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Evolution of Regulations for Bridges to Marsh Islands in South Carolina

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EVOLUTION OF REGULATIONS FOR BRIDGES TO MARSH ISLANDS IN SOUTH CAROLINA

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I. INTRODUCTION

With 344,500 acres of salt marsh, South Carolina's coast contains more public trust tidelands than most other states on the East Coast.¹ Although these lands are reserved for the public's use and enjoyment under the Public Trust Doctrine,² in the past few decades the tidelands became threatened by

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¹ MARINE RES. DIV., S.C. DEP'T. OF NATURAL RES., DYNAMICS OF THE SALT MARSH, *available at* <http://www.dnr.sc.gov/marine/pub/seascience/dynamic.html> (last visited Feb. 4, 2007).

² See *Coburg Inc. v. Lesser (Coburg I)*, 422 S.E.2d 96, 97 (S.C. 1992); Op. S.C. Att'y Gen., 2003 S.C. AG LEXIS 231 (Dec. 5, 2003) [hereinafter *2003 SC Attorney General Opinion*].

the prospect of private development. South Carolina thus faced a critical decision: whether to protect these pristine marshlands or open them up for development by allowing private bridge access.³ This article details the eight-year struggle to prevent these public tidelands from becoming covered with a network of private bridges that would have lead to small, but heavily developed, marsh islands. Heavy development would have resulted in serious damage to this very productive and sensitive habitat, including harm to its clean waters, biological diversity and high productivity, as well as its beautiful views.⁴ During this struggle, the Coastal Conservation League (CCL) committed its resources to protecting the integrity of South Carolina's public trust tidelands.⁵

The CCL's campaign involved all three branches of government. In the judicial branch, CCL appealed a precedent-setting case to the South Carolina Supreme Court.⁶ In the executive and legislative branches, CCL worked to influence decisions by the state agency staff and members of the Board South Carolina's Department of Health and Environmental Control (DHEC Board),⁷ as well as the legislators who ultimately would approve new regulations. After a South Carolina Attorney General's opinion clarified the State's ownership of marsh islands that relied, in part, upon the South Carolina Constitution,⁸ regulatory amendments were thwarted that

³ See Bo Petersen, *Lawmakers Get a Fresh Look at Marsh Islands: Boat Tour an Effort to Push New Rules to Govern Development*, POST AND COURIER (Charleston), Mar. 7, 2006, at B1; *Saving the Marsh Islands*, HERALD (Rock Hill), Nov. 23, 2004, at 5A.

⁴ See generally OCEAN & COASTAL RES. MGMT., NAT'L CENTERS FOR COASTAL OCEAN SCIENCE, NAT'L OCEANIC & ATMOSPHERIC ADMIN., MANAGEMENT OF SMALL DOCKS AND PIERS: ENVIRONMENTAL IMPACTS AND ISSUES (May 2005), available at <http://coastalmanagement.noaa.gov/initiatives/media/environmentalimpacts.pdf> (last visited Feb. 4, 2007) [hereinafter *MGMT. OF SMALL DOCKS AND PIERS*].

⁵ See Coastal Conservation League, <http://coastalconservationleague.org/NETCOMMUNITY/Page.aspx?&pid=526&srcid=212> (last visited Feb. 4, 2007). For an interesting discussion of public trust and its role in ecological protection in a number of state programs including South Carolina, see Bruce B. Dykaar & David A. Schrom, *Public Ownership of U.S. Streambeds and Floodplains: A Basis for Ecological Stewardship*, BIOSCIENCE, April 2003, available at <http://www.ecomagic.org/pubs/RiverPaper.pdf> (last visited Feb. 4, 2007).

⁶ S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, 610 S.E.2d 482 (S.C. 2005).

⁷ The Board is responsible for overseeing the operations of the South Carolina Department of Health and Environmental Control (DHEC). See S.C. Dep't of Health & Envtl. Control, <http://www.dhec.sc.gov/administration/aboutDHEC.htm> (last visited Feb. 4, 2007).

⁸ See 2003 SC Attorney General Opinion, *supra* note 2 (citing S.C. CONST. art. III, § 31).

would allow unchecked marsh island development in public trust marshlands.⁹

A. Public Trust Background

South Carolina's Public Trust Doctrine¹⁰ provides that the state holds tidelands, marshes, and creeks in trust for the benefit of all citizens;¹¹ The state also owns small islands nestled in the marsh,¹² known as "hummocks."¹³ In South Carolina, the Public Trust Doctrine establishes the public's right to fully enjoy public trust lands for a wide variety of recognized public purposes including fishing, shell fishing, boating, swimming, bird watching, hunting, and most often for simply enjoying the outstanding views.¹⁴

Aesthetically magnificent and biologically rich, estuaries (comprised of public trust tidelands – creeks, bays and marshes) often are called the oceans' nursery grounds because they provide critical habitat to some sixty species.¹⁵ Many of these species are recreationally and commercially important, including sea trout, grouper, snapper, striped bass, oysters, blue crab, shrimp, and flounder.¹⁶ In South Carolina alone, thousands of small marsh islands are nestled within the estuaries and marshes.¹⁷ These islands are an integral part of the salt marsh ecosystem, providing habitat and haven for many species, particularly birds and mammals.¹⁸ In the fragile strip

⁹ *Id.*

¹⁰ See generally Barton H. Thompson, Jr., 15 SOUTHEASTERN ENVTL. L. J. 47 (2006).

¹¹ See *McQueen v. S.C. Coastal Council*, 580 S.E.2d 116, 119 (2003).

¹² *Coburg I*, 422 S.E.2d at 97; 2003 SC Attorney General Opinion, *supra* note 2.

¹³ MARINE RES. DIV., S.C. DEP'T OF HEALTH & ENVTL. CONTROL, AN ECOLOGICAL CHARACTERIZATION OF COASTAL HAMMOCK ISLANDS IN SOUTH CAROLINA [hereinafter *HAMMOCK ISLANDS*], available at http://www.csc.noaa.gov/id/DNR_Final_1_report_December.pdf (Dec. 1, 2004) (last visited Feb. 4, 2007).

¹⁴ See Lynda L. Butler, *Environmental Water Rights: An Evolving Concept of Public Property*, 9 VA. ENVTL. L.J. 323, 331 (1990).

