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CORPORATE SOCIAL RESPONSIBILITY AND CONSERVATION: THE PRESERVATION OF ECOLOGY AND CULTURE TO SUSTAIN THE SEA ISLANDS

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With an estimated 50 to 75 % of the growth and development in the southeastern United States during the next 30 years projected to occur along the coastal plain, traditional southern communities are being replaced by retirement communities and exclusive vacation resorts. Natural resource managers, urban and regional planners, and social scientists are concerned that the influx of new residents and visitors to this newly gentrified coastal zone will result in the loss of cultural identity and environmental quality.¹

ABSTRACT

This Article posits that corporate real estate development of coastal property can coexist with conservation strategies to preserve the ecological and cultural integrity of the barrier islands along the southeastern seaboard. Reformed corporate land use techniques that reflect prudent and sustainable master-planned communities may result in manageable natural and cultural resource preservation. The Introduction defines the historical, cultural, and ecological significance of the Sea Islands, an archipelago stretching from the Carolinas to Florida. Part I presents a series of corporate real estate redevelopment projects on the Sea Islands for analysis. Part II sets forth viable solutions for the implementation of sound environmental policies in conjunction with corporate

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¹ April S. Turner, *Summary*, in *TRENDS IN LAND USE POLICY AND DEVELOPMENT IN THE COASTAL SOUTHEAST* 23–45 (G.S. Kleppel et al., eds. 2006).

development strategies to maximize both ecological and economic returns. The ecological supervision and government oversight of the fragile Sea Island ecosystem and cultural infrastructure are also reviewed in proposing innovative techniques for the historic preservation of traditional land and customs. The analysis includes the significant contributions of the Gullah and Geechee indigenous Sea Island populations in managing a supportive green economy based on sustainable practices. A range of corporate, private, and government interests that inhabit the unique Sea Island landscape are examined in developing best practices to curtail the vast land loss and natural resource depletion currently occurring on the Sea Islands. Corporate accountability and the successful use of land trusts are advanced as ways to preserve the shrinking Gullah and Geechee communities of the Sea Islands. This Article provides a blueprint for overcoming the significant barriers to corporate collaboration with local communities and naturalists in defining cultural space and to ensure public enjoyment of precious natural resources.

INTRODUCTION

*The Gullah/Geechee people of the Low Country and Sea Islands of South Carolina, Georgia, Florida, and North Carolina are a distinctive people. They are also the only African American population of the United States with a separate, long-standing name identifying them as a separate people. They are distinct among African American peoples in this development of a tradition that depends as much upon maritime resources as upon land resources. Historically they are speakers of the only true African American creole language of the continental United States.*²

A. *The Gullah-Geechee Connection to the Sea islands*

The Sea Islands are concentrated along the coasts of South Carolina, Georgia, and Florida. The Sea Islands hold a place of cultural, historical, and ecological significance in our country. The history of the

² *Gullah/Geechee History & Culture*, NAT'L PARK SERV., at 5, available at <http://www.nps.gov/guge/historyculture/index.htm> [hereinafter *Gullah Geechee*] ("Thus, Gullah/Geechee cultural heritage, eating habits, cooking styles, music, language and traditions have made significant contributions, not only to the lives of southerners but also to all Americans. Recognizing the pivotal place that Gullah/Geechee people, language, folklore, and culture have occupied in African American scholarship.").

Sea Islands is intertwined with considerations of race, ethnicity, and class. The Gullahs of South Carolina and the Geechees of Georgia are modest African-American communities that stem from the descendants of slaves who worked the land of the Sea Islands.³ After emancipation from slavery, African Americans purchased land in the Sea Islands and raised their families for generations in tight-knit barrier island communities.⁴ Currently, African-American life in the Sea Islands is threatened due to an influx of development resulting in the near decimation of Gullah and Geechee land and history.⁵ This cultural legacy is now in danger of extinction in the Sea Islands.⁶ However, the Sea Islands are not the only areas at risk for encroachment into Gullah and Geechee lands.⁷

For centuries, the Gullahs and Geechees maintained their own way of life through a thriving Sea Island economy based on ecology.⁸ The Gullahs and Geechees nurtured viable oceanic and wildlife resources to sustain their people for decades in isolation from the United States mainland.⁹ Then came “destruction-ment” in the form of land development from eager real estate brokers who discovered the unmatched beauty of the Sea Islands.¹⁰ A takeover by big business land buyers converted the isolated Sea Islands from a peaceful paradise to a bastion of popular,

³ See *id.* at 1.

⁴ See Elizabeth Brabec & Sharon Richardson, *A Clash of Cultures: The Landscape of the Sea Island Gullah*, 26 *LANDSCAPE J.* 151, 152 (2007), available at http://works.bepress.com/elizabeth_brabec/16; *Gullah Geechee*, *supra* note 2, at 1.

⁵ See *Gullah Geechee*, *supra* note 2, at 2. “Unique Communities: Gullah Geechee, South Carolina coast: This coastline is home to the Gullah or Geechee people, descendants of slaves who have maintained crafts, traditions and language from West Africa.” Janet Paraschos, *Shining the Spotlight on Endangered Properties*, 40 *REAL ESTATE REV. J.* 9, 12 (2011) (providing the annual list of eleven endangered properties as designated by the National Trust).

⁶ See *Gullah Geechee*, *supra* note 2, at 4.

⁷ *Id.* (“Mainland Gullah/Geechee communities are also threatened by increasing coastal development and population growth with the resulting encroachment into rural neighborhoods.”).

⁸ See *id.* at 1–2 (“Coastal development, changing job markets, and population shifts have forced many Gullah/Geechee people to leave their ancestral family lands. The traditional economy of farming, fishing, hunting, and small-scale marketing of subsistence products has been replaced by suburban and resort service economy. These changes threaten Gullah/Geechee cultural survival and their distinct identity as a people who have survived since colonial times.”).

⁹ See *id.* (“Many traditional Gullah/Geechee communities have been lost to real estate development, encroachment by outsiders, and the resulting economic hardship.”).

¹⁰ See Shelley Walcott, *Unique Gullah/Geechee Culture at Risk*, CNN STUDENT NEWS (Feb. 26, 2002, 10:13 AM), <http://archives.cnn.com/2002/fyi/news/02/13/gullah/index.html>.

commercialized resorts.¹¹ The complete character of the Sea Islands was changed forever.

B. The Changing Demographics of the Sea Islands

Land purveyors were persistent in whitewashing the colorful Sea Islands.¹² The Gullahs and Geechees were pushed to the periphery of the Sea Islands to make room for wealthy transplants.¹³ Instead of living in a cohesive racial and economic environment, Sea Island resort and community developers erected gates and barriers on the barrier islands.¹⁴ Traditional Gullah and Geechee land was legally forfeited to real estate developers whose strong-arm tactics proved to be too much for the declining Gullah and Geechee people to handle.¹⁵ Over the course of time, corporate entities have designed the Sea Islands to be aesthetically pleasing to their own palette in defining ecological beauty and determining cultural land use without input from the indigenous African-American population that once dominated the area.

C. The Corporatization of the Sea Islands

Private and public attempts to curb the insatiable corporate appetite for Gullah and Geechee land have not led to the restitution of Gullah and Geechee land.¹⁶ The Gullahs and Geechees remain marginalized in the Sea Islands.¹⁷ The historic people of the Sea Islands are in danger, and the environment is being tested under the enormous stress of fervent real estate development. Corporate interests now seek to commoditize the Sea Islands at the expense of the people, places, and plants that inhabit the area.¹⁸ Legal, political, and public action and inaction are at the crossroads of preservation efforts to restore and retain the traditional integrity of the Sea Islands to include the Gullah and Geechee culture, tradition, and ecological life.¹⁹

¹¹ See *Gullah Geechee*, *supra* note 2, at 3.

¹² See *id.*

¹³ See *id.* at 1–4.

¹⁴ See *id.* at 3.

¹⁵ See *id.* at 2.

¹⁶ See *id.* at 4.

¹⁷ See Kaleb Warnock, *Goodwine Speaks About Gullah/Geechee People*, IOWA ST. DAILY (Sept. 14, 2011, 7:23 PM), http://www.iowastatedaily.com/news/article_06e11ee8-df31-11e0-ba1c-001cc4c03286.html; *Gullah Geechee*, *supra* note 2.

¹⁸ See Brabec, *supra* note 4, at 151.

¹⁹ National Heritage Areas Act of 2006, Pub. L. No. 109-338, 120 Stat. 1783 (codified at 16 U.S.C. 461, Sec. 295A).

Current efforts to limit the corporatization of the Sea Islands to protect ecological and cultural life in the Sea Islands are still incomplete. In using the personal narratives of affected Gullah and Geechee communities, our political and community leaders may be compelled to protect the precious natural and cultural resources of the Sea Islands. By demonstrating the general success of active community engagement and persistent preservation practices, at-risk communities may be equipped to shield themselves from the onslaught of overdevelopment and the environmental toxins that result. A collaborative approach is suggested to unify public, private, and philanthropic strategies to preserve Sea Island land and history. This Article seeks to provide a comparative study of African-American coastal communities in the southeast to provide context to the problem and suggest possible solutions for sustaining the Seal Island environment and its stewards.

I. A BRIEF HISTORY OF THE SEA ISLANDS

The coastal Sea Islands located in the Southeast sector of the United States are colloquially referred to as the “low country.”²⁰ These barrier islands²¹ stretch from South Carolina through North Florida, and include such distinguished destinations as Cumberland Island,²² Jekyll Island, St. Simons Island,²³ and Hilton Head Islands.

²⁰ See PATRICIA GUTHRIE, *CATCHING SENSE: AFRICAN AMERICAN COMMUNITIES ON A SOUTH CAROLINA SEA ISLAND* 1 (1996) (citing Margaret Creel in identifying the low country of South Carolina as the location of Gullah slaves); PATRICIA JONES-JACKSON, *WHEN ROOTS DIE: ENDANGERED TRADITIONS ON THE SEA ISLANDS* 7 (1987) (“Most [Sea] islands are characterized by graceful palmetto trees, expansive green terrain, and atmospheric haze. The landscape in fact bears a striking resemblance to the topography of such coastal countries as Nigeria, Ghana, Angola, and Liberia, the tropical homelands of the Sea Islanders’ ancestors.”).

²¹ See John M. Zeigler, *Origin of the Sea Islands of the Southeastern United States*, 49 *GEOGRAPHICAL REV.* 222, 222 (1959) (“The coast of South Carolina and Georgia is characterized by a chain of islands parallel to the mainland and separated from it by salt marshes; passes or sounds between the islands lie approximately opposite the mouths of coastal rivers.”).

²² See Charles Salter, Jr., *JFK Jr.’s Wedding Isle: Cumberland Island’s Isolation Offers Peace and Privacy for Celebs, Plain Folk Alike*, *L.A. TIMES*, Nov. 10, 1996 (John F. Kennedy, Jr. and Carolyn Bessette Kennedy married on Cumberland Island); *Places to Go*, NAT’L PARK SERV., <http://www.nps.gov/cuis/planyourvisit/placestogo.htm> (listing the historic African-American Church on Cumberland Island as the site of the Kennedy wedding) (last visited Feb. 8, 2013).

²³ *G8 Legacy Project Finds Home at St. Simons Island Lighthouse*, *GEORGIA GOV* (Mar. 24, 2004), http://sonnyperdue.georgia.gov/00/press/detail/0,2668,78006749_92321069

The Sea Islands played an integral role in the slave economy as the home of high quality cotton crops.²⁴ Sea Island cotton was a lucrative crop due to its high demand in Europe.²⁵ Rice and indigo also served as cash crops sustained by African slaves.²⁶ Accordingly, the Sea Islands played an integral role in the slave trade.²⁷ The Spanish, French, and British were early settlers in the Sea Islands.²⁸ Slaves were imported to the Sea Islands from West Africa for economic gain through agricultural means even after slavery was outlawed in the British colonies.²⁹ Fort Mose in Saint Augustine, Florida, located just south of the Sea Islands, became a refuge for free Africans and runaway slaves.³⁰ During the Civil War, white plantation owners and their families on the Sea Islands left the area seeking retreat from Union soldiers, thereby abandoning their land and their slaves.³¹ Subsequently, African Americans were among

_92340381,00.html (explaining that the 2004 G8 Summit was held at Sea Island, and St. Simons Island is the site of a legacy project commemorating the summit housed at the Coastal Heritage Center sponsored in part by the Coastal Georgia Historical Society and the Georgia Department of Natural Resources).

²⁴ See GUTHRIE, *supra* note 20, at 1, 5 (stating that the South Carolina Sea Islands were home to wealthy plantations); MICHAEL N. DANIELSON, PROFITS AND POLITICS IN PARADISE: THE DEVELOPMENT OF HILTON HEAD ISLANDS 8 (1995) (“Underpinning this flourishing economy [in the Hilton Head area] were slaves, who accounted for more than 80 percent of the area’s 40,000 inhabitants.”); see also *History and Archaeology at the Robert Stafford Plantation, Cumberland Island*, NAT’L PARK SERV., <http://www.nps.gov/seac/arch79.htm> (last visited Feb. 8, 2013).

