inherently common property that cannot be privately owned or given away by government. This is one reason why the public has access to coastal beaches. Now that markets are colonizing oceans, the human genome, space and other commons, it is time to extend the principles of the public trust doctrine.”).

⁶ In addition to the conference whose proceedings are gathered in this volume, see, e.g., Albany Law School Government Law Center, Conference: The Use of the Public Trust Doctrine as a Management Tool for Public and Private Lands (Dec. 4, 1992); University of California, Davis, Conference: The Public Trust Doctrine in Natural Resources Law and Management (1981); Wash. Dep't of Ecology, Symposium: Washington Public Trust Doctrine (Nov. 18, 1992), available at <http://www.ecy.wa.gov/programs/sea/pubs/93-53/intro.html> (last visited Apr. 10, 2007); Managing Hawaii's Public Trust Doctrine, Oct. 6, 2001, <http://www.hawaii1000friends.org/HIdoctrine.html> (last visited Apr. 10, 2007), and many others.

⁷ See *supra* note 1 and *infra* note 8.

⁸ A February 2007 LEXIS search of “US Law Reviews and Journals, Combined” found over eighty law review articles when the term “public trust doctrine” was entered and the search restricted to the immediately preceding one year period. Just two of those articles published in the past year on the public trust topic are: George P. Smith II & Michael W. Sweeney, *The Public Trust Doctrine and Natural Law: Emanations Within a Penumbra*, 33 B.C. ENVTL. AFF. L. REV. 307 (2006); Hope M. Babcock, *Grotius, Ocean Fish Ranching, and the Public Trust Doctrine: Ride 'Em Charlie Tuna*, 26 STAN. ENVTL. L.J. 3 (2007).

⁹ See, e.g., Alexandra B. Klass, *Modern Public Trust Principles: Recognizing Rights and Integrating Standards*, 82 NOTRE DAME L. REV. 699 (2006), available at <http://ssrn.com/abstract=934819> (last visited Apr. 10, 2007) (“At its core, the public trust doctrine is the idea that there are some resources, notably tidal and navigable waters and the lands under them that are forever subject to state ownership and protection in trust for the use and benefit of the public. To some, the doctrine is a vehicle for public access to water, beaches, or fishing in a world otherwise dominated by private ownership. To others it is a check on government attempts to give away or sell such resources for short-term economic gain. To yet others, it is a back-door mechanism for judicial taking of private property

resources, making them available to the public for certain public uses.¹⁰ Early case law restricted the protection to limited resources and certain uses (e.g. navigation, commerce, and fishing), but later cases expanded protected resources as well as protected uses to include recreation and public access in many states.¹¹

Recent debates regarding application of public trust principles in South Carolina provided a real-life perspective from which to initiate renewed scholarly discussion of this doctrine. Thus in September 2006, the University of South Carolina School of Law and the Southeastern Environmental Law Journal convened a symposium dedicated to exploring the modern public trust doctrine and related topics.¹² The context for this discussion was provided by recent changes to South Carolina state regulations¹³ associated with bridges to marsh islands, and the role of the public trust doctrine in the debate resulting in (and subsequent to) these new regulations.¹⁴

The symposium began with an evening keynote address¹⁵ by Professor Barton H. (“Buzz”) Thompson of Stanford University School of Law.¹⁶ Thompson’s resultant article, entitled *The Public Trust Doctrine: A Conservative Reconstruction & Defense*,¹⁷ explores the issue of whether the public trust doctrine can escape its perception by conservatives as an anti-

without just compensation through a clever argument that the property was never ‘private’ in the first place.” *Id.* at 699.)

¹⁰ See Sax, *supra* note 2, at 556-565.

¹¹ Rose, *supra* note 1, at 352.

¹² The symposium schedule is available at Southeastern Environmental Law Journal, University of South Carolina School of Law, *Conference Schedule*, <http://www.law.sc.edu/elj/2006symposium/agenda.shtml> (last visited Apr. 10, 2007).

¹³ S.C. CODE ANN. REGS. 30-12(N)(6) (2006).

¹⁴ See *infra* notes 22-46 and accompanying text.

¹⁵ See University of South Carolina School of Law Southeastern Environmental Law Journal Symposium, *Bridging the Divide: Public and Private Interest in Coastal Marshes and Marsh Islands, September 7-8, 2006*, <http://www.law.sc.edu/elj/2006symposium/> (last visited Apr. 10, 2007) [hereinafter *Bridging the Divide 2007 Symposium Website*] for streaming video of all symposium presentations. Professor Thompson’s evening keynote address was introduced by Southeastern Environmental Law Journal Editor-in-Chief Julie Murphy and University of South Carolina School of Law Dean & Educational Foundation Distinguished Professor of Law Walter F. (“Jack”) Pratt, Jr. *Id.*

¹⁶ Barton H. “Buzz” Thompson, Jr. serves as the Robert E. Paradise Professor of Natural Resources Law and Director, Woods Institute for the Environment at Stanford Law School. See <http://www.law.stanford.edu/directory/profile/58/> (last visited Apr. 10, 2007). Professor Thompson can be reached at buzzt@stanford.edu.

¹⁷ 15 SOUTHEASTERN ENVTL. L.J. 47 (2006).

majoritarian, anchorless doctrine providing an easy way to evade critically important property protections.¹⁸ After providing an overview of the history and current application of the public trust doctrine in American jurisprudence,¹⁹ Thompson argues that, in fact, underlying many major United States public trust decisions are four core principles – avoiding excess, the importance of common property, preserving democratic decision-making, and the special significance of oceans and navigable waterways – that are quite conservative in character.²⁰ To that end, Thompson sets forth a new vision of public trust that he asserts can fulfill the doctrine’s primary purposes while avoiding (at least some of) the concerns that have earned the doctrine conservative distrust.²¹

The first full day of the symposium opened with a panel made up of dynamic presentations by various stakeholders from South Carolina (including representatives of conservation interests, private property owners, and offices of the state government).²² These presentations discussed the high-profile and contentious issues of access to privately-owned islands in the coastal marshes of South Carolina. They conveyed to those attending the symposium how South Carolina’s courts,²³ state agencies²⁴ and legislature²⁵

¹⁸ *Id.* at 49.