¹⁵ See generally Nat'l Ocean Serv., Nat'l Oceanic & Atmospheric Admin., *About Estuaries*, <http://www.estuaries.gov/about.html> (last visited Feb. 4, 2007).

¹⁶ Nat'l Marine Fisheries Service, Nat'l Oceanic & Atmospheric Admin., *Habitat Conections* [sic]: *Wetlands, Fisheries and Economics*, <http://www.nmfs.noaa.gov/habitat/habitatconservation/publications/habitatconections/num4.htm> (last visited Feb. 4, 2007).

¹⁷ S.C. CODE ANN. REGS. 30-12(N)(1)(a) (2006).

¹⁸ MARINE RES. DIV., *supra* note 1.

between the land and the sea, these small islands are often a last refuge along South Carolina's rapidly developing coast.¹⁹

B. Coastal Population Growth Spurs Bridge Debate

Historically, most of South Carolina's small marsh islands were accessible by water and considered not worth the cost and trouble of constructing vehicular access.²⁰ Causeways were built on some larger islands located closer to the mainland, and the construction involved filling salt marshes for private purposes.²¹ Such filling of salt marshes for private purposes was outlawed in 1979, however, when the National Oceanic and Atmospheric Administration (NOAA) approved the South Carolina Coastal Management Program²² pursuant to the 1977 Coastal Tidelands and Wetlands Act²³ and the federal Coastal Zone Management Act.²⁴

By the 1990's however, the demand for coastal property had dramatically increased in South Carolina.²⁵ For example, Beaufort County (which is located on the coast and largely comprised of islands) experienced a thirty-six percent population increase in just one decade.²⁶ The population increase caused a tremendous increase in demand for waterfront property,²⁷

¹⁹ Pete Laurie, *Saltmarsh Refuge*, 51 SOUTH CAROLINA WILDLIFE 22, 22 (Nov.-Dec. 2004).

²⁰ See, e.g., *Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, S.C. ALC, No. 99-ALJ-07-0082-CC (May 1, 2000), available at <http://www.scale.net/decisions.aspx?q=4&id=5176> (noting the cost of the proposed bridge spanning marsh islands was approximately three million dollars and that the proposed bridge was considered the only feasible alternative for access).

²¹ A causeway is an earthen structure raised above water, marshland, or sand; the structure is human-modified to connect two or more marsh islands or to connect mainland or barrier islands to a marsh island. See NAT'L OCEANIC & ATMOSPHERIC ADMIN., SOUTH CAROLINA MARSH ISLANDS PROJECT DATA SET [hereinafter *NOAA DATA*], available at http://www.csc.noaa.gov/id/sc_marsh_islands_metadata.htm (last visited Feb. 4, 2007).

²² Ocean & Coastal Res. Mgmt., Nat'l Oceanic & Atmospheric Admin., *Ocean and Coastal Mgmt. in S.C.*, <http://coastalmanagement.noaa.gov/mystate/sc.html> (last visited Feb. 4, 2007). See also S.C. CODE ANN. REGS. 30-12(N) (2004), amended by S.C. CODE ANN. REGS. 30-12(N) (2006).

²³ Coastal Tidelands and Wetlands Act, S.C. CODE ANN. §§ 48-39-10 to -360 (2006).

²⁴ Coastal Zone Management Act, 16 U.S.C. §§ 1451-1466 (2000).

²⁵ R. VAN DOLAH ET AL., MARINE RES. RESEARCH INST., FINAL REPORT, AN EVALUATION OF LAND USE PATTERNS VERSUS ESTUARINE HABITAT IN SOUTH CAROLINA'S COASTAL ZONE 2 (2004).

²⁶ Beaufort County's population increased from 63,364 in 1980 to 86,425 in 1990. Beaufort County Library, *Population of Beaufort County, S.C.*, available at <http://www.bcgov.net/bfllib/populati.htm#Historical%20population%20statistics> (last visited Feb. 4, 2007).

²⁷ NOAA Coastal Services Center, Nat'l Oceanic & Atmospheric Admin., *Social and Demographic Trends that Affect the Need for Beach Renourishment*,

making it economically feasible to construct expensive bridges to small marsh islands. Some developers viewed marsh islands as the last frontier for waterfront development.

South Carolina's tidelands contain almost 3,500 marsh islands.²⁸ As of 2005, thirty-one percent of these already had bridges or causeways, or were permanently protected.²⁹ The remaining small marsh islands (almost 2,400) were potentially able to be developed with bridge access, absent specific regulations to limit bridges. More than half of these remaining islands were less than an acre in size, and ninety percent were smaller than five acres.³⁰ Many were remote and more than half located further than 500 feet from the mainland.³¹ Thus, accessing these remaining undeveloped islands would require extensive bridges with increasing lengths and increasing environmental impacts for smaller and smaller areas of potentially developable land.

C. Bridges to Marsh Islands Damage Public Resources

Devastating impacts can be associated with coastal development. For example, salt marshes and tidal creeks are very sensitive to contaminated runoff from nearby development.³² Bridges to marsh islands likely would facilitate more intense development in the heart of these critically important estuarine ecosystems. Rainwater flushes pollutants such as oil and gas, antifreeze, pesticides, and fertilizers into the marsh creeks from streets, driveways, and lawns.³³ These chemicals and pollutants can kill juvenile fish, crabs, oysters, and smaller organisms important to the marine food

<http://www.csc.noaa.gov/beachnourishment/html/human/socio/change.htm> ("Because the supply of coastal land is fixed, the increase in demand will lead to higher land prices in coastal counties. This will be particularly true along the coastline. . . . As land prices rise, it becomes profitable to develop marginal coastal properties. Thus, as land prices rise, we expect the improvement value of property in the coastal counties to increase.").

²⁸ OFFICE OF OCEAN & COASTAL RES. MGMT., S.C. DEP'T OF HEALTH & ENVTL. CONTROL, *S.C. Marsh Island Statistics* (June 23, 2005).

²⁹ *Id.* at 4. Email from Dan Burger, Dir., Communications and Tech Resources, Office of Ocean and Coastal Res. Mgmt., S.C. Dep't of Health & Envtl. Control, to author (Mar. 14, 2007) (on file with author) (providing an estimation to the Marsh Islands Advisory Committee that 3454 marsh islands were in South Carolina and 2395 of these islands were without a bridge and not protected).