²⁵ See DANIELSON, *supra* note 24, at 8 (indicating that the cotton grown on the Sea Islands was infamously of a superior grade and sold for exponentially more than other cotton products, introducing wealth into the local economy).

²⁶ See *id.* at 8.

²⁷ See GUTHRIE, *supra* note 20, at 1 (noting that the South Carolina Sea Islands served as a port in the slave trade from West Africa).

²⁸ See DANIELSON, *supra* note 24, at 7; see also CHARLES SEABROOK, CUMBERLAND ISLAND: STRONG WOMEN, WILD HORSES 13 (2004).

²⁹ Brabec, *supra* note 4, at 152. See generally Janie Gilliard Moore, *Africanisms Among Blacks of the Sea Islands*, 10 J. OF BLACK STUDS. 467 (1980).

³⁰ See *Gullah/Geechee Cultural Heritage Corridor*, NAT’L PARK SERV., http://www.nps.gov/nr/travel/cultural_diversity/Gullah_Geechee_Cultural_Heritage_Corridor.html [hereinafter *Gullah/Geechee Heritage Corridor*] (last visited Feb. 8, 2013) (“Gracia Real de Santa Teresa de Mose or Fort Mose in Saint Augustine is not only located in the nation’s oldest city but also is recognized as the oldest sanctioned free black community in the United States. . . . Today, Fort Mose historic state park is a National Historic Landmark. Visitors enjoy both the ecological treasures and historical past of Fort Mose.”); see also *Fort Mose Historic State Park*, FLA. ST. PARKS, <http://www.floridastateparks.org/FortMose/> (“In 1994 the site was designated as a National Historic Landmark and was listed on the National Register of Historic Places. In 2009 the National Park Service named Fort Mose as a precursor site on the National Underground Railroad Network to Freedom.”).

³¹ See JONES-JACKSON, *supra* note 20, at x.

the sole inhabitants on the Sea Islands after the mass white migration to the mainland.³²

A. *The Civil War and Special Field Order 15*

After the Civil War, in an effort to effectuate the “forty acres and a mule” doctrine, Army General William Tecumseh Sherman issued Special Field Order Number 15 on January 15, 1865.³³ Special Field Order 15 stated in part:

The islands from Charleston, south, the abandoned rice fields along the rivers for thirty miles back from the sea, and the country bordering the St. John’s River, Florida, are reserved and set apart for the settlement of negroes. . . . At Beaufort, Hilton Head, Savannah, Fernandina, St. Augustine, and Jacksonville, the blacks remain in their chosen or accustomed vocations, but on the islands, and in the settlements hereafter to be established, no white person whatever, unless military officers and soldiers, detailed for duty, will be permitted to reside; and the sole and exclusive management of affairs will be left to the freed people themselves, subject only to the United States military authority and the acts of Congress. . . .³⁴

The land described in Special Field Order 15 encompasses the Sea Islands.³⁵ White land owners found the Sea Island terrain undesirable at the time, especially after they could no longer exploit the land for profit.³⁶

³² See Joseph A. Opala, *The Gullah: Rice, Slavery, and the Sierra Leone–American Connection, Origin of the Gullah*, <http://www.yale.edu/glc/gullah/04.htm>; *Gullah Geechee*, *supra* note 2.

³³ See Order by the Commander of the Military Division of the Mississippi, Major General W.T. Sherman, in the field, Savannah, Ga., Jan. 16, 1865, *available at* <http://www.history.umd.edu/Freedmen/sfo15.htm>; *see also Sherman’s Field Order No. 15*, NEW GA. ENCYCLOPEDIA (Sept. 25, 2005), <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-3353>.

³⁴ THE LEGACY OF IBO LANDING: GULLAH ROOTS OF AFRICAN AMERICAN CULTURE 165 (Marquetta L. Goodwine & The Clarity Press Gullah Project eds., 1998).

³⁵ *Id.* (“This order was the document which provided the basis for the claim of ‘40 acres and a mule’ being entitled to every African American. However, most who speak about this claim do not realize that the Sea Islands was [sic] the area in which these 40 acres were to be apportioned.”).

³⁶ *See generally* Markham Shofner, *Man, Nature and New Ideas: The Legacy of Sea Pines Plantation* (2011) (unpublished B.A. thesis, Pomona College), *available at* <http://ea.pomona>

Many African Americans inhabiting the Sea Islands were not even aware of Special Field Order Number 15,³⁷ as President Andrew Johnson expeditiously repealed Special Field Order 15.³⁸ President Johnson then issued pardons in an attempt to restore property distributed pursuant to the order back to the previous white plantation owners.³⁹ However, President Johnson did not end the opportunity of African-American land ownership on the Sea Islands, as the deeded white land owners were no longer in the area, and in effect, abandoned their property.⁴⁰

African-American Sea Island inhabitants were eventually able to purchase plots of land and build their own homes there.⁴¹ As a result, African Americans constituted a large sector of the Sea Island population.⁴² Ultimately, African-American Sea Island residents acquired deeds to the land on which they were once enslaved through a special program.⁴³ “The Port Royal Experiment”⁴⁴ provided education, shelter, and clothing

.edu/wp-content/uploads/SHOFNER-thesis-final2.pdf (“Ravenous mosquitoes originally covered the island’s marshes and lagoons in unbearable numbers, but were effectively controlled through the efforts of the Sea Pines Plantation Company and advances in pest control. The new availability and affordability of residential air-conditioning tempered the summer heat. Especially with the older crowd drawn to the island, effective and inexpensive cool temperatures made living or visiting Hilton Head significantly more viable as the area could now be a beautiful and relaxing experience year round.”); U.S. DEP’T OF INTERIOR, NAT’L PARK SERV., NPS FORM NO. 10-900-B, NAT’L REGISTER OF HISTORIC PLACES, MULTIPLE PROPERTY DOCUMENTATION FORM (1988), *available at* <http://www.nationalregister.sc.gov/MPS/MPS033.pdf> (requesting protection for St. Helena Island, a Sea Island in South Carolina, noting the heat conditions that led white plantation owners off the barrier island during the summer, and elaborating on the historical context of the Port Royal Experiment).

³⁷ Goodwine, *supra* note 34, at 167.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *See id.* But see WILLIAM S. MCFEELY, *SAPELO’S PEOPLE: A LONG WALK INTO FREEDOM* 140–41 (1994) (chronicling the family of former Sapelo Island, Georgia plantation owner Thomas Spalding after the Civil War when they redeemed their land, stating, “[e]conomically, everyone had been the loser in the land restoration policy that the Spaldings had insisted on. It would have taken only a little over half of the arable land on the island to provide the 130 families with forty-acre farms; instead, most of it went back to thicket and then to forest.”).

⁴¹ *See* DANIELSON, *supra* note 24, at 10 (“Their [freed slaves] chances to acquire land improved after the establishment of new federal rules in 1865 that provided for the sale of sea island land only to blacks.”).

⁴² *Id.* at 8 (“At midcentury, Hilton Head counted 1100 black and only 25 white residents.”).

⁴³ *See* NEW GEORGIA ENCYCLOPEDIA, *supra* note 33.

⁴⁴ *See* GUTHRIE, *supra* note 20, at 2 (explaining that historic Port Royal is now Beaufort, South Carolina). Freed slaves were permitted to purchase land under the federally supported Port Royal Experiment resulting in African-American ownership of tracts of land

for the freed slaves of the Sea Islands.⁴⁵ African-American inhabitants of the Sea Islands were preceded by Native Americans who have since receded in population.⁴⁶ After the Civil War, the Sea Islands were considered uninhabitable for the most part, except by the African-American settlers who decided to make the area their home.⁴⁷

B. Gullah and Geechee Culture

As African-American communities of the Sea Islands developed after the Civil War, Gullah culture thrived in South Carolina,⁴⁸ while the African Americans of the Georgia coastal Sea Islands were immersed in

on former plantations. *Id.* This program is distinguishable from the forty acres and a mule program that did not benefit the former slaves of St. Helena Island. *Id.*

⁴⁵ Ilene Evans & Connie Rice, *The Port Royal Experiment in the American Civil War*, VFTE COMPANION READER, available at http://vfte.org/images/Port_Royal_Experiment.pdf.

⁴⁶ DANIELSON, *supra* note 24, at 7–8 (“Native American settlements on the island date to the second millennium B.C. When Europeans reached Port Royal Sound early in the sixteenth century, they met Indians who hunted, farmed and fished the area of the coastal islands. For the next two hundred years, Indians were its most numerous occupants. Eventually the encounter with white explorers and settlers proved fatal for the various tribes that inhabited the sea islands.”) (citations omitted); JONES-JACKSON, *supra* note 20, at 9 (“After the forced migration in the early 1700s of the Yamasee and other Indians, the coastal [Sea] islands became the home of African slaves, a few white planters, and ex-slaves and their free descendants.”) (citation omitted); Shofner, *supra* note 36, at 10; see also, *Anna Kingsley’s Story*, NAT’L PARK SERV., http://www.nps.gov/timu/historyculture/kp_annakingsley.htm (last visited Feb. 8, 2013) (“Americans and Europeans came seeking wealth by obtaining land and establishing plantations. The forced labor of enslaved Africans secured that wealth. Those Africans who were freed by their owners or who purchased their own freedom became farmers, tradesmen, or black militiamen who helped protect the colony. On the frontier, away from the settlements and plantations, the Seminole Indians and the Black Seminoles kept an uneasy vigil on the encroaching development of Florida.”).

⁴⁷ See Shofner, *supra* note 36, at 10 (“After the [Civil] [W]ar was over and the armies gone, the population dropped and the island experienced an extended period of isolation through much of the 1900s.”).

⁴⁸ See 3 ALEXANDER LINDEY & MICHAEL LANDAU, *LINDEY ON ENT., PUB. & THE ARTS* § 6:24 (3d ed. 2004) (noting the induction of the critically acclaimed film *Daughters of the Dust*, by Julie Dash, which highlights Gullah culture and is set in the Sea Islands of South Carolina); Bridgette Bates, *From the Collection: Julie Dash’s 1991 Sundance Award-Winning Daughters of the Dust*, SUNDANCE FILM FESTIVAL (Jan. 25, 2012, 4:01 PM), <http://www.sundance.org/festival/article/from-the-collection-julie-dashes-1991-sundance-award-winning-daughters-of-th/> (“The film beautifully weaves together the fragmented history of a family and a place—in 1902, a family gathers on South Carolina’s Sea Islands to bid farewell to their home, a place isolated from the mainland where the descendants of African slaves struggled to maintain their unique lifestyle.”).

their Geechee culture.⁴⁹ The African Americans of Gullah and Geechee descent in the Sea Islands developed their own language or dialect, a type of patois that mixed elements of English and West African speech.⁵⁰ Descendants of both the Gullah and Geechee people still identify with this language and culture today.⁵¹ Both the Gullahs and the Geechees historically live on the natural resources of the land and sea.⁵² Seafood

⁴⁹ See Charles Joyner, *Foreword* to PATRICIA JONES-JACKSON, *WHEN ROOTS DIE: ENDANGERED TRADITIONS ON THE SEA ISLANDS* I, xix; Josephine A. Beoku-Betts, *We Got Our Way of Cooking Things: Women, Food and Preservation of Cultural Identity Among the Gullah*, 9 *GEND. & SOC.* 539–40 (1995) (“[C]ohesive communities evolved and preserved African cultural traditions more fully than in any other group of African Americans in the United States. These traditions are represented in the Gullah language spoken among Sea Islanders, in birth and naming practices, in folktales, in handicrafts such as grass-basket weaving, carved walking sticks, and fishing nets, in religious beliefs and practices, and in a food culture based on rice.”) (citation omitted); Goodwine, *supra* note 34, at 164 (“As Gullahs began to move to the mainland and other areas outside of South Carolina, there sprang up a new name for these branches of their extended family tree: ‘Geechee.’ ‘Gullahs’ and ‘Geechees’ are thought to be an enigma since they have been able to maintain many customs and traditions of their African Ancestors in spite of being enslaved and oppressed like many of their mainland counterparts and kinspeople.”). See generally CORNELIA WALKER BAILEY, *GOD, DR. BUZZARD, AND THE BOLITO MAN: A SALTWATER GEECHEE TALKS ABOUT LIFE ON SAPELO ISLAND, GEORGIA* 4–5 (2000) (“It used to be said that black people on the Georgia Sea Islands were Geechee and those on the South Carolina islands were Gullah. . . . Here on the Georgia islands, Saltwater Geechee was what we called ourselves, and black people who lived about thirty miles inland, around freshwater, were Freshwater Geechee.”).

⁵⁰ See Joyner, *supra* note 49, at xii; MCFEELY, *supra* note 40, at 40–41 (“No aspect of the coastal culture has proved more intriguing or baffling to those drawn to its study than the Gullah language, which developed and survived on the barrier islands of South Carolina and Georgia because of the relatively low mobility of the slaves who had been brought there.”); Bonnie Davis, *Slideshow: The Best Historically Black Beaches in America*, *THE GRIO*, available at http://thegrio.com/2010/06/08/legacy-beaches-for-african-americans/#:historic_beaches-jpg (referring to the Gullah Sea Islands of Georgia and South Carolina, “[t]he region consisting of broad islands and flat coastal plains extending miles inland called ‘Lowcountry’ was originally inhabited by Native Americans and became home to African slaves and their descendants.”).