¹⁹ *Id.* at 50-54.

²⁰ *Id.* at 58-68.

²¹ *Id.* at 68-70.

²² See *Bridging the Divide 2007 Symposium Website*, *supra* note 15. The first panel was moderated by Dr. Dwayne E. Porter, University of South Carolina Department of Environmental Health Sciences and the Baruch Institute for Marine and Coastal Sciences. See <http://www.sph.sc.edu/facultystaffpages/facstaffdetails.php?ID=413> (last visited Apr. 10, 2007).

²³ See, e.g., *S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’tl. Control*, 610 S.E.2d 482 (S.C. 2005) (Review of Office of Coastal Resources Management (OCRM) permit for a bridge to an island under S.C. CODE ANN. REGS. R. 30-12(N) (2004) (Small Islands Regulation) resulted in holding that because the regulations did not define “small,” that regulation was invalid. *Id.* at 486.), *reh’g denied* *S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’tl. Control*, 2005 S.C. LEXIS 120 (S.C., Apr. 7, 2005).

²⁴ See *Op. S.C. Att’y Gen.*, 2003 S.C. AG LEXIS 231 (Dec. 5, 2003) [hereinafter *2003 SC Attorney General Opinion*] (answering the question “is it legal for OCRM to consider and grant permits for bridges to islands, whose title is presumed to be in the state, for private development and use where the permit is tantamount to a de facto conveyance of these state lands (or the use of these state lands) and the ouster of the public, without requiring that the applicant clearly and convincingly demonstrate, by means such as an attorney’s opinion and accompanying title abstract, a grant from the State or predecessor sovereign, e.g. a King’s grant or Lords Proprietor’s grant, in the applicants chain of title sufficient to overcome the state’s presumption of ownership of the island?” in the negative. *Id.* at 15-16). This Opinion is reprinted in this volume, see Henry McMaster, *Opinion of the Attorney General State of South Carolina, December 5, 2003 (Reprint)*, 15 SOUTHEASTERN ENVTL. L.J. 39 (2006).

have struggled with the question of how the state should balance competing public and private interests in deciding whether or not to permit marsh island bridge construction.²⁶ Nancy Vinson of the Coastal Conservation League²⁷ discussed the origins and history of the “bridges to marsh islands” debate.²⁸ South Carolina Attorney General Henry McMaster²⁹ told the assembled participants of the events leading up to issuance of his 2003 Opinion asserting that public trust applies to all of South Carolina’s marsh islands absent a King’s grant,³⁰ and subsequent related activities in the Attorney General’s office.³¹ Ellison D. Smith of Smith, Bundy, Bybee, and Barnett³² spoke from the point of view of the regulated community and private property owners, and asserted that the public trust arguments on behalf of the marsh islands may have been taken too far.³³ Carolyn Boltin of the South Carolina Department of Health and Environmental Control³⁴ Office of Ocean and Coastal Resources (“OCRM”)³⁵ explained the 2006 bridges to marsh islands regulations³⁶ and provided insight into OCRM’s

²⁵ See S.C. CODE ANN. REGS. 30-12(N) (1993), *amended by* S.C. CODE ANN. REGS. 30-12(N)(6) (2006). The South Carolina legislature reviews all administrative rules before they are finalized. See C. Victor Pyle, III, *Potential Separation of Powers and Non-delegation Issues Regarding the Legislative Review of Executive Agency Rules and Regulations in South Carolina* (2002) (unpublished manuscript, on file with author); Ronald A. Herring, *Legislative Oversight and the South Carolina Experience*, 34 S.C. L. REV. 595, 625-627 (1982).

²⁶ See Nat’l Oceanic & Atmospheric Admin., *South Carolina Marsh Islands Project Data Set*, http://www.csc.noaa.gov/id/sc_marsh_islands_metadata.htm (last visited Apr. 10, 2007). See also *Saving the Marsh Islands*, HERALD (Rock Hill), Nov. 23, 2004, at 5A.

²⁷ The Coastal Conservation League website can be found at <http://coastalconservationalleague.org/> (last visited Apr. 10, 2007).

²⁸ Nancy Vinson, *Evolution of Regulations for Bridges to Marsh Islands in South Carolina*, 15 SOUTHEASTERN ENVTL. L.J. 19 (2006). See also *infra* notes 38-45 and accompanying text.

²⁹ The South Carolina Attorney General’s website can be found at <http://www.scattorneygeneral.org/> (last visited Apr. 10, 2007).

³⁰ *2003 SC Attorney General Opinion*, *supra* note 24, at 15.

³¹ See, e.g., Op. S.C. Att’y Gen., 2006 S.C. AG LEXIS 57 (Apr. 3, 2006).

³² The Smith, Bundy, Bybee and Barnett, PC website can be found at <http://www.s3blaw.com/> (last visited Apr. 10, 2007).

³³ See *Bridging the Divide 2007 Symposium Website*, *supra* note 15.

³⁴ The South Carolina Department of Health and Environmental Control (DHEC)’s main website is at <http://www.scdhec.net/> (last visited Apr. 10, 2007).

³⁵ DHEC’s Office of Ocean & Coastal Resource Management (OCRM) website is at <http://www.scdhec.net/environment/ocrm/> (last visited Apr. 10, 2007).