³⁰ Email from Dan Burger, *supra* note 29.

³¹ *Id.*; NOAA DATA, *supra* note 21.

³² See S.C. DEP'T OF NATURAL RES., S.C. MARINE RES. DIV., TECHNICAL REPORT No. 99, EVALUATION OF THE IMPACTS OF DOCK STRUCTURES ON SOUTH CAROLINA ESTUARINE ENVIRONMENTS 43-44 (2002).

³³ *Id.* at 44.

web.³⁴ Additionally, shading from bridges directly kills marsh grass, destroying its important ecological function.³⁵

Studies by state scientists have demonstrated that increasing development of coastal zones (as indicated by more impervious surfaces such as roads and roofs) causes a dramatic decline in water quality and marine life.³⁶ In watersheds with approximately thirty percent impervious surfaces, marine life diversity in tidal creeks is reduced to only a few, pollution-tolerant species.³⁷ Shellfish beds near developed areas are routinely closed to harvesting for weeks after heavy rains, which carry pollutants into the marshes and creeks and so contaminate the shellfish that their consumption can be a threat to public health.³⁸

In addition to environmental problems associated with runoff, bridges to marsh islands facilitate development, thereby increasing dock construction and boat use in creeks that might otherwise have very little boat traffic.³⁹ Boat wakes and propeller wash damage tidal creeks in a number of ways: (1) they erode the soft mud shorelines, churning up the creek bottoms along with the organisms that live on the bottom; (2) they increase turbidity, potentially smothering eggs or clogging gills of young fish; and (3) they destroy oyster beds both by undermining them and preventing new beds from forming.⁴⁰ Oyster beds provide an important structural habitat and a haven for a variety of marine species in tidal creeks.⁴¹

As set forth in this section, therefore, South Carolina's marsh islands resources cried out for protection. This sections that follow this will detail the debates and history that lead to the 2006 regulatory amendments passed by the South Carolina General Assembly.

³⁴ *Id.*

³⁵ See *MGMT. OF SMALL DOCKS AND PIERS*, *supra* note 4, at 2-7.

³⁶ See R. VAN DOLAH ET AL., *supra* note 25.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See, e.g., *S.C. Coastal Conservation League*, S.C. ALC, No.99-ALJ-07-0082-CC (finding that the proposed "bridge will facilitate the development of 33 lots on the island" and 30 new docks were included in the proposed development).

⁴⁰ *MGMT. OF SMALL DOCKS AND PIERS*, *supra* note 4, at 14.

⁴¹ *Id.*

II. HISTORY OF THE MARSH ISLAND BRIDGE DEBATE

A. Existing State Regulations

The first state regulations designed to prevent inappropriate access to small, environmentally fragile marsh islands were enacted in 1993.⁴² Regulation 30-12 prohibited new causeway construction and required the South Carolina Department of Health and Environmental Control (DHEC) Office of Ocean and Coastal Resource Management (OCRM) to base bridge permit decisions on eleven factors.⁴³ The factors included public need for the proposed bridge, feasible alternative access to the island (*i.e.* by boat), and the impacts to protected resources.⁴⁴ The South Carolina legislature determined that these new regulations were necessary because the “ecological, cultural, natural, geological and scenic characteristics [were] being irretrievably damaged or lost by ill-planned development.”⁴⁵

B. Park Island: The Test Case

In 1998 LandTech, a Charleston developer, planned to build a subdivision on a twenty-nine acre marsh island called Park Island.⁴⁶ Under the then-existing regulations, LandTech applied to OCRM for a vehicular bridge permit over the marshes of the Wando River in Mt. Pleasant, South Carolina.⁴⁷ LandTech estimated the 1,430 foot-long and thirty-three foot-

⁴² S.C. CODE ANN. REGS. 30-12(N) (1993), *amended by* S.C. CODE ANN. REGS. 30-12(N)(6) (2006). “Access to Small Islands: Inappropriate development can affect the values set forth in Section 48-39-20(E) and the policies the Department is required to implement pursuant to Section 48-39-30. To prevent inappropriate access to small islands, permanent filling for access is prohibited, except for the expansion of existing useable causeways. Bridging will be considered based upon: (1) Distance of bridging required; (2) Type of bridging and dimensions of bridging requested; (3) Configuration of shoreline; (4) Size of the island including highland and critical area; (5) The existence of feasible alternative access; (6) Public need; (7) Impacts on protected resources; (8) The ability of the owner to tie into existing sewer utilities or meet SCDHEC standards for septic tanks; (9) Impact upon values set forth in Section 48-39-20(E); (10) The island is subject to stormwater and management policies set forth in the Program Document; (11) The owner must provide a dock master plan, and a development plan. Mitigation will be required for any fill placed in the critical area for widening causeways.” S.C. CODE ANN. REGS. 30-12(N) (1993), *amended by* S.C. CODE ANN. REGS. 30-12(N)(6) (2006).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ S.C. CODE ANN. § 48-39-20(E) (1994).

⁴⁶ S.C. Coastal Conservation League v. S.C. Dep’t of Health & Env’tl. Control, S.C. ALC, No. 99-ALJ-07-0082-CC (May 1, 2000), *available at* <http://www.scalc.net/decisions.aspx?q=4&id=5176> (last visited Feb. 4, 2007).

⁴⁷ *Id.*

wide bridge would cost \$3 million.⁴⁸ The bridge was deemed economically feasible because waterfront lot prices approached \$500,000 to \$1 million.⁴⁹ The purpose for the proposed bridge was to provide access for a residential subdivision of thirty-three lots with thirty docks.⁵⁰

OCRM issued the Park Island permit, but CCL and citizens objected on grounds that the bridge failed to meet the standards required by the existing regulations.⁵¹ The most striking reason CCL raised in challenging the permit was the failure to demonstrate a public need for the bridge.⁵² Public need can be a consideration in the Public Trust Doctrine⁵³ and was a factor for consideration the then-existing regulations.⁵⁴ CCL argued there was no demonstrated public need for the bridge and the purpose was developing a subdivision for private gain.⁵⁵ In addition, a feasible alternate means of access to the island would exist, as LandTech's development plans included building 30 docks.⁵⁶ CCL also claimed OCRM should have denied the permit because the proposed bridge would have been 1,430 feet long,⁵⁷ forty percent longer than the maximum dock permitted under then-current regulations.⁵⁸ The regulations required OCRM to consider bridge development impacts, giving particular attention to impacts on protected

⁴⁸ *Id.*

⁴⁹ See LandTech of Charleston, L.L.C., *Park Island: It's Only For A Select Few*, <http://www.landtechsc.com/parkisland.php> (last visited Feb. 4, 2007).