⁵¹ Goodwine, *supra* note 34, at 7 (“While the Gullah and Geechee communities of today number some 500,000 speakers of the Gullah language, their influence extends to much larger numbers who, however territorially dispersed, yet remain ethnically tied through the extended lines of Gullah kinship.”); Stephen J. Wermiel, *Clarence Thomas After Ten Years: Some Reflections*, 10 *AM. U. J. GENDER SOC. POL’Y & L.* 315, 323 (“[Supreme Court Justice Clarence Thomas] explained that when he was growing up, he spoke a dialect called ‘Geechee,’ or ‘Gullah,’ which comes from the area of southeast Georgia where he was born.”) (citation omitted).

⁵² See BAILEY, *supra* note 49, at 36; Beoku-Betts, *supra* note 49, at 541 (“[T]he Gullah have a deep understanding of their coexistence with other living things and believe that the use of these resources should be moderate and nonexploitive.”).

is the main dietary staple while tabby and coquina made of the shells of oysters were the primary building material.⁵³ The

[p]roximity to the sea fostered an early tradition of seafood harvesting, ranging from cast netting to small-scale commercial shrimp boats. Economic gain from catching and selling seafood began before the end of slavery and continued into the 20th Century. The African-American shrimping fleet was a major factor in the development of commercial fishing in the region.⁵⁴

The tradition of weaving intricate baskets using sweet-grass as the raw material for manufacturing can be traced to West Africa.⁵⁵ Delicately hand-sewn fishing nets also provide economic resources for inhabitants of the area.⁵⁶ The bartering and pooling of communal resources is a way of life for the Gullah and Geechee people.⁵⁷ The natural resources of the Sea Islands provide the lifeblood of its Gullah and Geechee residents, but these ancestral communities are now being denied access to the very land they call home.⁵⁸ The endangerment of natural resources in the Sea Islands, spurred by rapid development, threatens the Gullahs and Geechees.⁵⁹

⁵³ See *Gullah Geechee*, *supra* note 2.

⁵⁴ *Id.* (noting that pollution from “the expanding timber industry, recent catastrophic hurricanes, and pressures on commercial fishing worldwide” contributed to the decline of the fishing economy); see Georgia Dep’t of Natural Res., *Interpreting African American Life on Ossabaw Island and Community Formation on the Mainland*, REFLECTIONS (Dec. 2011), available at issuu.com/georgiashpo/docs/reflections_122011 (describing slave quarters on Ossabaw Island, a Georgia barrier island as being made from tabby, a form of concrete made from a mixture of lime, shell, water, and sand); see also Beoku-Betts, *supra* note 49 (“The value of self-sufficiency in food supply is an integral aspect of the Gullah food system. Men and women of all ages are conversant with hunting, fishing and gardening as ways to provide food.”).

⁵⁵ See BAILEY, *supra* note 49, at 307; JONES-JACKSON, *supra* note 20, at 148; MCFEELY, *supra* note 40, at 27.

⁵⁶ BAILEY, *supra* note 49, at 303; JONES-JACKSON, *supra* note 20, at 148.

⁵⁷ See JONES-JACKSON, *supra* note 20, at 148 (explaining that the Gullahs and Geechee thrived off of their surrounding natural resources).

⁵⁸ *Id.*; Carolyne Dowse et al., *Sapelo Island: Nine Generations: An Island in Time*, in NATURAL RESOURCES AS COMMUNITY ASSETS: LESSONS FROM TWO CONTINENTS 102, 102 (Brian Child & Martha West Lyman eds., 2005) (“The Sapelo Island case study highlights issues related to land tenure, access, and use rights of natural resources. It describes the growing capacity of island residents to secure access and rights to land and natural resources, and to create economic opportunities from their cultural and natural assets.”) (emphasis removed).

⁵⁹ JONES-JACKSON, *supra* note 20, at 148. The endangerment of fishing exacerbating the effect of pollution and other environmental threats to their community. *Id.*

Environmental protection and preservation has been a major component of the advocacy taking place on behalf of the Gullah and Geechee communities, but more proactive and progressive measures may be necessary to protect their lives and legacy.⁶⁰

C. *Corporate Relations with the Gullah and Geechee People*

The general disinterest in the Sea Islands by mainstream America continued into the twentieth century as the descendants of slaves converted the Sea Islands into thriving African-American communities.⁶¹ It was not until the mid-1900s that mainstream attention returned to the Sea Islands.⁶² Large-scale redevelopment in the Islands displaced traditional African-American landowners.⁶³ African Americans were targeted

⁶⁰ *Id.*; see also BAILEY, *supra* note 49, at 325 (explaining that while some traditions remain, including throwing cast nets to catch fish on Sapelo and making coiled grass baskets, “many of our Geechee ways have faded”).

⁶¹ See Davis, *supra* note 50; see also ANDREW KAHRL, *THE LAND WAS OURS: AFRICAN AMERICAN BEACHES FROM JIM CROW TO THE SUNBELT SOUTH* 4 (2012). See generally *Andrew Kahrl: Biography and Project Description*, W.E.B. DU BOIS INST. FOR AFR. AND AFR. AM. RES., <http://dubois.fas.harvard.edu/Andrew-Kahrl> (last visited Feb. 8, 2013) (describing Kahrl’s project entitled, *Losing the Land: African American Beaches and the Making of Coastal Capitalism*). Kahrl’s book will follow the histories of African-American beachfront properties in the Chesapeake, Atlantic, and Gulf Coast regions from the age of Jim Crow to the modern era. *Id.* It will compare blacks’ struggles to acquire and develop coastal properties for pleasure, relief, and profit, to changes in the economic and cultural value of beaches and beachfront property, examining cultural and structural forces that led to higher coastal property values, privatization of America’s shores, degradation of coastal ecologies, and the reduction of black-owned coastal property over the past quarter century. *Id.*; U.S. v. Merchants’ & Miners’ Transp. Co., 187 F. 355, 360 (Ga. 1911) (describing mainstream sentiments towards the Gullahs in the early twentieth century as a group speaking in an unknown dialect “from their tribal forebears on the Dark Continent,” that cannot be understood by the court and are not as qualified to be jurors “as the upright, clear-sighted, fearless Americans of the ancient American stock”).

⁶² See Oliver A. Houck, *More Unfinished Stories: Lucas, Atlanta Coalition, and Palila/Sweet Home*, 75 U. COLO. L. REV. 331, 334 (“Isolated, difficult to access, and subject to the front-end forces of the Atlantic Ocean, these islands were first occupied by people who retained their own language well into the twentieth century. Around the time of the Civil War, however, they became peopled as well by city dwellers fleeing the heat and the yellow fever of summers in Charleston and Savannah. The newcomers found sea breezes, unspoiled beaches and the shade of Spanish moss drifting from centuries-old live oak trees. In the American South, it didn’t get any better than this. The stage was set for an invasion with but one objective: to get as close to the waves as possible and build there.”).

⁶³ See BAILEY, *supra* note 49, at 271–72, 328 (“In 1969 we [the Sapelo Island Geechees] got the news that the North End of Sapelo was being sold to the state of Georgia. . . . But no one . . . ever notified black landowners of the sale, not before it happened, not when it happened, and not after it happened.”); DANIELSON, *supra* note 24, at 11 (“Unlike most

and disproportionately denied property rights in preserving their land and culture on the barrier island coast.⁶⁴ The lack of formal property rights inclusive of natural resources has been cited as a major problem in the environmental protection of coastal land.⁶⁵ Commercialization and urbanization changed the economic and cultural landscape of the Sea Islands.⁶⁶ Culturally and ecologically unsound land development took precedence over long-standing traditions and customs of the historic African-American majority in the Sea Islands, who are now increasingly in the minority.⁶⁷

Changing demographics threaten the continued existence of the Gullah and Geechee cultures, but governmental intervention in the form of regulatory environmental reform and historic preservation grants to non-profits in promotion of African-American land preservation may serve to restore some of the lost history of the Gullah and Geechee people.⁶⁸ Along with this course of action, “[i]t seems reasonable that the government should grant some lifetime concessions to landowners who donate their land or sell it at less than face value for the public good.”⁶⁹

blacks in the rural south in 1950, Hilton Head’s blacks were owners rather than tenants; nevertheless, almost all were poor, living in a near-subsistence economy based on farming and fishing.”)

⁶⁴ See also Press Release, National Park Service, Timucuan Ecological and Historic Preserve Announces Significant Archaeological Discovery at Kingsley Plantation (Nov. 10, 2011), available at <http://home.nps.gov/news/release.htm?id=1258> (“Free blacks and those of mixed race were prohibited from inheriting property.”).

⁶⁵ James R. Rhinehart & Jeffrey J. Pompe, *Entrepreneurship and Coastal Resource Management*, 1 THE INDEP. REV. 543, 548 (1997) “When ownership rights are not defined, users have little or no incentive to take into account the effects of their actions on the welfare of others” and subsequently, “the greatest returns” of the resource and private benefits go to the first-comers. *Id.* Then “[f]ish grow scarce, water becomes polluted, beaches are crowded and denuded, and wetlands and marshes disappear.” *Id.*

⁶⁶ JONES-JACKSON, *supra* note 20, at 7.

⁶⁷ See *id.* at 9 (“Federal census figures for the [Sea Island] coastal areas have until very recently shown high concentrations of African and African American populations.”).

⁶⁸ See JONES-JACKSON, *supra* note 20, at 167 (“obviously, the question of land retention is directly tied to the education of the landowners about the legal responsibilities involved.”); National Historic Preservation Act of 1966, 16 U.S.C. § 470 (2000). *But see* Rhinehart & Pompe, *supra* note 65 (“The government does not necessarily do a better job than the free market in the provision of environmental amenities . . . special interest groups, such as real estate developers, environmentalists, and investors, always attempt to influence government decision-makers to see things their way. Often government policy winds up being compatible with the lobbyists’ wishes.”).

⁶⁹ SEABROOK, *supra* note 28, at 8–10; see Danielle N. Boaz, *Examining Creole Languages in the Context of International Language Rights*, 2 HUM. RTS. & GLOBALIZATION L. REV. 45 (“Marquetta Goodwine gave a presentation to the United Nations’ 55th Session of the Commission on Human Rights (UNCHR) in Geneva in 1999, asking for its aid to preserve

Statutory compliance with land use laws may also promote the retention of Gullah and Geechee land.⁷⁰

II. CORPORATE DEVELOPMENT OF THE SEA ISLANDS

The Sea Islands endured a massive transformation in the 1970s at the direction of Charles Fraser⁷¹ of the Sea Pines Company.⁷² Fraser set out to develop premier beach communities that were aesthetically pleasing to out-of-town residents who wanted to live in the Sea Islands with all the modern amenities and conveniences of the suburbs.⁷³ Fraser properties include real estate developments in Hilton Head, South Carolina,⁷⁴ and Amelia Island, Florida.⁷⁵ Fraser had the vision of a master-planned

the ways of the Gullah people in the Lowcountry of South Carolina. In response to her plea for assistance, the UNCHR developed a resolution with regard to the Gullah people that acknowledged that the present educational system in the U.S. does not allow the Gullah people to study their own language or history. . . . The UNCHR acknowledged the request for assistance from the Gullah people, but made no resolutions to offer them support.”)⁷⁰ See NAT'L PARK SERV., *supra* note 24 (“Robert Stafford was the major planter, exporter, and importer on Cumberland Island, and his involvement in island activities covered an uninterrupted period of more than 60 years. His extensive holdings and subsequent land use decisions should have been a major determining and regulatory factor in local island policies.”).

⁷¹ See Gene Sloan, *Hilton Head, Way Ahead of Its Time*, USA TODAY (Sept. 1, 2006 10:51 AM), http://usatoday30.usatoday.com/travel/destinations/2006-08-31-hilton-head_x.htm; *Gullah Geechee*, *supra* note 2 (“During the 1960s, as the number of outsiders relocating to the islands rose to a peak, there was a second major out-migration of Gullah/Geechee people to the North. They were essentially pushed from their homeland by loss of land for agriculture, lack of job training, lack of skilled jobs, and few opportunities for advancement . . . some of the people who left in the 1960s are now returning to their roots and are among the most active in trying to preserve Gullah/Geechee community and tradition.”) (citation omitted). Charles Fraser was a lawyer by trade who graduated from Yale Law School. Douglas Martin, *Charles Fraser, Developer of Hilton Head, Dies at 73*, N.Y. TIMES (Dec. 19, 2002), <http://www.nytimes.com/2002/12/19/obituaries/19FRAS.html>. Fraser learned his creative property and land use strategies from a Yale professor who taught him how to circumvent legal scrutiny. *Id.*

⁷² See Sloan, *supra* note 71, at 552; Houck, *supra* note 62, at 335–53 (highlighting real estate developer David Lucas in his legal battle to develop coastal property on a South Carolina Sea Island).

⁷³ Sloan, *supra* note 71.