³⁶ S.C. CODE ANN. REGS. 30-12(N)(6) (2006).

plans with respect to implementation and other actions to provide protection to South Carolina's public trust lands.³⁷

Coastal Conservation League Water Quality Program Director Nancy Vinson's³⁸ article, entitled *Evolution of Regulations for Bridges to Marsh Islands in South Carolina*,³⁹ sets the factual stage for this symposium edition to explore the intersection between current events and scholarly consideration. Vinson opens her piece by noting that the approximately 350,000 acres of salt marsh on South Carolina's coast represent more public trust tidelands than most other East Coast states.⁴⁰ She then catalogs the many years of conservationists' endeavors to defeat threats to those lands by private persons seeking to encourage development by constructing bridges to small marsh islands,⁴¹ documenting the back-and-forth history of efforts to avoid damage to what many viewed (and still view) as very productive and sensitive ecosystems.⁴² She provides helpful background on how the fights ranged throughout the branches of government, including a precedent-setting case from the South Carolina Supreme Court,⁴³ an opinion by the South Carolina Attorney General,⁴⁴ and new regulation.⁴⁵

The symposium continued with a series of two additional panels.⁴⁶ The first was entitled *Public Trust: Where Has it Been and Where is it Going?* Professor Marc R. Poirier of Seton Hall Law School opened that panel, followed by Faith Rivers of Vermont Law School. Richard Roos-Collins of the National Heritage Institute closed that panel.⁴⁷

³⁷ See Sammy Fretwell, *Fees mulled for salt-marsh docks*, THE STATE (Columbia), Sept. 9, 2006, at B5.

³⁸ Nancy Vinson serves as Water Quality Program Director for the Coastal Conservation League. See <http://coastalconservationleague.org/NETCOMMUNITY/Page.aspx?&pid=368&sreid=201> (last visited Apr. 10, 2007). Ms. Vinson can be reached at nancyv@scccl.org.

³⁹ Vinson, *supra* note 28.

⁴⁰ *Id.* at 19.

⁴¹ *Id.* at 25-37.

⁴² *Id.* at 23-25.

⁴³ S.C. Coastal Conservation League v. S.C. Dep't of Health & Env'tl. Control, 610 S.E.2d 482 (S.C. 2005).

⁴⁴ See Vinson, *supra* note 28, at 29-32.

⁴⁵ S.C. CODE ANN. REGS. 30-12(N)(6) (2006).

⁴⁶ See *Bridging the Divide 2007 Symposium Website*, *supra* note 15, for streaming video of all presentations from these panels.

⁴⁷ The second panel was moderated by F. Patrick Hubbard of the University of South Carolina School of Law. See <http://www.law.sc.edu/faculty/hubbard/> (last visited Apr. 10, 2007).

The final panel of the day was entitled *Bridging Marsh Islands, Public Trust and other Contemporary Matters*. Erin Ryan of William and Mary Marshall-Wythe School of Law opened that panel, followed by Sam Kalen of Van Ness, Feldman, P.C. James Salzman of Duke Law School and the Nicholas School of Environmental and Earth Sciences closed the final panel.⁴⁸ The subsequently-submitted papers from each of these speakers are summarized below.

Professor Marc R. Poirier's⁴⁹ article, entitled *Modified Private Property: New Jersey's Public Trust Doctrine, Private Development and Exclusion, and Shared Public Uses of Natural Resources*,⁵⁰ defends the modern public trust doctrine as useful.⁵¹ Poirier uses New Jersey jurisprudence in the public trust arena, which limits or conditions private development of the shore in ways somewhat different than other states,⁵² to explore broader themes and justifications in the protection of water and related resources.⁵³ He begins by addressing use of the public trust doctrine in New Jersey and other states to manage water and land at the water's edge, resources which have multiple and conflicting uses.⁵⁴ He continues with an in-depth analysis of some political realities and academic considerations of the modern public trust doctrine.⁵⁵ Poirier concludes that cases which logically fit the rubric of public trust doctrine (such as South Carolina's marsh islands debate) deserve consideration under this doctrine in terms of background principles, even where regulatory and political realities make its application difficult.⁵⁶

Professor Erin Ryan's⁵⁷ article, entitled Palazzolo, *The Public Trust, and The Property Owner's Reasonable Expectations: Takings and the South*

⁴⁸ The final panel was moderated by Dr. Madilyn Fletcher, Director of the University of South Carolina School of the Environment and a Professor in Marine Science and Biological Sciences. See <http://www.baruch.sc.edu/faculty/fletcher.html> (last visited Apr. 10, 2007).

⁴⁹ Marc R. Poirier serves as a Professor of Law at Seton Hall Law School. See http://law.shu.edu/faculty/fulltime_faculty/poiriema/poirier.html (last visited Apr. 10, 2007). Professor Poirier can be reached at poiriema@shu.edu.

⁵⁰ 15 SOUTHEASTERN ENVTL. L.J. 71 (2006).

⁵¹ *Id.* at 72-91.

⁵² *Id.*

⁵³ *Id.* at 113-19.

⁵⁴ *Id.* at 72-74.

⁵⁵ *Id.* at 91-113.

⁵⁶ Poirier, *supra* note 50, at 116-19.

⁵⁷ Erin Ryan serves as an Assistant Professor of Law at William and Mary Marshall-Wythe School of Law. See <http://www.wm.edu/law/facultyadmin/faculty/ryan-871.shtml> (last visited Apr. 10, 2007). Professor Ryan can be reached at eryan@wm.edu.