⁵⁰ Developers argued before the ALJ that, in addition to providing access to the lots, the bridge also had a public purpose. See *S.C. Coastal Conservation League*, S.C. ALC, No. 99-ALJ-07-0082-CC.

⁵¹ *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 610 S.E.2d 482, 484 (S.C. 2005).

⁵² See generally *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, C.A. No. 00-CP-10-5655, slip op. at 12-16 (S.C. 9th Cir. June 13, 2002); *S.C. Coastal Conservation League*, S.C. ALC, No. 99-ALJ-07-0082-CC.

⁵³ See generally WASH. STATE DEP'T OF ECOLOGY, NO. 93-54, THE PUBLIC TRUST DOCTRINE AND COASTAL ZONE MGMT. IN WASHINGTON STATE 8 (1991), available at <http://www.ecy.wa.gov/pubs/93054.pdf> (last visited Feb. 4, 2007). See also *Orion Corp. v. State*, 747 P.2d 1062, 1073 (Wash. 1987).

⁵⁴ S.C. CODE ANN. REGS. 30-12(N)(6) (1999), amended by S.C. CODE ANN. REGS. 30-12(N)(6) (2006).

⁵⁵ See *S.C. Coastal Conservation League*, C.A. No. 00-CP-10-5655, slip op. at 14.

⁵⁶ *S.C. Coastal Conservation League*, S.C. ALC, No. 99-ALJ-07-0082-CC.

⁵⁷ *Id.*

⁵⁸ The regulations, which governed bridge and dock development, placed a 1,000-foot maximum on dock length, but no comparable length limitation existed for bridges despite the similarity of the structures. See S.C. CODE ANN. REGS. 30-12(A)(1)(I) (1999), amended by S.C. CODE ANN. REGS. 30-12 (2006). Further, "the proposed Park Island bridge would be roughly *four times larger*" than the longest bridge previously approved. *S.C. Coastal Conservation League*, C.A. No. 00-CP-10-5655, slip op. at 17.

public trust resources and the ensuing development on the island.⁵⁹ LandTech's plans for the island included constructing hard, impervious surfaces, and the planned thirty three lots would all require driveways, walkways, roads, and 5,000-square-foot houses with 1,000-square-foot decks in a nine-acre area.⁶⁰ Under then-current regulations, OCRM was required to consider "[t]he extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area."⁶¹ However, CCL argued that OCRM could not properly consider these cumulative impacts because OCRM did not know how many other small marsh islands to which similar bridges could be built would affect the ecology of the tidelands.⁶² Issuing the Park Island permit would have set precedent and likely encouraged applications to build bridges to similar nearby islands.

CCL challenged the issuance of the permit to LandTech to develop Park Island on behalf of its 4,000 members who regularly use and enjoy the marshes and creeks of the state including those in the Park Island area.⁶³ Neighbors, whose view would be transformed from tranquil, beautiful marshes and creeks into one of a long concrete bridge with cars, lights, and noise, also were parties in the challenge.⁶⁴ They too asserted that LandTech had not met the regulations' public need requirements.⁶⁵ At the hearing before a South Carolina Administrative Law Judge (ALJ), OCRM staff member Richard Chinnis testified OCRM attempted to satisfy the public need requirement and believed it had done so, but acknowledged that OCRM had no official regulatory definition of public need,⁶⁶ which the regulations listed as an important consideration.⁶⁷ Although OCRM acknowledged it did not know what "public need" meant and scientists testified about the negative impacts on protected resources, the ALJ deferred

⁵⁹ See *id.* at (N)(1)(a)-(2)(a) (1999).

⁶⁰ *S.C. Coastal Conservation League*, S.C. ALC, No. 99-ALJ-07-0082-CC.

⁶¹ S.C. CODE ANN. REGS. 30-11(C)(1) (1999).

⁶² *S.C. Coastal Conservation League*, S.C. ALC, No. 99-ALJ-07-0082-CC.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* Richard Chinnis, Dir., Permitting and Certification, Ocean & Coastal Res. Mgmt., S.C. Dep't Health & Env'tl. Control, testified that in reviewing the permit for public need, OCRM staff members considered the voluntary buffer around Park Island as well LandTech's plans to donate a 12-acre parcel on the mainland for an educational facility. *Id.* In addition, LandTech had set aside a tract on the mainland for public schools and recreation. *Id.*

⁶⁷ S.C. CODE ANN. REGS. 30-12(N)(6) (2004), *amended by* S.C. CODE ANN. REGS. 30-12 (2006).

to the agency's judgment and ruled the permit validly issued.⁶⁸ CCL appealed the ALJ's ruling to the Coastal Zone Management Appellate Panel,⁶⁹ which affirmed the Final Order of the ALJ.⁷⁰

CCL appealed the Coastal Zone Management Appellate Panel's Final Administrative Order affirming the ALJ's ruling, and in June 2002, the South Carolina Circuit Court reversed the ALJ's ruling supporting OCRM's decision to grant the bridge permit.⁷¹ The Circuit Court ruling criticized OCRM for ignoring the plain meaning of the word "need."⁷² OCRM had allowed the developer to donate land on the mainland, unrelated to the bridge or the island, to justify the "public need" for the bridge to the island.⁷³ The Circuit Court held there was *no* evidence in the record supporting a finding of public need and to find to the contrary was an error of law warranting reversal.⁷⁴ The Circuit Court also found legal error in not applying any standard whatsoever to judge the length and size of the bridge.⁷⁵ The court found that the alternative access standard was misstated as "the existence of feasible alternatives," which was incorrect.⁷⁶ The Circuit Court ruling stated that it was erroneous to limit feasible alternatives to bridge access, only based on a proscribed outcome: because such complete development of the island might not be possible without a bridge.⁷⁷ The administrative law judge's refusal to recognize the future environmental impacts, such as, alterations to the ecological, cultural, and natural values,⁷⁸ which must be protected under 48-39-20(c), was also found to be reversible error.⁷⁹

OCRM and the developer appealed the Circuit Court decision to the South Carolina Supreme Court.⁸⁰ In February 2005, the South Carolina Supreme Court reversed the Circuit Court decision in the Park Island bridge

⁶⁸ *S.C. Coastal Conservation League*, S.C. ALC, No. 99-ALJ-07-0082-CC.