⁷⁴ See *id.* at 552 (“The Sea Pines development covers 3,480 acres of beachfront, forests, lagoons, and sea marshes on the southern tip of Hilton Head Island. Parks, woodlands, golf courses, and tennis courts occupy 2,400 acres.”).

⁷⁵ Shofner, *supra* note 36, at 45 (“The Sea Pines Company began to develop multiple projects ranging from River Hills Plantation in North Carolina to Amelia Island in Florida, and all the way down to Palmas del Mar in Puerto Rico.”).

gated community when his company purchased land in the Sea Islands in South Carolina and Florida.⁷⁶ Fraser promoted the idea of luxury and leisure to retirees and vacationers who were seeking to reside or relax in an exclusive neighborhood. However, “developers do not operate without making mistakes, and in some cases they actually ignore environmental concerns—for instance, it seems clear in hindsight that some buildings were constructed too close to the ocean on Seabrook Island.”⁷⁷ Thus, the Sea Pines Company decimated the natural resources that stood in the way of erecting its oversized, enclosed communities.⁷⁸

A. *The Charles Fraser Effect on Gullah and Geechee Life*

Fraser’s communities were erected in areas inhabited primarily by African Americans.⁷⁹ The indigenous residents of the Sea Islands were sold the idea that nature would be preserved to enhance the beauty of their insular enclaves on Hilton Head and Amelia Island.⁸⁰ Fraser sought to achieve the label of a naturalist without the distraction of natural inhabitants. The Sea Pines Company that developed the Sea Pines Plantation on Hilton Head was financed in part by Fraser’s father, Joseph Fraser, who owned a paper mill that consumed the land in exchange for economic gain.⁸¹

⁷⁶ See MARC A. WEISS, *THE RISE OF THE COMMUNITY BUILDERS: THE AMERICAN REAL ESTATE INDUSTRY AND URBAN LAND PLANNING 2* (1987) (“Planning and developing for specifically residential districts or neighborhoods was first utilized by land subdividers in the case of high-income suburban communities. . . . Creating residential subdivisions for builders and purchasers of expensive single-family houses represented the first phase of the modern transformation of urban land development by private real estate entrepreneurs.”).

⁷⁷ Rhinehart & Pompe, *supra* note 65, at 557.

⁷⁸ *See id.* at 543 (“[B]eaches and estuaries are especially sensitive to economic development, and coastal areas of the United States are experiencing more rapid development than inland areas. . . . Many, if not most, of our coastal environmental concerns stem from population growth pressure.”).

⁷⁹ *See supra* notes 48–60 and accompanying text.

⁸⁰ *See id.* at 558 (“Community developers, such as those on barrier islands, package environmental amenities along with other attractions and receive compensation from property prices in exactly the same way that Wal-Mart profits by selling tennis rackets, golf clubs, electronic equipment, and clothing.”); Shofner, *supra* note 36, at 6 (A “large number of professional designers, from engineers to landscape architects, combined their efforts to produce the ‘Sea Pines style.’”).

⁸¹ Rhinehart & Pompe, *supra* note 65 (“Charles Fraser, owner and developer of Sea Pines on Hilton Head Island, convinced his father, a logger who bought the land originally for its timber, to leave the tall pines along the coast, to capitalize on their greater value as a resort amenity.”) (citation omitted).

Joseph Fraser formed the Hilton Head Company as a conglomerate of lumber associates who pursued the island for its timber in 1949.⁸² Charles Fraser followed in his father's footsteps by amassing land ownership that led to land exploitation.⁸³ The Sea Pines Company maximized corporate profits while disrupting the ecology of the barrier islands.⁸⁴ Land preservation on Fraser's developed properties was minimal compared to the disruptive impact of his development of the Sea Islands.⁸⁵ Sea Pines Company maximized toxic waste with chemical runoff from the pesticides used to maintain an excessive number of golf courses on the barrier islands.⁸⁶ Corporate development of the Sea Islands also obstructed access to

⁸² See Joyner, *supra* note 49, at xiii; Shofner, *supra* note 36, at 11 ("In 1950, a group of wealthy Georgians bought eight thousand acres of pine forest on the southern end of the island. General Joseph Fraser orchestrated the operation by forming the Hilton Head Company, a group of southern lumber associates who had bought the island for its timbering potential, as most of the island was covered with virgin pine at the time. His son, Charles Elbert Fraser, would emerge as the man to guide the development of Hilton Head.") (citation omitted); see also SEABROOK, *supra* note 28, at 359 ("[S]ome people blame the [paper] mill for the air pollution that has eaten paint off houses and chrome off cars and caused Spanish moss to disappear from the oaks in St. Marys [a town near Cumberland Island that hosts the National Park Service Cumberland Island Visitor Center].").

⁸³ See Rhinehart & Pompe, *supra* note 65, at 552 ("He began the island's resort development phase in 1957.").

⁸⁴ See *id.* at 545 ("In the initial phases of the development of Sea Pines on Hilton Head Island, South Carolina, in the late 1950s and early 1960s, public regulation was minimal and government brought few pressures to bear on developers to behave in an ecologically responsible manner."). *But see* Shofner, *supra* note 36, at 31 ("In addition to declaring the island a bird sanctuary and no-hunting zone, Fraser legally cut off the development of hundreds of acres of forests, marshes, lagoons and meadows to preserve the environmental quality of Sea Pines. The Open Space easements permanently protect the acres from development.") (citation omitted).

⁸⁵ See RUSS RYMER, *AMERICAN BEACH* (1st ed. 1998) (detailing the disruption to tidal patterns caused by the development of the Ritz Carlton hotel on Amelia Island that resulted in the drowning death of a young boy on American Beach); Rhinehart & Pompe, *supra* note 65, at 551 ("Developers often built too close to the ocean; used 'hard' erosion control techniques, such as seawalls, rock revetments, and bulkheads; cut trees; and filled in marshes."); KAHRL, *supra* note 61, at 64, 130 (describing the environmental damage caused by sea walls and detailing the drowning danger created by a sea wall in Louisiana to patrons of Seabrook, an area of beach relegated to African Americans, as a concession for not frequenting the protected white beach at Pontchartrain).

⁸⁶ See Rhinehart & Pompe, *supra* note 65, at 544 (explaining that large amounts of nitrogen and phosphorous cause algae blooms that remove oxygen from the water, injure aquatic life, and reduce water quality) ("The clearing of land destroys vegetation and trees, which increases runoff and ruins the overall natural beauty of the environment. Damage to streams, marshes, and marine life results from the use of pesticides, fertilizers, toxic chemicals, and other pollutants.").

sacred burial grounds,⁸⁷ led to expensive beach erosion, and displaced native animal species.⁸⁸

B. Sea Pines Company Corporate Relations

The Sea Pines Company was not held accountable to the indigenous population of the Sea Islands for the adverse effect of its real estate development. Corporate action against the native residents and historic inhabitants of the Sea Islands was unethical, and at times unconscionable.⁸⁹ The growth of private communities and the resort-based economy marginalized African Americans both economically and politically.⁹⁰ Vulnerable residents of the Sea Islands, who were disproportionately African American, were targeted by the Sea Pines Company to obtain the land at below-market value.⁹¹ Questionable real estate tactics were used to force landowners out of the area to make way for a more affluent community that would invest in Fraser's properties.⁹² Corrupt sales tactics were directed toward African-American landowners as a way to acquire prime real estate at subprime costs.⁹³ Restrictive land covenants, deed

⁸⁷ Goodwine, *supra* note 34, at 174, 186–87 (“In the fall of 1990, the Gullahs brought suit against the Melrose Company and Cooper River Landing Company, charging them with trespassing and desecrating the graveyard. . . . Although they [the Gullahs] had an agreement permitting them access to the gravesite and to the beach that is along the same road, the road there has now been blocked and they have been told that there are new owners who do not have to adhere to previous agreements.”); *Gullah Geechee*, *supra* note 2 (“Residents were cut off from their hunting and fishing grounds as well as their traditional burial grounds. . . . Developers want to move the graves so that the historic site can be used as waterfront residential property, which would effectively eliminate the historical significance of the property under existing criteria of the National Historic Preservation Act.”) (citation omitted).

⁸⁸ See Houck, *supra* note 62, at 340.

⁸⁹ DANIELSON, *supra* note 24, at 4.

⁹⁰ *Id.* *Gullah Geechee*, *supra* note 2 (“There was a resulting population shift on the Sea Islands from the traditional rural black majority to an affluent white majority. This change brought intensified racial prejudice and segregation to islands where Gullah/Geechee people had lived for years in relative isolation from the outside world.”).

⁹¹ Joyner, *supra* note 49, at xii–xiv; *About Our Service Area*, CENT. FOR HEIRS’ PROP. PRESERVATION, <http://www.heirsproperty.org/learn/?id=570> (last visited Feb. 8, 2013).

⁹² See KAHRL, *supra* note 61, at 250 (“On these [Sea] islands [including Hilton Head] would-be developers encountered African American families . . . whose ties to the land extended back to the dawn of freedom and for whom possession of land had come to shape and reflect the very meaning of freedom.”).

⁹³ Joyner, *supra* note 49, at xiii; Goodwine, *supra* note 34, at 168–69 (“As ‘developers’ moved in with trucks to fell trees and dig lagoons, they also moved into the Gullah community with a great deal of fast talk and untruths. There are numerous Gullahs who

restrictions, and onerous homeowner association bylaws asserted strict rules that essentially served to diminish public beach access.⁹⁴ Fraser retained tight legal control of his Sea Island developments through legal measures that he developed in consultation with his former Yale Law School professor who was an expert in land use.⁹⁵ High home prices and exorbitant property taxes essentially served to keep the local African-American population of the Sea Islands outside of the community gates of Fraser's properties.⁹⁶

used to live on Hilton Head but now reside in cities across the United States, who tell stories of how an elderly person in their family was approached with a briefcase full of single dollar bills and how this person was coaxed into selling the family land. . . . The documents that were presented to many people were of course legal documents that even college graduates would require lawyers to review.”)

⁹⁴ See, e.g., Shofner, *supra* note 36, at 6 (“Pioneering land-use planning efforts backed by the implementation of private covenants allowed the effective design, advertising, financing and control of the [Sea Pines] plantation. Open Space easements and private covenants were tools exercised by the owner which make the island appear as if crafted by one hand, and in essence, it was.”); Rhinehart & Pompe, *supra* note 65, at 554; WEISS, *supra* note 76, at 3–4 (“The main method by which community builders implemented their planning and design vision . . . was through the vehicle of legally enforceable deed restrictions. . . . Deed restrictions, an innovation of community builders and their attorneys, served as both the physical and political model for zoning laws and subdivision regulations.”) (citations omitted). *But see* Shofner, *supra* note 36, at 48 (“For Fraser, the beach is there to serve people, and as long as people must be there, then he believed they should levy as little environmental harm as possible—light footprint.”) (citation omitted).

⁹⁵ See Shofner, *supra* note 36, at 18 (“A lawyer turned environmental developer, he [Charles Fraser] wrote private covenants which were attached to all deeds sold by the company. Every deed sold had roughly forty pages of restrictions attached, with the first one being that Fraser could disallow any building for any reason whatsoever, even if it was purely aesthetic. Sea Pines Company did no actual construction, only management and real estate sales of the land and the private deed covenants gave Fraser power over development on the plantation, long after he no longer held the deeds.”) (citation omitted).

⁹⁶ JONES-JACKSON, *supra* note 20, at 166 (“Acreage once used to grow food is now restricted and controlled by high taxes and county regulations implemented in response to development.”); Goodwine, *supra* note 34, at 169 (“After a while, the level of development built up for and enjoyed by those coming in from outside permitted the tax base to be raised too high for many of the Gullahs to continue to hold on to their family plots. Due to the fact that someone else built a resort next to them that was valued at millions of dollars, a person who had been there all his or her life, making enough from the land and sea to cover their taxes, could no longer do so. As a result, many people who could not continue to pay lost their land at tax auctions. Even in recent years, some people’s taxes have gone up 300% in a single year as a result of a resort being built adjacent to them. This process became a means of removal of Gullahs and Geechees from wide property areas in the Sea Islands.”); Rhinehart & Pompe, *supra* note 65, at 552 (“Deed covenants regulate and control building and future development to ensure environmental protection. . . . Fraser introduced strict deed covenants regulating both the developer and individual property owners, which have proven durable and enforceable.”) (citation omitted); Shofner, *supra*

C. *Corporate Land Use and Planning*

Fraser's land use policies were supported by local governments and municipalities in displacing long-time residents from their land and sacrificing ecological balance on the Sea Islands.⁹⁷ Fraser utilized creative legal strategies to persistently maintain a community closed to outside influence.⁹⁸ Sweeping measures were taken by Fraser to ensure a secluded enclave for the wealthy on the Sea Islands without disruption.⁹⁹ The African-American families of origin on the Sea Islands did not fit into Fraser's plan for the Sea Islands, and were thus pushed to the periphery of the island.¹⁰⁰ Common law land trusts were one such measure used to maintain the status quo in Fraser's real estate transactions.¹⁰¹ Zoning laws and land use statutes were also implemented by politicians on the Sea Islands who were influenced by corporate interests to increase the tax base and exclude people of color.¹⁰² Beach erosion and plant endangerment

note 36, at 17 ("Through the use of private covenants as legal tools, Charles Fraser planned to retain complete aesthetic and locational control over development.").