Carolina Marsh Island Bridge Debate,⁵⁸ provides an interesting analysis of public trust doctrine jurisprudence in the takings context.⁵⁹ Ryan opens with a discussion of South Carolina's recently promulgated marsh island regulations,⁶⁰ noting that these islands are subject to what she labels South Carolina's "formidable" public trust doctrine.⁶¹ Her piece then evaluates the relationship between the public trust doctrine and the takings subtext with respect to the debate over South Carolina's new regulations, with particular attention to a recent Supreme Court takings decision, *Palazzolo v. Rhode Island*,⁶² in which the public trust doctrine made a late-breaking appearance on remand.⁶³ Looking to a related analysis in *McQueen v. South Carolina Coastal Council*,⁶⁴ Ryan suggests that regulatory takings claims brought by disappointed bridge permit seekers are unlikely to succeed. Noting that property owner's "reasonable expectations" about development prospects are central to any legal analysis of an alleged regulatory taking, Ryan asserts that the public trust doctrine should serve to limit successful claims.⁶⁵

Professor Faith R. Rivers'⁶⁶ article, entitled *The Public Trust Debate: Implications for Heirs' Property Along the Gullah Coast*,⁶⁷ sets forth a unique perspective on potential unintended consequences of the public trust doctrine on long-time minority residents on South Carolina's coast.⁶⁸ Rivers examines the efficacy of using the public trust doctrine and various tax incentive mechanisms as tools to conserve heirs' property,⁶⁹ which is real property purchased by African Americans and held within families for generations without clear title.⁷⁰ She asserts that selective use of the public trust doctrine can result in limits to development on large areas of ecologically important, yet previously developed, coastal islands,⁷¹ which

⁵⁸ 15 SOUTHEASTERN ENVTL. L.J. 121 (2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=951840 (last visited Apr. 10, 2007).

⁵⁹ *Id.*

⁶⁰ *Id.* at 123-32.

⁶¹ *Id.* at 122.

⁶² *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001).

⁶³ Ryan, *supra* note 58, at 122, 132-40.

⁶⁴ *McQueen v. S.C. Coastal Council*, 580 S.E.2d 116 (S.C. 1995).

⁶⁵ Ryan, *supra* note 58, at 145-46.

⁶⁶ Faith R. Rivers serves as an Associate Professor of Law at Vermont Law School. See http://www.vermontlaw.edu/faculty/emp_media_expertise_template.cfm?doc_id=1161 (last visited Apr. 10, 2007). Professor Rivers can be reached at frivers@vermontlaw.edu.

⁶⁷ 15 SOUTHEASTERN ENVTL. L.J. 147 (2006).

⁶⁸ *Id.* at 155-60.

⁶⁹ *Id.* at 160-68.

⁷⁰ *Id.* at 148.

⁷¹ 30-6 S.C. Reg. 167 at 30-12(N)(2)(f)(i)(b) (listing islands considered "upland").

may expose application of the doctrine to charges of arbitrariness by those holding heirs property resources.⁷² To deal with this issue, Rivers proposes the development of a Gullah Culture Preservation Exemption as a conservation tool that preserves Gullah (a people most prevalent in the South Carolina Lowcountry)⁷³ both ownership and traditional use of coastal lands without hindering the property rights of heirs' property owners.⁷⁴

The article by Richard Roos-Collins⁷⁵ of the Natural Heritage Institute,⁷⁶ entitled *Lessons From The Mono Lake Cases For Effective Management of Public Trust Resources*,⁷⁷ begins by discussing the new "bridges to marsh islands" regulations. Explaining how the public trust doctrine provides for state ownership of these marshlands,⁷⁸ Roos-Collins explores whether the new regulatory program can achieve its intended purpose over the course of the next generation.⁷⁹ Highlighting the significance of the resource, he discusses the substantial discretion granted to the state in deciding whether to balance public and private interests in considering individual permit applications.⁸⁰ Roos-Collins then draws on the lessons provided by the Mono Lake Cases in California to demonstrate that effective protection of public trust resources can accommodate reasonable development.⁸¹ He highlights four strategic lessons that can be applied: (1) An Ounce of Prevention is Worth a Pound of Cure;⁸² (2) Manage the Commons, Not Just the Individual Shepherds;⁸³ (3) Results Matter Most;⁸⁴ and (4) Public Trust Management is a Joint Venture.⁸⁵

⁷² Rivers, *supra* note 67, at 156-59.

⁷³ *Id.* at 161-63.

⁷⁴ *Id.* at 169.

⁷⁵ Richard Roos-Collins is the Director of Legal Services for the Natural Heritage Institute (NHI). See <http://www.n-h-i.org/index.php?s=25&m=15> (last visited Apr. 10, 2007). Mr. Roos-Collins can be reached at rrcollins@n-h-i.org.

⁷⁶ The Natural Heritage Institute's general website is at <http://www.n-h-i.org/> (last visited Apr. 10, 2007).

⁷⁷ 15 SOUTHEASTERN ENVTL. L.J. 171 (2006).

⁷⁸ *Id.* at 171-72.

⁷⁹ *Id.*

⁸⁰ *Id.* at 173-79.

⁸¹ *Id.* at 180-89.

⁸² *Id.* at 180-81.

⁸³ Roos-Collins, *supra* note 77, at 181-84.

⁸⁴ *Id.* at 184-88.

⁸⁵ *Id.* at 188-89.

The article by Sam Kalen,⁸⁶ entitled *The Coastal Zone Management Act of Today: Does Sustainability Have a Chance?*⁸⁷ begins with a acknowledgment of the historical context for the Federal Coastal Zone Management Act (CZMA).⁸⁸ Kalen notes that the occurrence of the Southeastern Environmental Law Journal's symposium rings familiar alarm bells to those that led to the CZMA.⁸⁹ He asserts that the issue of coastal protection is being examined too narrowly, based on problematic assumptions that have failed the nation's coastal areas over the past few decades.⁹⁰ Kalen states such assumptions will create a situation even less ready to address the increasing pressures on (and resultant building on) coastal resources.⁹¹ Other problems, such as pollution,⁹² historic wetland losses,⁹³ overtaxed marine resources,⁹⁴ and hurricane activity,⁹⁵ threaten coastal areas and provide even more reason for reassessment and increased coastal zone management. Exploring alternatives or amendments to the CZMA must be part of that analysis according to Kalen, who believes that expansion of the public trust doctrine in future decision-making can properly embody the notion of coastal sustainability.⁹⁶

Professors J.B. Ruhl⁹⁷ and James Salzman's⁹⁸ article, entitled *Ecosystem Services and the Public Trust Doctrine: Working Change From Within*,⁹⁹

⁸⁶ Sam Kalen is a Member of the law firm of Van Ness Feldman, PC. See <http://www.vnf.com/content/aboutus/bios/smk.htm> (last visited Apr. 10, 2007). He can be reached at smk@vnf.com. Mr. Kalen will be serving as a visiting professor at The Florida State University School of Law in the 2007-2008 academic year.