⁶⁹ Pursuant to statute, the Panel has quasi-judicial review of any final decision by an administrative law judge. S.C. CODE ANN. § 1-23-610 (2006).

⁷⁰ *S.C. Coastal Conservation League*, C.A. No. 00-CP-10-5655, slip op. at 1.

⁷¹ *Id.* at 1-2.

⁷² *Id.* at 12-13.

⁷³ *Id.* at 14-15.

⁷⁴ *Id.* at 12.

⁷⁵ *Id.* at 16.

⁷⁶ *S.C. Coastal Conservation League*, C.A. No. 00-CP-10-5655, slip op. at 19.

⁷⁷ *Id.* at 19-20.

⁷⁸ *Id.* at 20-22 (citing S.C. CODE ANN. § 48-39-20(e) (2002)).

⁷⁹ *S.C. Coastal Conservation League*, C.A. No. 00-CP-10-5655, slip op. at 22 (citing S.C. CODE ANN. § 48-39-20(c) (2002)).

⁸⁰ *S.C. Coastal Conservation League*, 610 S.E.2d at 484.

case.⁸¹ The Supreme Court ruled the OCRM regulations governing Access to Small Marsh Islands were void for vagueness because “small” was not defined.⁸² In light of the invalidity of this section of the regulations, the Supreme Court ruled the Park Island bridge permit was authorized under the next applicable, although less restrictive, section of the OCRM regulations governing transportation projects.⁸³ Prior to the 2005 Supreme Court decision, efforts had already begun to clarify ownership interests in marsh islands.⁸⁴ Title to many of these ecologically sensitive lands was of escalating importance because of the increasing development pressures, illustrated by the Park Island bridge controversy. Yet, it was further complicated by the Public Trust Doctrine, which directly limits the private development of state owned lands without a permit or grant from the state.⁸⁵

C. Marsh Island Ownership and the Public Trust

In 2000, while the Park Island case was making its way through the courts, CCL, with the assistance of retired attorney J. Randolph Pelzer, researched the marsh island ownership issue. Pelzer documented state law decreeing that the state owns all marsh islands absent a sovereign grant conveying an island to an individual.⁸⁶ In addition to recognition of the Public Trust Doctrine in the South Carolina Constitution,⁸⁷ statutes,⁸⁸ and regulations,⁸⁹ two unanimous South Carolina Supreme Court decisions identify the state as owner of marsh islands.⁹⁰ In the controversy leading to the relevant Supreme Court decisions, Lesser received a permit to construct a dock crossing the marsh and an island Coburg claimed to own.⁹¹ Because South Carolina’s coastal management agency⁹² granted Lesser’s dock

⁸¹ *Id.*

⁸² *Id.* at 485.

⁸³ *Id.* at 487 (citing S.C. CODE ANN. REGS. 30-12(F) (2004)).

⁸⁴ See *infra* Part II.C.

⁸⁵ Coburg, Inc. v. Lesser (*Coburg I*), 422 S.E.2d 96, 97 (S.C. Ct. App. 1992); Coburg, Inc. v. Lesser (*Coburg II*), 458 S.E.2d 547, 548 (S.C. 1995).

⁸⁶ Interview with J. Randolph Pelzer, Managing Partner, Pelzer & Salisbury, P.A., in Charleston, S.C. (May 23, 2000).

⁸⁷ S.C. CONST. art. III, § 31.

⁸⁸ S.C. CODE ANN. §§ 1-11-100, 48-39-120 (2000).

⁸⁹ S.C. CODE ANN. REGS. 30-4(2)(C) (2000), amended by S.C. CODE ANN. REGS. 30-4 (2006).

⁹⁰ *Coburg I*, 422 S.E.2d at 97; *Coburg II*, 458 S.E.2d at 548.

⁹¹ *Coburg I*, 422 S.E.2d at 97.

⁹² The predecessor to OCRM was the South Carolina Coastal Council and was incorporated into the coastal division of DHEC in 1994. See S.C. CODE ANN. § 1-30-45(B) (2006).

permit, it was a party in these cases.⁹³ The South Carolina Supreme Court ruled that:

Presumption of title to marshland rests in the State of South Carolina, to be held in trust for the benefit of the public. Further, ownership of the islands situate within marshland follows ownership of the marshland.⁹⁴

Encouraged by this research, CCL requested meetings with OCRM and the Attorney General's office. After thoroughly researching the legal issues, the Attorney General's office agreed with CCL's conclusions and began the process of assessing legal requirements that could prove individual as opposed to state ownership of a marsh island.⁹⁵ As the Attorney General would explain in a subsequent opinion issued at the request of then-Senator Arthur Ravenel, Jr., a specific sovereign grant conveying the island would be required for a party to prove title to marsh islands, and such a grant would be strictly construed in favor of the state.⁹⁶ The Attorney General's office agreed to review this proof of ownership for OCRM in permit applications to the state for activities on South Carolina marsh islands.⁹⁷

As a direct result of the Attorney General's opinion, OCRM now requires proof of ownership before a permit that will affect the state-owned islands can be considered.⁹⁸ As previously discussed, the predecessor to OCRM⁹⁹ was a party to cases in the mid-1990's in which the South Carolina Supreme Court clarified the requirement that a sovereign grant was necessary to overcome the state's presumed ownership of marsh islands.¹⁰⁰ In 2002, despite the Attorney General's office confirmation to OCRM that proof of a sovereign grant was necessary to prove an individual's ownership of a marsh island,¹⁰¹ OCRM did not actually investigate proof of ownership documented by a sovereign grant.¹⁰² As a result of the issues raised by the Attorney General, the agency did submit copies of permit applications to the

⁹³ *Id.*

⁹⁴ *Id.* (citations omitted).

⁹⁵ Interview with Henry McMaster, Attorney General, State of South Carolina, in Columbia, S.C. (Fall 2003).

⁹⁶ 2003 SC Attorney General Opinion, *supra* note 2.