⁹⁷ See Rhinehart & Pompe, *supra* note 65, at 545 ("Until 1960, the government did little to regulate development in coastal areas. For instance . . . in the initial phases of the development of Sea Pines on Hilton Head Island, South Carolina, in the late 1950s and early 1960s, public regulation was minimal and government brought few pressures to bear on developers to behave in an ecologically responsible manner. However, public pressure on the government to become involved intensified in the late 1960s.") (citation omitted).

⁹⁸ See Shofner, *supra* note 36, at 44.

⁹⁹ Rhinehart & Pompe, *supra* note 65, at 545. *But see* Houck, *supra* note 62, at 342 (explaining that the enemy to private development was the "environmental-government-complex or 'the Green Machine,' a manevolent [sic] axis between government and environmental groups [which had] become very wealthy and powerful").

¹⁰⁰ See JOHN C. MURRAY, *THE USE OF LAND TRUSTS AND BUSINESS TRUSTS IN REAL ESTATE TRANSACTIONS* (2010), available at <http://firstam.com/title/resources/reference-information/jack-murray-law-library/the-use-of-land-trusts-and-business-trusts-in-real-estate-transactions.html>.

¹⁰¹ *Id.* ("Common law trusts have been used for centuries to preserve and protect title to and minimize taxes on property. Florida; Hawaii; Illinois; Indiana; North Dakota; and Virginia have statutes that permit forms of land trusts, while states such as Arizona, California and Ohio have permitted the creation of land trusts through court decisions. The majorities [sic] of states do not recognize, or permit the use of, land trusts. Land trusts are unique because the duties and powers of the trustee are limited, but they are still considered to be trusts and generally are governed by the principles that are applicable to all other trusts.").

¹⁰² See David J. Kennedy, *Residential Associations as State Actors: Regulating the Impact of Gated Communities on Nonmembers*, 105 *YALE L.J.* 761, 768–69 (1995) ("The very establishment of a residential association is fraught with potential for discrimination on the basis of race and class. . . . A case in point is Hilton Head, South Carolina. Famed for hosting the Renaissance Weekend retreat for baby boom wunderkinder, Hilton Head may

ensued.¹⁰³ As a private developer, Fraser single-handedly controlled the natural resources and the demographics of the Sea Islands.¹⁰⁴ Cultural icons were lost and historic landmarks were destroyed in implementing Fraser's real estate development plans on these fragile barrier islands.

D. *Business Ethics and Cultural Preservation*

The concentration of private land interests for profit may not be a source of corporate wrongdoing, but laws and regulations should be implemented to protect the public from unscrupulous corporate actors.¹⁰⁵ The intense accumulation of private development for profit over the course of time accelerates the deterioration of the surrounding natural and cultural environment.¹⁰⁶ Over-ambitious individuals involved in land development and acting through corporate entities have imposed a huge burden upon the Gullah and Geechee populations.¹⁰⁷ Unfettered coastal

be equally well known for its system of exclusive property developments, named, with apparent lack of concern for historical irony, 'plantations.' These gated resort villages, with names such as Shipyard Plantation, Port Royal Plantation, Wexford Plantation, Colleton River Plantation, and Hilton Head Plantation, are occupied largely by the wealthy and white, to the exclusion of the local black population." *But see* Shofner, *supra* note 36 (quoting Charles Fraser, "I'm interested in making money, but I'm also interested in history, architecture, trees and birds"). "Fraser was a human usage environmental economist, who believed the most valuable offerings of nature were those that could be experienced and known by humans, and that society should protect the natural world for its own extended benefit." *Id.*; Rhinehart & Pompe, *supra* note 65, at 548 ("An argument in favor of zoning is that the proper mix of competing land uses will not result when development is left to private parties.") (citation omitted).

¹⁰³ Rhinehart & Pompe, *supra* note 65, at 544.

¹⁰⁴ *See id.* at 551–52.

¹⁰⁵ *See, e.g.*, KAHRL, *supra* note 61, at 102 ("Following the town's [the historically African-American town of Highland Beach, Maryland] incorporation, a group of white developers challenged the legality of the town's charter. . . . Throughout the late 1920s and early 1930s lobbyists representing waterfront developers continued to pressure the state legislature to repeal the town's charter. In February 1933, they nearly succeeded in sneaking a bill into the final legislature that would have done just that. By the early 1930s, Highland Beach was forced to hire a lawyer in Annapolis to 'keep a constant watch' on the state capitol and keep town officials abreast of the maneuverings of Anne Arundel County real estate interests."); Rhinehart & Pompe, *supra* note 65, 545 ("Various methods, including government regulation, government ownership, market incentives, and privatization might be utilized in an attempt to correct the negative effects associated with CPRs [common pool resources].").

¹⁰⁶ *See, e.g.*, Alison Rieser, *Managing the Cumulative Effects of Coastal Land Development: Can Maine Law Meet the Challenge?*, 39 MAINE L. REV. 321 (1987) (noting that the pace and extent of coastal development degrade natural resources and are very difficult to regulate).

¹⁰⁷ Michael Powell, *A Tale of Two Cities*, N.Y. TIMES, May 6, 2007 (describing the racist land development policies of master planner Robert Moses in New York City).

development by developers with no cultural ties to the community perpetuates a pattern of exclusion and disregard for the personal and natural inhabitants indigenous to the area.¹⁰⁸ Arrogance and apathy may be the root of the unrelenting control exerted by certain phases of corporate development in the Sea Islands.¹⁰⁹

Fraser is cited as one of the most powerful and influential figures in the history of land development.¹¹⁰ However, Fraser was responsible for introducing a large influx of environmental stress on the Sea Islands, and he was criticized by many environmentalists for destroying the Islands.¹¹¹ Fraser dismissed the notion of untouched natural beauty in favor of commercializing the Sea Island environment.¹¹² The appropriate regulatory response should promote corporate responsibility in balancing economic policy with ecological integrity.¹¹³ Fiscally responsible and environmentally responsive private companies should be certified before obtaining access to undeveloped land in defined cultural regions. The establishment and maintenance of well-funded land trusts¹¹⁴

¹⁰⁸ See JONES-JACKSON, *supra* note 20, at 165 (comments of attorney Ed Brown) (“[T]he land is changing hands because history has created a division between those people who own the land and those people who want to buy land.”). “The [African-American] population that remains behind on the [Sea] islands is having to adjust to the incoming population of resort residents. . . . Developers have not been responsive to local needs. . . . [W]e need to develop a methodology by which that can be properly managed and the profits therefrom; if there are to be profits.” *Id.*

¹⁰⁹ Cassandra Y. Johnson & Myron F. Floyd, *A Tale of Two Towns: Black and White Municipalities Respond to Urban Growth in the South Carolina Lowcountry*, 13 *HUM. ECOLOGY REV.* NO. 1, 24–25 (2006) (“The most socioeconomically disadvantaged subgroups in these communities had little or no decision-making authority regarding natural resource use.”).

¹¹⁰ See Shofner, *supra* note 36 (“Some design professionals claim that Fraser had [more] beneficial impact on land use policies in the United States than any other man in the forty years following World War II.”). *But see* Shofner, *supra* note 36 (“[T]he other owning parties of the Hilton Head Company quickly discarded his [Charles Fraser’s] ideas as those of an egotistical and naive youth by the other owning parties of the Hilton Head Company. . . . As he was only twenty-seven years old when he set out to develop Sea Pines Plantation, most thought Fraser was underprepared and underage—but he would not be discouraged.”) (citation omitted).

¹¹¹ *Id.* at 49; see JONES-JACKSON, *supra* note 20, at 5 (“The sandy soil, which drains inadequately, places economic and developmental constraints on the [Sea Islands] area.”).

¹¹² See Shofner, *supra* note 36, at 49 (“He saw their breed of naive and anti-progress environmentalism as inferior. The belief that a beautiful place should be totally cut off from people repulsed and confused Fraser.”).

¹¹³ Rhinehart & Pompe, *supra* note 65, at 545.

¹¹⁴ See generally MURRAY, *supra* note 100 (“A land trust has been defined as follows: A land-ownership arrangement by which a trustee holds both legal and equitable title to land while the beneficiary retains the power to direct the trustee, manage the property,

may also suffice to preserve the historic places that lie in the path of corporate development.¹¹⁵

E. Land Preservation Techniques for Historically Significant Sites

Community land trusts have been successful in preventing African-American land loss.¹¹⁶ Conservation land trusts present opportunities to protect environmental property in the Sea Islands.¹¹⁷ Architectural or protective covenants may be used in conjunction with government-mandated preservation requirements to preserve the historic character of private properties.¹¹⁸ Conservation easements¹¹⁹ may also prove to be an effective

and draw income from the trust.”); RICHARD BREWER, *CONSERVANCY: THE LAND TRUST MOVEMENT IN AMERICA* (2003).

¹¹⁵ Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community through Partition Sales of Tenancies in Common* (Mar. 2000) (Land Tenant Center research paper No. 132, Univ. of Wisconsin–Madison) (“Owners of such [African-American] heritage land should be eligible for federal support that could include financial assistance earmarked to helping restore historically important buildings on the land, either federal management of the property under a trust relationship or federal assistance in helping these landowners establish private land trusts, and the building of museums or archives that would document the history of the acquisition and use of the land by the black landowners.”); BAILEY, *supra* note 49, at 332. *But see* Shaila Dewan, *A Georgia Community with an African Feel Fights a Wave of Change*, N.Y. TIMES (May 4, 2008), http://www.nytimes.com/2008/05/04/us/04island.html?pagewanted=print&_r=0 (“But the mechanisms designed to preserve the culture can offer little help to residents or descendants who want to move back. The National Park Service commission, for example, does not have the power to buy land. The island’s revitalization society has a land trust but little money.”).

¹¹⁶ *See Community Land Trusts: Preserving Long-Term Housing Affordability*, COMMUNITY INVESTMENTS (2008), http://www.frbsf.org/publications/community/investments/0805/land_trusts.pdf (“The late 1960s saw the establishment of the first nonprofit community land trust in the United States—New Communities in Albany, Georgia—which had the goal of providing residential and agricultural leaseholds for African-American farmers.”); Dowse et al., *supra* note 58, at 108; ELIZABETH BYERS & KARIN MARCHETTI PONTE, *THE CONSERVATION EASEMENT HANDBOOK* 7 (2d. ed. 2005).

¹¹⁷ *See* BREWER, *supra* note 114, at 11; *see also* JULIE ANN GUSTANSKI & RODERICK H. SQUIRES, *PROTECTING THE LAND: CONSERVATION EASEMENTS PAST, PRESENT, AND FUTURE* (2002).

¹¹⁸ *See* 36 C.F.R. § 67; *see also* *The Secretary of the Interior’s Standards for Rehabilitation*, NAT’L PARK SERV., <http://www.nps.gov/tps/standards/rehabilitation/rehab/stand.htm> (last visited Feb. 8, 2013).

¹¹⁹ *See generally* Ann Harris Smith, *Conservation Easement Violated: What Next? A Discussion of Remedies*, 20 FORDHAM ENVTL. L. REV. 597 (2010) (“Conservation easements have become very popular because they meet the needs of conservation organizations and landowners. Easements appeal to conservation organizations because many landowners are willing to donate them, allowing the organizations to protect land at little or no cost. Conservation easements are attractive to landowners because they often provide substantial

technique to protect land in the Sea Islands.¹²⁰ Landowner associations provide yet another viable alternative to the African-American land loss epidemic that plagues the Sea Islands.¹²¹ Further, community equity projects may promote effective land use policies that benefit entire communities, as opposed to concentrating solely on the enhancement of luxury properties.¹²²

Required government approval of ecologically significant land through sale or transfer may help promote corporate social responsibility.¹²³ Ecologically sound community economic development may take precedence over corporate profits if equitable laws and effective regulations are implemented and enforced in the Sea Islands.¹²⁴

tax benefits, and they allow owners to protect their land in perpetuity while still maintaining ownership of it. As of 2005, land trusts had preserved 6,245,969 acres in the United States through conservation easements, more than doubling the number of acres protected by easement since 2000. That number increased dramatically between 2006 and 2010, during which time a special tax incentive was in place which allowed conservation easement donors to deduct greater percentages of the value of conservation easements than for charitable contributions and carry forward any excess for fifteen years. Although that legislation expired in 2009, conservation groups are lobbying Congress to renew it and make it permanent.”).

¹²⁰ See BYERS & PONTE, *supra* note 116, at ix (“During the last century, governments at all levels made important strides in protecting land for conservation and public recreation, creating an impressive system of national, state, and community parks, wildlife refuges, and forests.”); see also UNIFORM CONSERVATION EASEMENT ACT (1981); GUSTANSKI & SQUIRES, *supra* note 117, at 72 (showing that Florida, Georgia, and South Carolina have each adopted the Uniform Conservation Easement Act).