⁸⁷ 15 SOUTHEASTERN ENVTL. L.J. 191 (2006).

⁸⁸ 16 U.S.C. §§ 1451-1466 (2000).

⁸⁹ See Kalen, *supra* note 87, at 192.

⁹⁰ *Id.* at 208-09.

⁹¹ *Id.* at 192-96.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Kalen, *supra* note 87, at 192-96.

⁹⁶ *Id.* at 221.

⁹⁷ Professor J.B. Ruhl serves as the Matthews & Hawkins Professor of Property at Florida State University College of Law. See <http://www.law.fsu.edu/faculty/jruhl.html> (last visited Apr. 10, 2007). Professor Ruhl can be reached at jruhl@law.fsu.edu. Although unable to attend the symposium for temporary health-related reasons, Professor Ruhl generously agreed to keep his commitment to provide an article for this symposium issue.

⁹⁸ James Salzman serves as a Professor of Law at Duke University School of Law and a Professor at Duke University Nicholas School of Environment and Earth Sciences. See <http://www.law.duke.edu/fac/salzman/> (last visited Apr. 10, 2007). Professor Salzman can be reached at salzman@law.duke.edu.

⁹⁹ 15 SOUTHEASTERN ENVTL. L.J. 223 (2006).

begins with the question “[w]hat to do with the public trust doctrine?”¹⁰⁰ Exploring the evolution of the doctrine following Professor Joseph Sax’s 1970 article,¹⁰¹ the article attempts to ascertain why Sax’s vision is not yet fulfilled.¹⁰² Ruhl and Salzman propose that natural capital and ecosystem services can be integrated into the public trust doctrine.¹⁰³ They note that traditional public trust resources often supply economically valuable ecosystem services to the public, and thus natural capital and ecosystem service values should be recognized as protected trust uses.¹⁰⁴ To that end, they assert, the proper approach is not to reshape the public trust doctrine to fit ecological goals, but rather to reshape the way ecological goals are framed to fit the public trust doctrine.¹⁰⁵

After the formal presentations, a round-table scholarly discussion about the modern public trust doctrine in the context of South Carolina’s marsh island bridge debate ensued.¹⁰⁶ As reflected below in a brief synopsis, the discussion was meandering, many-faceted, and thoroughly fascinating.

The assembled scholars and other participants began by discussing whether on-the-ground application of the public trust doctrine was by necessity a balancing act.¹⁰⁷ Assuming the answer to such an inquiry is yes, participants considered the questions of who does (and should do) the

¹⁰⁰ *Id.*

¹⁰¹ Sax, *supra* note 2.

¹⁰² Ruhl & Salzman, *supra* note 99, at 224.

¹⁰³ *Id.* at 224-30.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 238.

¹⁰⁶ This discussion was moderated by Professor Josh Eagle of the University of South Carolina School of Law. Southeastern Environmental Law Journal, University of South Carolina School of Law, *Conference Schedule*, <http://www.law.sc.edu/elj/2006symposium/agenda.shtml> (last visited Apr. 10, 2007).

¹⁰⁷ Of course, most modern efforts to engage in either environmental protection or use of property in a way that may impact environmental resources involves balance of some sort. See, e.g., *20th Century Global Conflicts - Issue #6- The Environment: Balancing Act*, <http://www.room324.com/BalancingAct.htm> (“Humans use resources every day to grow, develop, maintain life processes, and reproduce; in doing so, we use both renewable and nonrenewable resources. Governments, conservationists, economists, and others might ask the following questions in their search for a balance of resource use and conservation: * How do we use resources while ensuring that the same resources will be available to future generations? * How do the federal and state governments work with communities and conservationists to ensure that resources are used wisely and economically? * How do national and state parklands coexist with traffic and tourism while protecting natural beauty? * How do industries maintain sustainable ecosystems while running economically viable operations? * What role does the government play in mediating between industry, tourism, and conservation?”).

balancing¹⁰⁸ and what is (and should be)¹⁰⁹ balanced. Discourse continued, exploring both how one would know if application of the public trust is off-balance, and what to do about it if one determined it was.¹¹⁰

The application of the public trust doctrine as it pertains to environmental justice concerns¹¹¹ was also the topic of round-table discussion. The idealistic goal of having public trust analyses include a process for assessment of implications with respect to minority and low-

¹⁰⁸ Governmental entities are usually viewed in the role of trustee in the public trust doctrine context. See, e.g., M. Casey Jarman, *The Use of the Public Trust Doctrine for Resource-Based Area-Wide Management: What Lessons Can We Learn From the Navigable Waters Trust?*, 4 ALB. L.J. SCI. & TECH. 7 (1994) (“The government has dual ownership responsibilities as public trustee. As owner of the ‘jus privatum,’ the state has the ability, albeit a quite restrictive one in many instances, to alienate trust lands or resources to private parties. As owner of the ‘jus publicum,’ the state has trust responsibilities that it is powerless to abrogate. In the United States, this trust originally applied to tidal waters, lands, and resources, but has been expanded by the courts to large inland navigable rivers and lakes and, under certain circumstances, non-navigable waters. The Property Clause of the U.S. Constitution and some state constitutions establish public trust obligations. Legislative bodies have imposed public trust duties as well.” *Id.* at 11-12 (footnotes omitted)). Thus, a governmental entity (legislative, judicial, or administrative) of some sort is the likely answer, though other models may be argued.

¹⁰⁹ Because the public trust doctrine is viewed by most as a creature of state law, see Erin Ryan, Comment, *Public Trust and Distrust: The Theoretical Implications of the Public Trust Doctrine for Natural Resource Management*, 31 ENVTL. L. 477, 478 n.5 (2001), the answer to this question may vary depending on location.