⁹⁷ *Id.* at 5.

⁹⁸ S.C. CODE ANN. REGS. 30-4(2)(C) (2004), amended by S.C. CODE ANN. REGS. 30-4 (2006).

⁹⁹ See *supra* note 92.

¹⁰⁰ *Coburg I*, 422 S.E.2d at 97; *Coburg II*, 458 S.E.2d at 548.

¹⁰¹ Interview with Henry McMaster, Attorney General, State of South Carolina, in Columbia, S.C. (Fall 2003); see also 2003 SC Attorney General Opinion, *supra* note 2, at *1.

¹⁰² 2003 SC Attorney General Opinion, *supra* note 2, at *13-14.

Attorney General's office for review.¹⁰³ However, such submissions did not include the necessary sovereign grant documentation.¹⁰⁴

In light of the situation that had developed in 2003 then-Senator Authur Ravenel, Jr. requested an official opinion from the South Carolina Attorney General's office on the ownership issue.¹⁰⁵ Senator Ravenel posed the following question in his request for clarification:

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 use of these state lands) to 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?¹⁰⁶

On December 5, 2003, Attorney General Henry McMaster issued an official opinion responding to this request,¹⁰⁷ which stated:

OCRM possesses no authority to consider and grant permits for bridges to these islands, whose title is presumed to be in the State, for private development and use. Such a permit is tantamount to a de facto conveyance of these state lands (or use of these state lands) and the ouster of the public.¹⁰⁸

Further, Attorney General McMaster's opinion indicated that OCRM must require permit applicants to provide clear and convincing proof of island ownership (based a sovereign grant) to the Attorney General's office as part of any permit application.¹⁰⁹ Since this opinion was issued, the confirmation of a specific sovereign grant by the Attorney General's office has been

¹⁰³ Interview with Henry McMaster, Attorney General, State of South Carolina, in Columbia, S.C. (Fall 2003).

¹⁰⁴ *Id.*

¹⁰⁵ 2003 SC Attorney General Opinion, *supra* note 2, at *1.

¹⁰⁶ *Id.* at *2-3.

¹⁰⁷ *Id.* at *1.

¹⁰⁸ *Id.* at *15.

¹⁰⁹ *Id.* at *15-16.

necessary before OCRM issues a bridge or dock permit to an undeveloped marsh island.¹¹⁰

The Attorney General's opinion was controversial, however, and drew strong reactions from some members of stakeholders group appointed by OCRM.¹¹¹ This group met regularly to try to reach a consensus on new bridge regulations.¹¹² Lobbyists representing development interests in the stakeholders group and OCRM staff expressed opposition to the Attorney General's opinion.¹¹³ Opponents indicated they would have state legislation introduced in the upcoming legislative session to "fix" this ownership problem so that sovereign grants would not be required.¹¹⁴ However, the South Carolina State Constitution prevented a statutory fix to the ownership presumption by prohibiting the state from giving away state-owned lands to individuals absent a public purpose.¹¹⁵ Accordingly, following the Attorney General's opinion, the presumption remained that all marsh islands in South Carolina are state-owned.¹¹⁶

III. THE PATH TO MORE SPECIFIC BRIDGE REGULATIONS

A. *The Public Need Factor*

In 2000, after the Circuit Court's ruling that the Park Island bridge did not meet any public need,¹¹⁷ OCRM drafted changes to the bridge regulations that eliminated the public need and bridge length considerations.¹¹⁸ Public outcry against weakening the bridge regulations ensued and, at public hearings, many spoke in favor of making public need a requirement as opposed to one of the eleven various considerations as

¹¹⁰ Carolyn Risinger Boltin, Deputy Comm'r, Ocean & Coastal Res. Mgmt., S.C. Dep't of Health & Envtl. Control, Presentation at the University of South Carolina School of Law Southeastern Environmental Law Journal Symposium: Bridging the Divide: Public and Private Interests in Coastal Marshes and Marsh Islands (Sept. 8, 2006) available at <http://www.law.sc.edu/elj/2006symposium/> (last visited Feb. 4, 2006).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See generally Tyrone Walker, *Battle Over Bridge Plan Goes to State's High Court*, POST AND COURIER (Charleston), Oct. 18, 2004, at 1D.

¹¹⁴ See generally Robert Behre, *Opinion May Limit Bridges in Marshes: Proof of Island Ownership Crucial*, POST AND COURIER (Charleston), Dec. 29, 2003, at 1A.

¹¹⁵ S.C. CONST. art. III, § 31; see also 2003 SC Attorney General Opinion, *supra* note 2.

¹¹⁶ 2003 SC Attorney General Opinion, *supra* note 2, at *15-16.

¹¹⁷ S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control, C.A. No. 00-CP-10-5655, slip op. at 12 (S.C. 9th Cir. June 13, 2002).

¹¹⁸ 24-12 S.C. Reg. 18 (Dec. 22, 2000).

required by the then-current regulations.¹¹⁹ Initially, OCRM left public need as a consideration.¹²⁰

Initially, in April 2001, OCRM's governing body, the DHEC Board,¹²¹ responded to public concern and amended the regulations to *require* a showing of public need before a bridge permit could be considered.¹²² In 2002, when the regulations went to the legislature for final approval, OCRM staff worked with developers' lobbyists to craft and promote an amendment with an inconsistent definition of public need.¹²³ This alternative proposed definition allowed, but did not require, a showing of public need for the bridge.¹²⁴ It also allowed developers to mitigate a lack of public need with some general benefit to the public regardless of size or location in the state.¹²⁵ CCL, through its public interest lobbying efforts, prevented this weakened form of regulation from taking effect.¹²⁶ Yet, these two differing statements as to public need created uncertainty within OCRM and resulted in no change to the bridge regulations.¹²⁷ Public need thus remained as one of the eleven factors to consider in making bridge permitting decisions when no significant change to the regulations was adopted.¹²⁸

B. Seeking Consensus

In 2003 and 2004, OCRM staff again attempted to meaningfully amend the bridge regulations. OCRM appointed another stakeholder-interest group to begin seeking basic information on marsh islands.¹²⁹ As part of this effort,

¹¹⁹ See, e.g., Jimmy Leland, Letter to the Editor, *Bridges over Wetlands*, POST AND COURIER (Charleston), Apr. 9, 2002, at 10A.