¹²¹ See Dowse et al., *supra* note 58, at 107 (“[N]eighbors committed to informal, collegial cooperation on land restoration and wildlife management, and conveyed rights of first refusal to the Sand County Foundation. A novelty at the time of creation, landowners invested in the idea of nature appreciation, environmental education, and research as a legitimate land use across the reserve.”).

¹²² *Id.* at 111 (similar to land banking, land is acquired to fulfill social and communal goals).

¹²³ See Rhinehart & Pompe, *supra* note 65, at 548 (“[P]rivate developers are ahead of legislators and government regulators. Developers can own entire islands; for all practical purposes they own and control much of the natural resource base, including beaches and marshes.”).

¹²⁴ See generally April B. Chandler, “*The Loss in My Bones*”: *Protecting African American Heirs’ Property with the Public Use Doctrine*, 14 WM. & MARY BILL RTS. J. 387 (2005) (explaining that land use laws and property sales unfairly affected African-American residents of the Sea Islands); Anna Stolley Persky, *In the Cross-Heirs*, ABA J. (May 2009) (explaining that some families are particularly vulnerable because land was passed down as heirs’ property, which means without the benefit of a will); Rhinehart & Pompe, *supra* note 65, at 556–57 (“Although no island can be developed without some negative environmental impacts, islands such as those described here stand in sharp contrast to earlier beach developments such as Myrtle Beach, where trees are cut, land rearranged, and plants and animals removed. But if development is to occur, the market approach can produce environmental amenities without the coercive force of government.”).

F. Corporate Accountability for Cultural and Ecological Protection

Corporations may engage in self-regulation to maintain ethical business practices and standards in developing culturally sensitive land projects in an eco-friendly manner.¹²⁵ Perhaps traditional concepts of ownership in real property law could be revised to consider the land-bequeathing traditions of the Gullah and Geechee people.¹²⁶ The promotion of cultural competency in the corporate development of land could also assist in the just assessment of taxes when these developments serve to dramatically increase the tax basis of the local community.¹²⁷ Corporations may even owe a fiduciary duty to develop community plans that will support economic, environmental, and cultural sustainability.¹²⁸

¹²⁵ See generally Antony Page, *New Corporate Forms and Green Business*, 37 WM. & MARY ENVTL. L. & POL'Y REV. 347 (2013).

¹²⁶ See Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 113, 116 (“These formal legal systems—while so critical to providing secure and alienable title to one’s home—are inaccessible to many in the United States. Income, educational, cultural, and language barriers push many individuals outside these formal legal systems, where they can easily end up in a home with clouded title. . . . Informal homeownership, however, is pervasive and systemic in low-income communities across many parts of the United States, both urban and rural.”); *Gullah Geechee*, *supra* note 2 (“With land ownership tangled in years of subdivision of property among families and inheritance of land without recorded wills (heirs/property), Gullah/Geechee people could not prove their ownership rights to their home sites. As years passed and more people died in testate [sic], the property became more entangled in communal ownership. Many were forced from their land and/or the land and waterways where they had traditionally farmed, hunted and fished to supplement their tables and their incomes.”). See generally BAILEY, *supra* note 49, at 2–4, 327, 328 (“Culturally, historically and in every way but legally, this island [Sapelo] is ours. But we [Geechees] feel threatened every day. . . . Some people study the tax rolls to see if they can find any of us slipping up on our taxes, so they can buy land at a tax sale. Other people have actually mailed letters to everyone in the community, enticing us to sell our family land. . . . [T]he DNR [Georgia Department of Natural Resources] tried to claim our land in Behavior Cemetery but couldn’t prove it because that land had always been ours.”); *Walker v. Sapelo Island Heritage Authority*, 285 Ga. 194, 198 (2009) (reversing the lower court’s grant of the Sapelo Island Heritage Authority motion for summary judgment claiming title to the land contrary to the land claim of the heirs of Sea Island native Charles Walker).

¹²⁷ See Patricia L. Parker & Thomas F. King, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, NAT’L REG. BULL. 38, at 8–9 (1990) (advising “culturally sensitive consultation” for the land development of culturally significant areas).

¹²⁸ See CENT. FOR HEIRS’ PROP. PRESERVATION, *supra* note 91 (“Throughout the South, land loss among African Americans has reached alarming rates. This problem is exacerbated in coastal communities undergoing commercial and resort development. There are unique challenges in the Lowcountry where equitable growth must accommodate both urban redevelopment and sprawl into rural areas. Suburban sprawl has increased development pressures in rural areas. Further complicating land issues in the area are the selling off

III. THE ECONOMIZATION OF CULTURAL ECOLOGY

The overdevelopment of the Sea Islands has changed the natural ebb and flow of these coastal communities.¹²⁹ Economic interests should be balanced with cultural and ecological interests. The depletion of natural resources and exploitation of the Gullah and Geechee people has resulted in unsafe and unstable environmental conditions in the Sea Islands.¹³⁰

A. *Corporate Oversight in Land Use and Planning*

Largely touted as a successful model for coastal development, the Sea Pines Company under Charles Fraser upset the ecology of the Sea Islands¹³¹ and the geographic boundaries of African-American settlers who inhabited the islands for centuries.¹³² The efforts of the Sea Pines Company to revitalize the Sea Islands were widely recognized as an accomplishment of epic proportion in civilizing the Sea Islands.¹³³ In fact, though, Fraser's Hilton Head redevelopment served the contrary end, ostracizing conservationists¹³⁴ and cultivating a culture of exclusion to the economic and cultural detriment of people of color.¹³⁵ The pioneering

of major tracts of rural land by large corporations to create business and residential developments. These major developments, which are adjacent to communities of African Americans, exacerbate land ownership conditions for these rural African American land owners.”).

¹²⁹ *Gullah Geechee*, *supra* note 2, at 3 (“With the loss of land and easy access to fishing and hunting, came a loss of Gullah/Geechee self sufficiency and autonomy.”).

¹³⁰ *See Goodwine*, *supra* note 34, at 170–72 (“Little went into preserving the Gullah or Geechee heritage there [Sapelo Island] until it was realized that this was an element that could attract tourists.”).

¹³¹ *See SEABROOK*, *supra* note 28, at 8 (describing Hilton Head as “top-heavy with golf courses, strip malls, and subdivisions of cedar-sided homes with three-car garages”).

¹³² DANIELSON, *supra* note 24, at 4 (“The island’s [Hilton Head’s] natural attractions and fragile ecology were imperiled by all sorts of developers, ranging from the community builders who put Hilton Head on the map to large industrial operations lured to the area by abundant water, cheap labor, and eager public officials.”).

¹³³ *See id.*

¹³⁴ *See generally SEABROOK*, *supra* note 28, at 8 (“Charles Fraser, the cocky developer of Hilton Head’s Sea Pines Plantation, bought thirty-one hundred unspoiled acres on Cumberland [Island] in 1968 from two financially strapped Carnegie brothers. Almost immediately, he began laying out golf courses, streets, and an airport. When irate Carnegies . . . learned of the scheme, they pooled their resources, jerked strings in Washington, and ran him off the island.”).

¹³⁵ *See KAHRL*, *supra* note 61, at 252 (“Despite sunny (and highly marketable) descriptions of black Sea Islanders’ primitive culture and its direct links to West African traditions, African Americans’ distance from the region’s coastal capitalist economy was less the product of their own indifference and more the result of decades of calculated measures

African-American families who resided on the Sea Islands for generations were generally precluded from the Sea Pines landscape in the effective transfer of wealth from the indigenous community to the private sector.¹³⁶

The architectural design of the Sea Pines community did not recognize the contributions of the Gullah people in regards to land use.¹³⁷ The previously predominant African-American community of Sea Island received virtually no mainstream attention to highlight their displacement by the Sea Pines Company.¹³⁸

B. Public and Private Alliances for Cultural and Ecological Preservation

Cohesive African-American communities including Pin Point, Georgia, are closely anchored to the history of the Sea Islands.¹³⁹ Pin Point in Chatham County, Georgia was established by African-American freedmen from Ossabaw Island off the coast of Georgia, and was home to United States Supreme Court Justice Clarence Thomas.¹⁴⁰ The Gullah and Geechee displacement and disruption to coastal culture caused by the Sea Pines development went largely undocumented by the mainstream media.¹⁴¹ The Gullah and Geechee influences on Sea Island life

designed to stymie independent land development initiatives and ensure the susceptibility of black-owned lands to expropriation.”).

¹³⁶ DANIELSON, *supra* note 24, at 4 (“Growth [of the resort and retirement communities on Hilton Head] also radically altered the lives of Hilton Head’s earlier long-time residents, descendants of slaves freed during the Union occupation of Hilton Head during the Civil War.”).

¹³⁷ *Id.*

¹³⁸ See Persky, *supra* note 124 (quoting David Dietrich, co-chair of the ABA Property Preservation Task Force, stating that partition sales are “the worst problem you never heard of”); Goodwine, *supra* note 34, at 11 (“This continuing trend is not discussed on any large scale basis because it is seen as a local problem or a Sea Island problem.”); Salikoko S. Mufwene, *The Ecology of Gullah’s Survival*, in 72 AM. SPEECH 69, 76 (1997) (“One must also wonder why the media would have accomplished in the Geechee community what they have failed to do in the rest of the South, where the majority white population had earlier and greater access to the media.”).

¹³⁹ See Jeanne Cyriaque, *Interpreting African American Life on Ossabaw Island and Community Formation on the Mainland*, REFLECTIONS (Dec. 2011), http://georgiashpo.org/sites/uploads/hpd/pdf/Reflections/Reflections_Dec_2011.pdf.

¹⁴⁰ *Id.*; Angela Onwuachi-Willig, *Just Another Brother on the SCT?: What Justice Clarence Thomas Teaches Us About the Influence of Racial Identity*, 90 IOWA L. REV. 931, 969 (2005) (describing Justice Thomas’s childhood spent in Pin Point, Georgia where his mother still resides).

¹⁴¹ See generally *Gullah/Geechee Heritage Corridor*, *supra* note 30 (“The barrier islands were accessible only by boat until the building of the first bridges starting in the early

remains relatively underground.¹⁴² The Gullah-Geechee Cultural Heritage Corridor, maintained by the National Park Service in collaboration with local partners and organizational alliances, was established by the United States Congress in 2006 to commemorate this important piece of American culture.¹⁴³ Previously, Congress enabled the National Park Service to complete The Low Country Gullah Culture Special Resource Study in 2000.¹⁴⁴

The delicate nature of the animal and plant species located on the Sea Islands,¹⁴⁵ and precarious cultural aspects of a waning Gullah and Geechee population warrant special protection from overzealous land development.¹⁴⁶ The cultural ecology that emerges from the Sea Islands cannot be replicated elsewhere in the United States.¹⁴⁷ Accordingly, governmental funding and charitable donations may support an initiative

1950s. Since that time, many traditional Gullah/Geechee communities on the islands have been altered by cultural infiltration from mainlanders, or been lost entirely to real estate development.”).

¹⁴² *See id.* (“Through research, education and interpretation, the corridor aims to preserve and raise awareness regarding the Gullah/Geechee, among America’s least-known and most unique cultures.”).

¹⁴³ *See Gullah/Geechee Heritage Corridor*, *supra* note 30 (“The Gullah/Geechee Cultural Heritage Corridor extends from Wilmington, North Carolina in the north to Jacksonville, Florida, in the south. The National Heritage Area includes roughly 80 barrier islands and continues inland to adjacent coastal counties, defining a region 30 miles inland throughout the United States Low Country. The Gullah/Geechee Heritage Corridor is home to the Gullah people in the Carolinas, and the Geechee in Georgia and Florida—cultural groups descended from enslaved peoples from West and Central Africa The Gullah/Geechee Cultural Heritage Corridor is managed by a federal commission made up of local representatives who collaborate with the National Park Service, Community Partners, Grass Root organizations and the State historic preservation offices of North Carolina, South Carolina, Georgia and Florida.”).

¹⁴⁴ *See Ariana J. Marshall et al., Climate Change Adaptation through Coastal Land Use Management: The Context of Environmental Justice*, THE COASTAL SOC’Y’S 22ND INT’L CONF. 2 (“In this environmental justice context, one such example of a community, rather a nation within [a] nation which faces the disproportionate cost of economic, social and environmental crisis is found within the Gullah Geechee Cultural Heritage Corridor. . . . With documented findings such as those by the National Park Service and The National Trust for Historic Preservation, it is imperative that solutions are implemented with legislative and financial support from the federal, state, and local governments conjoined with local community guidance.”).

¹⁴⁵ Shofner, *supra* note 36, at 7 (“From herons to seagulls, azaleas to deer and raccoons to dolphins, many different species, plant or animal, find a home on Hilton Head.”).

¹⁴⁶ *See Goodwine, supra* note 34, at 9 (“The culture cannot be properly elevated by those who do not understand it for there are many nuances which will be misinterpreted. These can only be clarified if the community that is being studied is actively a part of the study process and not just treated as a voiceless specimen to be viewed with a magnifying glass.”); Johnson & Floyd, *supra* note 109, at 23; Persky, *supra* note 124.