¹¹⁰ Participants discussed that while one group of stakeholders may seek reparations through takings suits under the Fifth Amendment, U.S. CONST. amend. V, non-profit or other stakeholder groups may seek to file citizen suits. See Jim May, *Now More Than Ever: Environmental Citizen Suit Trends*, 33 ENVTL. L. REP. 10704 (2003). Likewise, Attorneys General or relevant state agencies can become involved through appropriate avenues of recourse, including judicial actions. See Allan Kanner, *The Public Trust Doctrine, Parens Patriae, and the Attorney General as the Guardian of the State’s Natural Resources*, 16 DUKE ENVTL. L. & POL’Y F. 57 (2005) (“Under the public trust doctrine, state AGs can sue, as trustee, for damages to natural resources that are held in the public trust. To recover damages, the AG must demonstrate that the public trust has been violated by an ‘unreasonable interference with the use and enjoyment of trust rights.’ Some states allow for the recovery of natural resource damages (‘NRD’) to any natural resource, while others only allow for the recovery of damages to natural resources that the state government actually owns. States vary as to what is encompassed by the public trust.” *Id.* at 59 (footnotes omitted)). Other avenues are likely also available.

¹¹¹ For an excellent general overview of the law of environmental justice, see MICHAEL B. GERRARD, ED., *THE LAW OF ENVIRONMENTAL JUSTICE: THEORIES AND PROCEDURES TO ADDRESS DISPROPORTIONATE RISKS* (ABA Section of Env’t, Energy, and Res. ed, 1999), updates available at <http://www.abanet.org/enviro/committees/envtab/ejupdates.html> (last visited Apr. 10, 2007). See also U.S. Environmental Protection Agency, *Environmental Justice*, <http://www.epa.gov/compliance/environmentaljustice/> (last visited Apr. 10, 2007).

income interests may not, participants concluded, be workable. Getting “real folks” involved in the nuances of a public trust debate with respect to a particular resource would, at best, be difficult.¹¹² However, ideas for cooperative efforts between various coastal environmental groups and low-income and/or minority community representatives in developing area-specific protections were deemed promising.¹¹³ Furthermore, as a tangent to the environmental justice discussion, the issue of housing affordability in coastal areas was debated.¹¹⁴

Round-table participants also discussed the future of the public trust doctrine. Hopes for its use have not borne as much fruit as some might have expected,¹¹⁵ though it has been more influential than others would have wanted.¹¹⁶ But as a way to mitigate for further losses, incorporate other

¹¹² This is not unlike the challenges many other areas of environmental law face as relates to environmental justice concerns. David Monsma, *Equal Rights, Governance, and the Environment: Integrating Environmental Justice Principles in Corporate Social Responsibility*, 33 *ECOLOGY L.Q.* 443 (2006) (“As a social justice issue and civil rights concern with the potentially discriminatory application of environmental laws, the origins and theory of environmental justice are richly documented in the law review scholarship, as elsewhere, and there is some scholarly consensus that environmental justice claims in court rarely work. A considerable range of academic commentary covers both ‘the articulation of concepts of environmental justice and environmental racism’ and the history of the environmental justice movement in terms of the importance of grassroots political organizing. A good deal of the analysis aims to examine the ‘gap’ between environmental laws and equal justice under law, and to discover how environmental justice ‘contribute[s] to social and political debates about fair treatment.’ Efforts to conceive of novel judicial and legislative strategies to advance the legal theory of environmental justice are also fully developed in the legal literature.” *Id.* at 445-446 (footnotes omitted).).

¹¹³ A “community visioning” process was one approach discussed by round-table participants. See Sustainable Communities Initiative, *Creating Community Topic Area: Community Visioning & Implementation*, <http://www.sustainable.org/creating/vision.html> (last visited Apr. 10, 2007) (“A community visioning process can often provide guidance for citizens who are unclear about a future course. This section identifies alternative approaches and resources that can assist the visioning process.”). One participant also suggested engaging indigenous populations through “Keeper” associations. See Waterkeeper Alliance, <http://www.waterkeeper.org/mainwaterkeepers.aspx> (last visited Apr. 10, 2007).

¹¹⁴ See, e.g., NOAA Coastal Servs. Center, *Affordable Housing in the Coastal Zone: The Challenge of Living Where You Work*, *COASTAL SERVICES* (Mar./Apr. 2003), available at <http://www.csc.noaa.gov/magazine/2003/02/housing.html> (last visited Apr. 10, 2007).

¹¹⁵ See Sax, *supra* note 2.

¹¹⁶ See, e.g., James R. Rasband, *The Public Trust Doctrine: A Tragedy of the Common Law*, 77 *TEX. L. REV.* 1335 (1999) (reviewing BONNIE J. MCCAY, *OYSTER WARS AND THE PUBLIC TRUST: PROPERTY, LAW, AND ECOLOGY IN NEW JERSEY HISTORY* (1998)) (“Application of the doctrine can result not only in a dangerous usurpation of legislative authority but also in a potential violation of the Fifth and Fourteenth Amendments when a prior grant of trust

doctrines, and fully integrate a conceptual framework for moving forward, the public trust doctrine remains murky.

South Carolina's public trust jurisprudence,¹¹⁷ and in particular the recent experience with the bridges to marsh islands controversy,¹¹⁸ was viewed by some participants as a reason why the public trust doctrine as a tool can become dysfunctional. The legislative debate over the new bridges to marsh islands regulations,¹¹⁹ and the ensuing final regulations¹²⁰ (which arguably are not in keeping with the relevant public trust doctrine as earlier articulated by the Attorney General¹²¹ and the courts¹²²) reflect the political realities that sometimes stymie rigorous application of a legal doctrine. Can compromise, when it leads to legally imperfect¹²³ (but politically stable) results be justified? If yes, how does one plausibly defend such a compromise from future "reworking" from either side? In other words, does the end justify the means?