¹²⁰ See S.C. CODE ANN. REGS. § 30-12(N)(6) (2000).

¹²¹ For an organizational chart of DHEC, see http://www.scdhec.net/administration/docs/org_chart.pdf (Feb. 8, 2006) (last visited Feb. 4, 2007).

¹²² 25-5 S.C. Reg. 18 (May 25, 2001).

¹²³ Arlie Porter, *DHEC Board Prohibits Dock Construction on Small Creeks; Concessions to Developers Allowed to Ease Passage of Regulations in the Legislature*, POST AND COURIER (Charleston), Apr. 12, 2002, at 1B; Sammy Fretwell, *Proliferation of Docks Threatens Salt Marshes*, THE STATE (Columbia), Apr. 4, 2002, at B1.

¹²⁴ Porter, *supra* note 123.

¹²⁵ *Id.*

¹²⁶ See, e.g., Editorial, *Protect Marshes in Developing State Bridge Policy*, THE STATE (Columbia), Mar. 28, 2002, at A16 ("[A] coalition of environmental groups is asking that new bridges to marsh islands be allowed only when there is a compelling public need.").

¹²⁷ See S.C. CODE ANN. REGS. § 30-12(N)(6) (2003).

¹²⁸ 26-5 S.C. Reg. 31 (May 24, 2002); S.C. CODE ANN. REGS. 30-12(N)(6) (2003), *amended* by S.C. CODE ANN. REGS. 30-12 (2006).

¹²⁹ Boltin, *supra* note 110.

the South Carolina Department of Natural Resources¹³⁰ attempted an ecological characterization of marsh islands by studying a very small subset of the islands under a limited budget.¹³¹ In addition, NOAA compiled basic data on the number, size, and distance from the mainland of marsh islands in South Carolina.¹³² This second attempt to amend the regulations failed when the OCRM-appointed stakeholder group could not reach consensus.¹³³ But the issue was brought to a head when the South Carolina Supreme Court invalidated the 1993 regulations in the Park Island decision.¹³⁴

After the 2005 Supreme Court invalidation of the 1993 bridge regulations, the DHEC Board took swift action to develop new regulations.¹³⁵ With input from interest groups on both sides, the DHEC Board appointed a new, balanced group of stakeholders to the Marsh Islands Advisory Committee, which would be working under new leadership at OCRM.¹³⁶ This stakeholders group was charged with addressing the Supreme Court's ruling on the vagueness of the bridge regulations.¹³⁷ The group, representing developers, realtors, and conservationists, was able to arrive at a consensus and unanimously recommended revised regulations for promulgation by the DHEC Board.¹³⁸ The group designed the proposed new regulations to balance appropriate development with protection of Public Trust resources.¹³⁹ The DHEC Board adopted the recommendations with

¹³⁰ South Carolina Department of Natural Resources Homepage, <http://www.dnr.sc.gov> (last visited Feb. 4, 2007).

¹³¹ *HAMMOCK ISLANDS*, *supra* note 13.

¹³² *NOAA DATA*, *supra* note 21.

¹³³ Boltin, *supra* note 110.

¹³⁴ *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 610 S.E.2d 482 (S.C. 2005).

¹³⁵ DHEC appointed a citizen stakeholder group, the Marsh Island Advisory Committee, after the regulations were invalidated and passed emergency regulations until permanent regulations could be formally adopted. See Ocean & Coastal Res. Mgmt., S.C. Dep't of Health and Envtl. Control, *OCRM Outreach & Initiatives Marsh Island Advisory Committee*, <http://www.scdhec.net/environment/ocrm/outreach/marshislands.htm> (last visited Feb. 4, 2007) (containing links to the Marsh Islands Advisory Committee Charge, emergency regulations for bridges to marsh islands, and Committee Members).

¹³⁶ Richard Chinnis & Debra Hernandez, Ocean & Coastal Res. Mgmt., *S.C. Coastal Marsh Island Mgmt. Strategy, Address at the 14th Biennial Coastal Zone Conference* 1-2 (July 17-21, 2005), *available at* http://www.csc.noaa.gov/cz/2005/CZ05_Proceedings_CD/pdf%20files/Chinnis.pdf (last visited Feb. 4, 2007); see also *DHEC: Backs Ban on Marsh Bridges*, SUN NEWS (Myrtle Beach), Oct. 18, 2005, at C3.

¹³⁷ Chinnis & Hernandez, *supra* note 136, at 5.

¹³⁸ *Id.* at 5-6; Boltin, *supra* note 110.

¹³⁹ *Id.* at 1-2.

minor amendments and proposed the resulting regulations to the legislature for final approval in 2006.¹⁴⁰

These consensus amendments contained three basic components: (1) a clear statement of island size eligible for a bridge, (2) development standards to reduce impacts, and (3) a special exception that encourages conservation by allowing bridges to islands placed under conservation easements that are not otherwise eligible for bridges.¹⁴¹ Stakeholders designed the three components to work together to balance a level of appropriate development with public resource protection.¹⁴² While allowing a limited number of private bridges to islands, the regulations were intended to minimize damage to public trust resources by implementing heightened environmental safeguards.¹⁴³ One rationale underlying the proposed amendments was that if an individual were to be allowed to build a bridge across public trust tidelands, that individual must significantly reduce the impacts of the resulting development to those public trust resources (including public views, wildlife habitat, and clean water).¹⁴⁴

The new regulations clearly defined when an island would be eligible for a bridge permit using a matrix that was based on island size and distance from the mainland.¹⁴⁵ Islands less than two acres in size would not have been eligible for a bridge permit.¹⁴⁶ The island size and distance requirements under that proposal would have allowed potentially 180 bridges to marsh islands. However, private bridges in significant natural areas designated for conservation would have been prohibited absent a special exception.¹⁴⁷

The second part of the regulations would have set development standards designed to reduce and mitigate the impacts to public trust tidelands for permitted bridges.¹⁴⁸ They also provided that development on the island would have to be designed to reduce impacts to public trust resources including water quality, wildlife habitat, and public views.¹⁴⁹

¹⁴⁰ Specific Project Standards for Tidelands and Coastal Waters, 29-10 S.C. Reg. 74 (proposed Oct. 28, 2005).

¹⁴¹ *Id.*

¹⁴² Chinnis & Hernandez, *supra* note 136, at 2-3.