¹⁴⁷ Joyner, *supra* note 49, at xix.

to save what is left of this unique environment.¹⁴⁸ The indigenous culture and endangered species in the Sea Islands are at risk.¹⁴⁹ A collective effort is necessary to ensure the enjoyment of the Sea Islands by the general public.¹⁵⁰ The Sea Island ecosystem comprises an integral part of the environment throughout the region that warrants special protection.¹⁵¹

C. *Non-Profit Organizational Support for Gullah and Geechee Interests*

Several entities must work together to preserve the coastal culture and ecological economy of the Sea Islands. A continuous effort to provide recognition to the instrumental coastal culture of the Sea Islands is vital to the reestablishment of island inhabitants in providing sustainable resources. A number of advocates and activists,¹⁵² along with special interest organizations, are leading the effort to protect African-American communities from land-loss, to preserve the natural and cultural resources of the Sea Islands.¹⁵³ Organizations involved in this effort include the Sapelo Island Cultural and Revitalization Society

¹⁴⁸ *But see* Paraschos, *supra* note 5, at 10 (“Funding for National Heritage Areas was reduced by half, and the National Park Service’s construction budget, which funds maintenance on historic structures, suffered a 35 percent hit.”).

¹⁴⁹ Joyner, *supra* note 49, at x (naming the “bald eagle, Eastern brown pelican, the short-nosed sturgeon, and the loggerhead turtle” as endangered Sea Island inhabitants); Shofner, *supra* note 36, at 7 (noting that Hilton Head serves as a habitat to the environmentally threatened Loggerhead Sea Turtle and previously endangered alligator among other species).

¹⁵⁰ *See* Joyner, *supra* note 49, at xvi (“As we drift further and further out upon the sea of modernization, that heritage may be as crucial to our sanity and survival as to theirs. The Sea Islanders and their folk culture have something precious to offer us if we do not destroy them first.”); SEABROOK, *supra* note 28, at 9 (explaining the position of the Sierra Club to preserve Cumberland Island in the public domain).

¹⁵¹ *See* Shofner, *supra* note 36, at 8 (“Typical of many barrier islands, salt marshes cover a large portion of the land-facing side of Hilton Head. These marshes provide aesthetic wonder, constantly changing their golden hue and sustaining a myriad of plant and animal life. The salt marshes also serve as the basis for the diverse ecology of the island, because they act as a nursery and breeding grounds for birds and fish. The nutrient wealthy waters of Hilton Head help maintain the area’s rich biodiversity.”) (citation omitted).

¹⁵² *See, e.g.*, BAILEY, *supra* note 49, at 291–92 (“I learned to fight for what I thought was right, to be an activist in my own way. . . . I became one who tells our [African-American Sapelo Island Geechee inhabitants] stories for a purpose—to preserve our history and culture, remind us of who we are and help save our way of life on this island.”).

¹⁵³ Goodwine, *supra* note 34, at 174 (“The loss of land has meant the loss of traditions in more ways than one in the Sea Islands.”).

(“SICARS”),¹⁵⁴ Hog Hammock Community Foundation,¹⁵⁵ Sapelo Island Heritage Authority,¹⁵⁶ the Gullah/Geechee Sea Island Coalition,¹⁵⁷ African American Environmentalist Association,¹⁵⁸ Penn Center,¹⁵⁹ Heirs’ Property

¹⁵⁴ SAPELO ISLAND CULTURAL REVITALIZATION SOC’Y, <http://sapeloislandga.org> (last visited Feb. 8, 2013); *Geechee Gullah Cultural Interpretive Village*, SAPELO ISLAND CULTURAL REVITALIZATION SOC’Y, <http://sapeloislandga.org/village/index.html> (last visited Feb. 8, 2013) (“[T]he Memorandum of Agreement between SICARS and the Sapelo Island Heritage Authority, an instrumentality of the State of Georgia that was signed July 1, 2008 has been a huge leap forward for the Geechee Gullah Nation on Sapelo.”); Letter of Support from Reginald Hall, Vice President of Development, SAPELO ISLAND CULTURAL REVITALIZATION SOC’Y, *available at* <http://sapeloislandga.org/village/index.html> (“The Sapelo Island Cultural and Revitalization Society (SICARS) was founded in 1993, incorporated in 1994, and achieved 501(c)(3) non-profit status in 1995. The organization’s mission is to ‘address systemic threats to the survival of the Hogg Hummock community through land retention strategies, land use planning, and policy reform.’ These threats include tax and government planning agendas that directly affect the community and encourage or directly create the loss of descendant-owned land.”); *see also* S. Res. 677, 2011 Gen. Assemb., Reg. Sess. (Ga. 2011) (“WHEREAS, many concerned citizens, environmentalist groups, business and property owners, and the original Geechee Gullah residents are gravely concerned about the future of this beautiful island and the survival of its native people; and WHEREAS, before it is too late and the important environmental and historical heritage of the island is lost forever, the State of Georgia needs to immediately undertake an extensive study and proposal development regarding the funding, governance, and future of Sapelo Island.”).

¹⁵⁵ BAILEY, *supra* note 49, at 274–75 (formed in part by Cornelia Walker Bailey in response to the proposed sale of land on Sapelo Island); Dowse et al., *supra* note 58, at 106 (“When SICARS was formed in 1993, community members realized that, with a long tradition of landownership, a recent and painful history of land loss, and mounting development pressure, there was an urgent need to be proactive and address land tenure issues. SICARS proceeded to expand its institutional capacity to become a community land trust.”).

¹⁵⁶ Sapelo Island Heritage Authority Act, GA. CODE ANN. § 12-3-440 (2012); Dewan, *supra* note 115 (reporting that the state-appointed Sapelo Island Heritage Authority did not have a budget).

¹⁵⁷ GULLAH/GEECHEE NATION, <http://gullahgeecheenation.com/> (last visited Feb. 8, 2013) (citing the Gullah/Geechee Nation Constitution and the Gullah/Geechee Declaration that states the Constitution’s mission is “[t]o preserve, protect, and promote our history, culture, language, and homeland and to institute and demand official recognition of the governance (minority) rights necessary to accomplish our mission to take care of our community through collective efforts which will provide a healthy environment, care for the well beings of each person, and economic empowerment”).

¹⁵⁸ AFR. AM. ENVIRONMENTALIST ASS’N, <http://aaenvironment.blogspot.com/> (last visited Feb. 8, 2013) (a division of the Center for Environment, Commerce & Energy).

¹⁵⁹ *Welcome to The Penn Center*, PENN CTR., <http://www.penncenter.com/> (last visited Feb. 8, 2013) (“Penn Center sits at the heart of Gullah culture, on the 50 acres of the historical campus of Penn School.”); *Collection, Documentation, Preservation and Dissemination: Public Programs*, PENN CTR., http://www.octavus.us/0000148/0000077/Public_Programs.php (last visited Feb. 8, 2013) (“The Program provides the tools to empower residents to

Retention Coalition,¹⁶⁰ Center for Heirs' Property Preservation,¹⁶¹ the Federation of Southern Cooperatives Land Assistance Fund,¹⁶² the Native Islander Business and Community Association,¹⁶³ and the Native Islanders Property Owners Association.¹⁶⁴

Foundations and non-profit organizations are also involved in the movement to promote the natural beauty and cultural integrity of the Sea Islands, including the A.L. Lewis Historical Society at American Beach,¹⁶⁵ Avery Research Center for African American History and Culture, the South Carolina African American Heritage Council, and other community development corporations. Additional organizations involved in the preservation efforts on the Sea Islands include the National Trust for

develop and work towards a long-range vision not only for their real property, but also for the community as a whole. General program activities include assistance with issues pertaining to: 1) taxes; 2) heirs property; and 3) community organizing.”); *see also Gullah/Geechee Heritage Corridor*, *supra* note 30 (“One of the most notable historic places to visit within the Gullah/Geechee Cultural Heritage Corridor is the Penn School Historic District on St. Helena Island in South Carolina. The district is a National Historic Landmark listed in the National Register of Historic Places.”).

¹⁶⁰ HEIRS' PROP. RETENTION COAL., <http://www.southerncoalition.org/hprc/> (last visited Feb. 8, 2013) (“HPRC’s mission is to develop and facilitate the collaborative action of organizations that help low-income families, particularly families of color in the southeast, retain their ancestral land and maintain it as a sustainable asset for future generations.”).

¹⁶¹ CENTER FOR HEIRS' PROP. PRES., <http://www.heirsproperty.org/> (last visited Feb. 8, 2013) (noting that legal services include estate planning, probate, and quiet title actions).

¹⁶² *History of the Federation of Southern Cooperatives*, S. GRASSROOTS ECONS. PROJECT, <http://sgproject.org/about/history-of-the-federation-of-southern-cooperatives/> (last visited Feb. 8, 2013) (“In 1985, the Federation merged with the Emergency Land Fund, which was also the result of a meeting on Black economic development held at the Atlanta University Center in the early seventies. ELF’s primary goal was to reverse the alarming trend of Black land loss in the rural south.”).

¹⁶³ *About Us*, HILTON HEAD ISLAND GULLAH CELEBRATION, <http://www.gullahcelebration.com/about/> (last visited Feb. 8, 2013) [hereinafter GULLAH CELEBRATION] (“The Native Island Business and Community Affairs Association, Inc. (NIBCAA), began meeting eighteen years ago. It was started by a group of minority business owners and community leaders who were interested in economic development and improving the quality of life for Native Islanders and other residents of Hilton Head Island. NIBCAA’s mission of fostering economic development and improving the quality of life of Native Islanders remains the focus of the organization.”).

¹⁶⁴ *See GULLAH CELEBRATION*, *supra* note 163 (“The Hilton Head Island Native Community, which is located primarily in Ward I, has four Property Owners Associations (POA’s). These POA’s keep the residents abreast of local, state and national issues impacting them and their communities.”).

¹⁶⁵ *See Visiting American Beach*, NAT’L PARK SERV., http://www.nps.gov/timu/historyculture/ambch_visiting.htm (last visited Feb. 8, 2013).

Historic Preservation,¹⁶⁶ the National History Landmark Program,¹⁶⁷ and the National Register of Historic Places.¹⁶⁸

The preservation of coastal African-American culture in the Sea Islands has occurred in some limited circumstances. For instance, the Florida Land Trust was successful in establishing a community center for the local residents of American Beach, with plans to open a museum to showcase the traditions of the African-American community on American Beach.¹⁶⁹ There are also plans to protect the owners historic land through homeowners associations.¹⁷⁰ Public interest groups may adequately serve to protect the land and its people from further erosion and encroachment in the event of government inaction.¹⁷¹ Access to monetary and natural resources may help to ensure sustainability in the context of cultural and ecological preservation.¹⁷²

IV. THE PRESERVATION OF GULLAH AND GEECHEE COASTAL CULTURE

Cultural continuity is the hallmark of ancestral ties that link the past to the present.¹⁷³ Ties that bind the American culture include the

¹⁶⁶ See National Trust for Historic Preservation, 16 U.S.C. § 468; see also Paraschos, *supra* note 5, at 10 (“Premier among preservation groups since its 1949 founding, the National Trust for Historic Preservation is a private, nonprofit membership organization dedicated to saving historic places and revitalizing America’s communities.”).

¹⁶⁷ See *National Historic Landmarks Program*, NAT’L PARK SERV., <http://www.nps.gov/nhl> (last visited Feb. 8, 2013).

¹⁶⁸ See National Register of Historic Places, 36 C.F.R. § 60; Determinations of Eligibility for Inclusion in the National Register, 36 C.F.R. § 63; see, e.g., Ellen Maguire, *Havens; Weekender: Sag Harbor, N.Y.*, N.Y. TIMES (July 9, 2004), <http://www.nytimes.com/2004/07/09/travel/havens-weekender-sag-harbor-ny.html?pagewanted=all&src=pm> (“Ninety percent of Sag Harbor [containing historic African-American enclaves] is on the National Register of Historic Places, including Azurest, a vacation enclave created in 1947 for middle- and upper-class black families, and exterior changes to buildings in the historic district must be approved by the local Board of Historic Preservation and Architectural Review.”); see also *National Register Bulletin 38*, NAT’L PARK SERV. (1990), available at <http://www.nps.gov/nr/publications/bulletins/nrb38>.

¹⁶⁹ *American Beach*, THE TRUST FOR PUB. LAND, <http://www.tpl.org/what-we-do/where-we-work/florida/american-beach.html> (last visited Feb. 8, 2013).

¹⁷⁰ See *Visiting American Beach*, *supra* note 165 (referencing the American Beach Property Owners Association).

¹⁷¹ See BREWER, *supra* note 114, at 9 (“Americans believed for a long time that federal and state governments were going to do the job of conserving land. . . . By the mid-1970s, this belief had faded.”).

¹⁷² See *History of Highland Beach*, TOWN OF HIGHLAND BEACH MD., <http://highlandbeachmd.org/> (last visited Feb. 8, 2013) (“Our [historically African-American] beachfront [on Highland Beach] is public land for the benefit of the entire community.”).

¹⁷³ See GUTHRIE, *supra* note 20.