Innovative ideas for future work in South Carolina and other states were bandied about. One idea was an interdisciplinary project in which graduate students in South Carolina (and other states) could cooperate with counties to do a public trust inventory.¹²⁴ Another was a public education campaign to help the citizenry understand their interests in public trust land, and grasp the concept of the state as a trustee.¹²⁵

resources is revoked or modified without payment of just compensation." *Id.* at 1336 (footnotes omitted).

¹¹⁷ See Kenneth R. Moss, *The Public Trust Doctrine in South Carolina*, 7 S.C. ENVTL. L.J. 31 (1998). See also *McQueen*, 580 S.E.2d at 119 ("As a coastal state, South Carolina has a long line of cases regarding the public trust doctrine in the context of land bordering navigable waters." *Id.* at 119.).

¹¹⁸ See Vinson, *supra* note 28.

¹¹⁹ *Id.* at 32-37.

¹²⁰ See S.C. CODE ANN. REGS. 30-12(N) (2004), amended by S.C. CODE ANN. REGS. 30-12(N) (2006).

¹²¹ 2003 SC Attorney General Opinion, *supra* note 24.

¹²² *McQueen*, 580 S.E.2d 116.

¹²³ Many symposium participants acknowledged the viability (though had differing opinions on the likelihood of success) of litigation attacking the 2006 regulations as violative of the pure public trust doctrine under South Carolina law.

¹²⁴ Such an "inventory" could reflect either maps or descriptions of areas subject to public trust protections.

¹²⁵ Of course, as one participant observes, an educated citizenry will lead some to say "build a wall" to protect private property and others to say "protect our public lands above all else." For resources directed at public involvement in environmental issues, see U.S. Environmental Protection Agency, *Concerned Citizens Resources*, <http://www.epa.gov/epahome/Citizen.html> (last visited Apr. 10, 2007).

Participants discussed the issues of sea-level rise¹²⁶ and global warming¹²⁷ in the context of the future of public trust. By their very nature, public trust lands are generally not stable systems. The differing definitions of mean high tide line and their implications were discussed.¹²⁸

A discussion ensued as to whether South Carolina should join other states in seeking an environmental constitutional amendment,¹²⁹ perhaps even an “environmental bill of rights.”¹³⁰ Some asserted that such an effort would be a change from recent environmental legislative efforts in South Carolina, where the conservation community has been in “reactive” rather than “proactive” mode.¹³¹ Others cautioned that in the current political climate, such legislation would likely involve compromise that had the potential to be a net loss for the environment.

A related dialogue about efforts in South Carolina to enact regulatory takings legislation¹³² similar to Measure 37¹³³ in Oregon followed. The

¹²⁶ See U.S. Environmental Protection Agency, *Sea Level Rise Reports*, <http://yosemite.epa.gov/oar/globalwarming.nsf/content/ResourceCenterPublicationsSeaLevelRiseIndex.html> (last visited Apr. 10, 2007).

¹²⁷ See, e.g., AN INCONVENIENT TRUTH (Paramount Classics 2006), available at <http://www.climatecrisis.net/> (last visited Apr. 10, 2007); U.S. Environmental Protection Agency, *Climate Change*, <http://www.epa.gov/climatechange/> (last visited Apr. 10, 2007); Competitive Enterprise Institute, *Global Warming*, <http://www.globalwarming.org/> (last visited Apr. 10, 2007), Union of Concerned Scientists, *Global Warming*, http://www.ucsusa.org/global_warming/ (last visited Apr. 10, 2007); Intergovernmental Panel on Climate Change, *Climate Change 2007: The Physical Science Basis, Summary for Policy Makers*, available at <http://www.ipcc.ch/SPM2feb07.pdf> (last visited Apr. 10, 2007).

¹²⁸ NOAA defines “mean high tide” as “[t]he mean average of all the high tides (high high tides and low high tides) occurring over a certain period of time, usually 18.6 years (one lunar epoch).” NOAA Coastal Servs. Center, *Glossary*, <http://www.csc.noaa.gov/ptd/glossary.htm> (last visited Apr. 10, 2007). But see Janet Freedman & Megan Higgins, R.I. Coastal Res. Mgmt. Council, *What Do You Mean By Mean High Tide? The Public Trust Doctrine In Rhode Island*, <http://www.crmc.ri.gov/presentations/presentations/wdymbht.pdf> (last visited Apr. 10, 2007).

¹²⁹ See Bret Adams et al, *Environmental and Natural Resources Provisions in State Constitutions*, 22 J. LAND RESOURCES & ENVTL. L. 73 (2002); Barton H. Thompson, Jr., *Environmental Policy and State Constitutions: The Potential Role of Substantive Guidance*, 27 RUTGERS L.J. 863 (1996).

¹³⁰ See South Carolina Chapter – Sierra Club, *Environmental Bill of Rights*, <http://southcarolina.sierraclub.org/EnvironmentalBOR.html> (last visited Apr. 10, 2007).

¹³¹ See generally Conservation Voters of South Carolina, <http://www.conservationvotersofsc.org/> (last visited Apr. 10, 2007).

¹³² See Georgetown Environmental Law & Policy Institute, *Regulatory Takings-Background*, http://www.law.georgetown.edu/gelpi/current_research/regulatory_takings/ (last visited Apr. 10, 2007).

¹³³ See *Measure 37*, <http://www.sos.state.or.us/elections/nov22004/guide/meas/>

discussion involved the role of public trust in growth plans, potential takings claims, and political realities in the South Carolina legislature and local governments. The lack of a voter initiative process¹³⁴ in South Carolina was deemed important in terms of whether such legislation could become reality in South Carolina.¹³⁵

The role of local governments and private initiatives received some attention from symposium participants. Inclusion issues, such as assurances for affordable housing,¹³⁶ were part of that discussion, as were differences in municipal management across South Carolina's coast.¹³⁷

The round-table discussion closed with a conversation about citizen enforcement options. The issue of individual standing was discussed,¹³⁸

m37_text.html (last visited Apr. 10, 2007); 1000 Friends of Oregon, *Urgent Action Needed to Fix Measure 37*, <http://www.friends.org/issues/M37/index.html> (last visited Apr. 10, 2007).