¹⁴³ 29-10 S.C. Reg. 74.

¹⁴⁴ Chinnis & Hernandez, *supra* note 136; 29-10 S.C. Reg. 74.

¹⁴⁵ 29-10 S.C. Reg. 74.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

These standards would have included a 75 percent reduction of the number and 50 percent reduction of the maximum length of docks on the island from previous regulations.¹⁵⁰

Finally, the proposed regulations would have allowed for a special exception to the bridge permitting rules. The exception would have encouraged conservation and allowed flexibility, but only in cases where the bridge would have served an overriding public interest.¹⁵¹ The proposed exception would have applied if impacts to public trust resources were significantly reduced if a bridge were built as compared to the development that likely would have occurred without the bridge.¹⁵² Such a special exception would have encouraged conservation because it would have required a permanent conservation easement to secure the protective measures. Examples of ways development impacts could be reduced by such easements would have included significantly reduced housing density, fewer docks, and fewer impacts to views, as well as increased riparian buffers and protection of wildlife habitat.¹⁵³

C. New Regulations for Access to Coastal Islands

Once the DHEC Board approved the regulations as proposed in 2006 by the Marsh Islands Advisory Committee, South Carolina law¹⁵⁴ required the regulations go before the South Carolina General Assembly for its approval. The 2006 South Carolina Senate Fish, Game and Forestry Committee voted for the regulations as written.¹⁵⁵ However, the South Carolina House Agriculture and Natural Resources Committee voted to eliminate most of the development standards designed to protect water quality, wildlife habitat and public views.¹⁵⁶ Developers' attorneys argued at legislative hearings that while they supported most provisions in the development standards, OCRM had overstepped its regulatory authority by requiring further development

¹⁵⁰ *Id.*

¹⁵¹ 29-10 S.C. Reg. 74.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ S.C. CODE ANN. § 44-1-70 (2006) ("All rules and regulations promulgated by the [DHEC] Board shall be null and void unless approved by a concurrent resolution of the General Assembly at the session of the General Assembly following their promulgation.").

¹⁵⁵ See generally Bo Petersen, *Marsh Island Bridges in Flux*, POST AND COURIER (Charleston), Apr. 16, 2006, at B1.

¹⁵⁶ 30-6 S.C. Reg. 167 (June 23, 2006) (amending S.C. CODE ANN. REGS. 30-12(N) (2005)) (identifying the substantial amendments to the proposed regulations passed by the House and adopted by DHEC).

standards associated with receipt of a bridge permit.¹⁵⁷ Development interests further objected that OCRM's regulation of development standards exceeded delegated authority, citing as unauthorized the inclusion of buffers and impervious surface limitations designed to protect wildlife habitat and water quality; additional safeguards for septic systems, polluted storm water, and freshwater wetlands to protect clean water; and requirements that outdoor lights shine downward and not in the face of the public enjoying the marsh view or engaged in evening activities such as fishing, flounder gigging, or shrimp baiting.¹⁵⁸

To settle this controversy, one Representative on the House Committee requested an official opinion from the South Carolina Attorney General.¹⁵⁹ Although the 16-page legal opinion from the state's chief attorney made it clear everything in the DHEC-approved regulations were completely within the agency's authority,¹⁶⁰ the House Agriculture and Natural Resources Committee nevertheless insisted upon removal of most of the development standards.¹⁶¹ Legislators did leave intact the reduction in dock length and numbers and added setbacks for septic systems.¹⁶² Another change the House Committee approved allowed one-acre islands within 100 feet of the mainland to potentially qualify for a permit, thus creating more opportunities for bridge permits.¹⁶³ These amended regulations passed the full General Assembly,¹⁶⁴ DHEC concurred with these changes,¹⁶⁵ and the regulations became effective in June 2006.¹⁶⁶

IV. CONCLUSION

As discussed above, South Carolina's original 1993 regulations for "Access to Small Marsh Islands" were declared unconstitutionally vague by

¹⁵⁷ Op. S.C. Att'y Gen., 2006 S.C. AG LEXIS 57 at *3-5 (Apr. 3, 2006); see Sammy Fretwell, *Plans in Works to Undo Laws Protecting Coast*, THE STATE (Columbia), Mar. 12, 2006, at B1.

¹⁵⁸ Op. S.C. Att'y Gen., 2006 S.C. AG LEXIS 57 at *3-5 (Apr. 3, 2006).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ See 30-6 S.C. Reg. 167 (June 23, 2006) (amending S.C. CODE ANN. REGS. 30-12(N) (2005)) (identifying the substantial changes to the proposed regulations by the House Committee).

¹⁶² S.C. CODE ANN. REGS. 30-12(N) (2006).

¹⁶³ 30-6 S.C. Reg. 167.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ S.C. CODE ANN. REGS. 30-12(N).

the South Carolina Supreme Court in 2005.¹⁶⁷ As finally enacted, the resulting revised 2006 regulations are very specific, enforceable, and address the questions that the South Carolina Supreme Court raised with regard to the original regulations.¹⁶⁸ The new regulations are longer, more specific, and more complex than the old regulations. This is a result of the 2005 Marsh Islands Advisory Committee consensus on many contentious issues.¹⁶⁹ The product is something that OCRM can use consistently and fairly in applying the rules.

The 2006 regulations, "Access to Coastal Islands," allow OCRM to consider applications for bridge permits on approximately 10 percent of South Carolina's remaining 2,400 marsh islands, these are the islands that are larger or closer to the mainland.¹⁷⁰ The regulations do not allow bridges, and the resulting intense development, to span from island to island, sprawling far out across the public trust tidelands. This was CCL's primary goal.

In this instance, the legal and political system worked. The political system responded to the varied public concerns and balanced the private development interests with conservation goals in such a way as to allow the bridge regulations to be approved by the legislature. To this end, South Carolina's Public Trust Doctrine was respected.

¹⁶⁷ S.C. Coastal Conservation League v. S.C. Dep't of Health & Env'tl. Control, 610 S.E.2d 482 (S.C. 2005).

¹⁶⁸ S.C. CODE ANN. REGS. 30-12(N).

¹⁶⁹ Chinnis & Hernandez, *supra* note 136, at 5-6.

¹⁷⁰ S.C. CODE ANN. REGS. 30-12(N).