¹³⁴ See Oregon State Archives, *Initiative, Referendum and Recall Introduction*, <http://bluebook.state.or.us/state/elections/elections09.htm> (last visited Mar. 24, 2007).

¹³⁵ A number of states considered regulatory takings ballot initiatives in 2006. See American Planning Ass'n, *Regulatory Takings Ballot Measures Across America*, <http://www.planning.org/legislation/measure37/> (last visited Apr. 10, 2007) ("Takings Ballot Initiatives – Defeated (3): California — Proposition 90: Defeated 47.5%–52.5%; Idaho — Proposition 2: Defeated 24%–76%; Washington — Initiative 933: Defeated 42%–58%. Takings Ballot Initiatives – Passed (1): Arizona — Proposition 207: Approved 65%–35%. Takings Ballot Initiatives – Removed from Ballot (5)). Maps showing state-by-state results for 2006 regulatory takings ballot initiatives are available at *Regulatory Takings Ballot Measures*, <http://www.planning.org/legislation/measure37/pdf/2006takingsleg.pdf> (last visited Apr. 10, 2007) and *2006 Regulatory Takings Ballot Initiatives: Ballot Initiative Strategy Center*, <http://ballot.org/vertical/Sites/%7B26C6ABED-7A22-4B17-A84A-CB72F7D15E3F%7D/uploads/%7B7659DFBD-5E12-4489-9FCF-C0F2587E8CC9%7D.PDF> (last visited Apr. 10, 2007). See also Georgetown Environmental Law & Policy Institute, *Regulatory Takings: Background* ("In Congress, 'takings' legislation was a central feature of the 'Contract with America' in the 104th Congress and some version of takings legislation has been considered, but not adopted, in virtually every subsequent Congress. Many state legislatures have also considered takings legislation, and about half the states have adopted some form of legislation on the subject. The adoption of Measure 37 by the voters of Oregon in November 2004 has created a new wave of interest in takings measures at the state level.").

¹³⁶ See NOAA Coastal Servs. Center, *supra* note 114.

¹³⁷ See Mun. Ass'n of S.C., <http://www.masc.sc/> (last visited Apr. 10, 2007).

¹³⁸ See *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998); *Friends of the Earth, Inc. v. Laidlaw Env'tl Servs., Inc.*, 528 U.S. 167 (2000). See generally Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881 (1983); William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221 (1988); Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163 (1992); Richard J. Pierce, Jr., *Is Standing Law or Politics?*, 77 N.C. L. REV. 1741 (1999); Craig N. Johnston, *Standing and Mootness After Laidlaw*, 30 ENVTL. L. REP. 10,317 (2000).

comparing California's standards with that of other states.¹³⁹ Discourse about the effectiveness of citizen suits in terms of actual enforcement ensued.¹⁴⁰

This symposium issue of the SOUTHEASTERN ENVIRONMENTAL LAW JOURNAL also contains three excellent student notes by University of South Carolina School of Law Juris Doctor candidates. These notes were competitively selected from among a considerable number of drafts submitted by Journal student members on topics related to the symposium. Bonnie E. Allen's note, entitled *The Viability of Leasing Public Trust Lands for Conservation in South Carolina*,¹⁴¹ explores the innovative idea of importing into South Carolina a public trust lands leasing program for conservation purposes. Jaclynn Bower's note, entitled *Providing Landowners With a Fair and Fighting Chance to Have Their Day in Court: How The Government Is (Not) Effectively Arguing the Statute of Limitations*,¹⁴² examines the issue of erosion and other "gradual takings" in the coastal context by exploring case law and other recent developments and pointing to a perceived increasing recognition of private property rights. Finally, Matthew E. Pecoy's note, entitled *Sitting on the Dock of the Bay: South Carolina's Need for a General Submerged Land Lease Program*,¹⁴³ argues that a submerged land lease program would provide desirable increased protections for public trust lands in South Carolina.

Through the *Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources* symposium, the University of South Carolina School of Law and its students indeed were successful in bridging academic discourse with dialogue about practical problems faced by South Carolina's citizenry. But at the end of the day, the Bridging the Divide Symposium raised more questions than it could answer, introduced more ideas than it could possibly resolve, and left participants and observers alike with a renewed commitment to continued consideration

¹³⁹ Joan Leary Matthews, *Unlocking The Courthouse Doors: Removal of the "Special Harm" Standing Requirement Under SEQRA*, 65 ALBANY L. REV. 421, 450 (2001). ("A number of these states are exceedingly liberal in their standing requirements for challenges to their state's NEPA provisions. For example, California has liberal standing rules for challenges brought under the California Environmental Quality Act (CEQA)." (citing CAL. PUB. RES. CODE §§ 21000-21165 (West 1996 & Supp. 2001))).

¹⁴⁰ See Jim May, *Now More Than Ever: Trends in Environmental Citizen Suits at 30*, 10 WIDENER L. REV. 1 (2003).

¹⁴¹ 15 SOUTHEASTERN ENVTL. L.J. 241 (2006).

¹⁴² 15 SOUTHEASTERN ENVTL. L.J. 261 (2006).

¹⁴³ 15 SOUTHEASTERN ENVTL. L.J. 283 (2006).

of many issues presented by the gathering. In other words, it was a successful symposium!¹⁴⁴

¹⁴⁴ The success was due almost entirely to myriad hours of work by the Symposium Committee, Valerie Cochran, Julie Murphy, Art vonLehe, and Kate Whetstone, and other staff of the Southeastern Environmental Law Journal, with the support of University of South Carolina School of Law staff and faculty.