Gullah and Geechee traditions of collective accountability for the land and its people.¹⁷⁴ An oral history tradition,¹⁷⁵ a unique dialect,¹⁷⁶ and shared resources combine to form the pinnacle of a celebrated lifestyle for the coastal Gullah and Geechee communities off the coast of Georgia and South Carolina. Panoramic ocean views were preserved as the Gullah and Geechee people honored and respected the land as a valuable resource.¹⁷⁷ The dedication that the Gullah and Geechee expressed toward the land for generations effectively preserved the Sea Islands for public use and now private consumption. Such effort should be honored by the public and private sector in mirroring Gullah and Geechee preservation techniques to publically preserve Gullah and Geechee cultural land holdings. Thus far, the Gullahs and Geechees have received little in return for their conservation efforts.¹⁷⁸ The Gullahs and Geechees have been informal trustees of the Sea Islands for so long that they could now be the beneficiaries of the land.

With the changing waves of development, gated communities transformed the open marshland of the coastal south into a venue of elitist structures at the expense of Gullah and Geechee heritage.¹⁷⁹ The

¹⁷⁴ See, e.g., Olufunmilayo B. Arewa, *Copyright on Catfish Row: Musical Borrowing, Porgy and Bess, and Unfair Use*, 37 RUTGERS L. J. 277, 307 ("As he [playwright George Gershwin] composed [the musical] *Porgy and Bess*, Gershwin spent time in Gullah communities in and around Charleston, South Carolina. Gullah communities are rich in cultural traditions and also retain a significant number of Africanisms in cultural expression, including language and music; they thus represented a rich resource from which Gershwin could draw.") (citations omitted). But see Kerry Reid, *Hit Porgy and Bess Points to Court's Future*, U. OF CHI., http://www.uchicago.edu/features/20110829_porgy_and_bess/ (last visited Feb. 8, 2013) ("Since its 1935 debut, the Gershwins' folk opera, based on DuBose Heyward's 1925 novel, has been roundly criticized for its stereotypical African American characters and misrepresentations of the South Carolina Gullah culture.").

¹⁷⁵ BAILEY, *supra* note 49, at 279.

¹⁷⁶ See Patricia Jones-Jackson, *On Decreeolization and Language Death in Gullah*, 13 LANGUAGE IN SOC'Y 351, 353 (1984).

¹⁷⁷ See GUTHRIE, *supra* note 20.

¹⁷⁸ See Lea Terlonge, *Resistance Is Not Futile: Protecting the Traditional Knowledge of the Gullah/Geechee from Assimilation*, 1 CHARLESTON L. REV. 51, 52 (2006) ("Government efforts to preserve the Gullah's stories, traditional practices, and language have thus far been insufficient.").

¹⁷⁹ See Kennedy, *supra* note 102, at 768–69 ("The NAACP Legal Defense Fund has alleged that the owner of one plantation, International Paper Corporation, colluded with the Beaufort County government to coerce the Gullah people to leave Daufuskie through tax increases, land seizures, and inadequate public services. In addition to throwing into stark relief the racial implications of market forces in shaping developers' choices, the Daufuskie dispute also illustrates the possibility that local governments will collude with developers to create attractive residential associations even at the price of encouraging racial discrimination.") (citations omitted); Goodwine, *supra* note 34, at 170 ("[P]eople [of

concrete bridges that were built at the prompting of real estate tycoons to provide mainstream access to Hilton Head and Amelia Island destroyed the cultural bridges of commonality among the native inhabitants.¹⁸⁰ These natives were generally free from outside intrusion prior to the development of luxury condominiums and townhouses.¹⁸¹ The building of bridges to marsh islands also affects the Sea Island environment.¹⁸² The unique language and traditions of the Gullah and Geechee populations are disintegrating into a sea of strip malls and golf courses.¹⁸³ Marketed towards business and leisure travelers, coastal communities such as Hilton Head and St. Simons Island have absolved the Gullah and Geechee cultural ties to the land in exchange for tourists and second-home owners.¹⁸⁴

Gullah and Geechee descent] give up their land for what they thought was a lot—only to find out later that they would no longer even be allowed on the property again because a gate was going up which would only be opened for those with passes and who lived or had official business on this resort ‘plantation.’”)

¹⁸⁰ See Goodwine, *supra* note 34, at 167 (“The attachment of bridges from the mainland to the islands in the Lowcountry of South Carolina and Georgia as well as the building of resort/vacation/retirement areas has come to be known as ‘development’ and the people that bring this in are called ‘developers.’ However, any Gullah or Geechee can point specifically to how these were never placed on the islands for their benefit, and have in fact only brought ruin to their culture, their language, their customs and their family ties.”); see also Rhinehart & Pompe, *supra* note 65, at 547 (“Public roads, ramps, docks, and bridges produce overcrowding and heavy stress on the environment. Bridges financed by taxpayer dollars have been a key element in promoting the development of barrier islands.”); Joyner, *supra* note 49, at xii (“In 1956 the first bridge to Hilton Head Island was constructed. Feverish land speculation ensued as other developers scurried onto Hilton Head and other Sea Islands to exploit the boom, buying up land from black islanders and building more resorts.”).

¹⁸¹ See Shofner, *supra* note 36, at 6 (“Access to the island was very limited in the beginning, but the Byrnes Bridge completion in 1956 allowed easy car access and a massive number of travelers, Sea Pines was ready to grow.”).

¹⁸² See Eric Ryan, Palazzolo, *the Public Trust, and the Property Owner’s Reasonable Expectations: Takings and the South Carolina Marsh Island Bridge Debate*, 15 SOUTH-EASTERN ENVTL. L.J. 121, 125 (“Coastal conservation advocates urged the State [South Carolina] to limit bridge-building in the coastal zone as much as possible, fearing the establishment of a vast network of bridges that would fragment the tidelands and damage vulnerable features of the coastal ecosystem.”).

¹⁸³ See Mufwene, *supra* note 138, at 69; *A Vanishing South, Gullahs v. Golfers: Preserving the Culture of the Sea Islands*, THE ECONOMIST (Jan. 31, 2008), <http://www.economist.com/node/10608808> (noting St. Helena’s ordinance against golf courses in light of the development in Hilton Head, including a resort community owned by Disney).

¹⁸⁴ BAILEY, *supra* note 49, at 251 (“[T]he black community there [on St. Simons Island] was beginning to be squeezed a little by development. All of St. Simons was. The whole island was on its way to being turned into fancy shops and high-priced homes for people moving into the Sea Islands.”); Mufwene, *supra* note 138, at 73–74 (“The new white residential communities of coastal Georgia and South Carolina are likewise separate from

Former visitors of the Sea Islands off the coasts of South Carolina and Georgia included the wealthiest American families.¹⁸⁵ The Carnegies,¹⁸⁶ Rockefellers,¹⁸⁷ Vanderbilts,¹⁸⁸ Morgans, and Reynolds¹⁸⁹ were among the elite inhabitants who escaped the northern metropolis for the serene scenery of the barrier islands.¹⁹⁰

African-American inhabitants historically lived on the islands as slaves prior to emancipation. Once freed, they were permitted to reside on this obscure location away from the mainland where they were still unwelcome.¹⁹¹ The diminishing value of plantations and harsh coastal climate after the Civil War led to the mass exodus of white inhabitants, leaving a predominately African-American population on the Sea Islands.¹⁹²

the traditional, pre-dominantly African-American communities. . . . As for the presence of tourists, one wonders how many times tourists stop to interact with the local populations in the first place.”).

¹⁸⁵ DANIELSON, *supra* note 24, at 6 (noting that the wealthy were drawn to the natural beauty of the Sea Islands); *see also* Dewan, *supra* note 115 (“Many tourists, unsated by a glimpse of the miles of salt marsh and the plantation ruins, the restored African Baptist church and the old sugarcane grinder, have one question: is there land for sale?”).

¹⁸⁶ *See* SEABROOK, *supra* note 28, at 7 (finding that the Carnegie family of Thomas M. Carnegie previously owned up to ninety percent of Cumberland Island, now maintained in part by the National Park Service to develop a national seashore).

¹⁸⁷ SEABROOK, *supra* note 28, at 7–8 (noting that the Rockefeller family also inhabited Cumberland Island).

¹⁸⁸ *See* Brian Grabbatin & Jennie Stephens, *Wigfall v. Mobley et al.: Heirs' Property Rights in Family and in Law*, 20 DISCLOSURE: A JOURNAL OF SOCIAL THEORY 133, 135 (“While the first generation of free African Americans was acquiring land, northern industrialists with names like Vanderbilt and Pulitzer also began buying portions of the southeastern coastline for vacationing and recreational hunting.”) (citations omitted).

¹⁸⁹ *See* Griffin Lotson, *Cultural Interpretive Village Feasibility Study*, SAPELO ISLAND CULTURAL REVITALIZATION SOC'Y (2008), available at <http://sapeloislandga.org/CIV/FeasibilityStudy.pdf> (“In the 1940's, tobacco magnate R. J. Reynolds purchased Sapelo Island and consolidated seven traditional African-American communities into one at Hogg Hummock Community.”).

¹⁹⁰ *See* RYMER, *supra* note 85, at 162 (“Resort culture was at its most concentrated and occult in the Sea Islands extending north from Amelia through the Georgia and South Carolina coasts. These became millionaire fiefdoms . . . a place [Jekyll Island] where the Rockefellers, Carnegies, Fergusons, Macys, Sloans, Vanderbilts, Astors, McCormicks, Fishers, Goulds, Whitneys, Pulitzers, and Morgans could all congregate.”); *Gullah Geechee*, *supra* note 2 (“Magnates, such as Bernard Baruch, R. J. Reynolds, Howard Coffin, and Tom Yawkey, bought failed rice plantations from their bankrupt owners and established hunting lodges for themselves and their friends. In some cases Gullah/Geechee people who were living on this land were allowed to continue their farming and/or work for the new landowner, while other new owners forced black people from the land.”).

¹⁹¹ GUTHRIE, *supra* note 20, at 1–2.

¹⁹² DANIELSON, *supra* note 24, at 10.

As a result of isolation in the aftermath of the Civil War and later segregation, African Americans were left to establish their own communities on the Sea Islands.¹⁹³ Life on the Sea Islands for slave descendants “was not an easy life; but it was a self-sufficient life adapted to the environment, a life shaped by a rich folk culture. Cut off from the mainland, generation [sic] of Sea Islanders preserved their cultural heritage, reflecting both continuity with Africa and creativity in the New World.”¹⁹⁴ The isolation from the mainstream population led to the development of the Gullah and Geechee languages and customs on the largely undeveloped Sea Islands.¹⁹⁵ Gullah and Geechee speech are derivatives of English and African dialects that are still in use today.¹⁹⁶

The sizable Gullah and Geechee communities in the Sea Islands have dwindled over the years.¹⁹⁷ The minimal number of Gullahs and Geechees remaining on the Sea Islands are largely overshadowed by the vast majority of vacationing families and relocated individuals who now inhabit these traditional lands.¹⁹⁸ Retirement communities and luxury beach homes infringed upon these cultural lands without recognition or respect for the underlying communities that comprise the rich Gullah and Geechee culture.¹⁹⁹ Shopping and recreation by the newcomers to the Sea Islands circumvented the traditional farming and fishing of the Gullah people.²⁰⁰

¹⁹³ *Id.* at 9–10 (“Bolstering the new city’s [Hilton Head after Union occupation pursuant to the Civil War] population were thousands of blacks. . . . In the weeks and months after the battle, former slaves poured onto Hilton Head and other occupied sea islands. . . . [Freed African-American slaves] harvested and planted cotton; moved into a new black town, which had a mayor and elected council; and went to schools operated by the Freedman’s Association.”).

¹⁹⁴ Joyner, *supra* note 49, at xi.

¹⁹⁵ See DANIELSON, *supra* note 24, at 6, 10–11 (“With the departure of the [Union] soldiers and speculators began eighty years of isolation as the island settled into a cycle of subsistence farming and oystering by a largely black population. . . . As the nineteenth century drew to a close, Hilton Head was a forgotten island with a dwindling black population and few visitors from the outside world.”).

¹⁹⁶ BAILEY, *supra* note 49, at 2–4.

¹⁹⁷ *Id.* at 7; MCFEELY, *supra* note 40, at 14.

¹⁹⁸ See Dewan, *supra* note 115.

¹⁹⁹ Goodwine, *supra* note 34, at 11. See generally Shofner, *supra* note 36, at 7 (noting that the climate, beaches, and wildlife of the Sea Islands appeal to regional resort and retirement development).

²⁰⁰ See generally GUTHRIE, *supra* note 20, at 5 (noting that African Americans on the South Carolina Sea Islands maintained crops of African origin including okra and yams); DANIELSON, *supra* note 24, at 11 (stating that farming was the primary occupation of African-American landowners on Hilton Head).

The influx of mainstream visitors and residents upset the ecological soundness and cultural sustainability maintained by the Gullahs and Geechees.²⁰¹ Expansive and under-utilized golf courses cover stretches of historic land that suppress the generational history of the Gullahs and Geechees who cultivated the land for hundreds of years.²⁰² The unbridled development of sacred land²⁰³ that often serves as the only asset that African-American families have, serves to foster political and judicial controversy to the detriment of the Gullah and Geechee culture.²⁰⁴

V. CULTURAL AND ENVIRONMENTAL PRESERVATION EFFORTS IN THE SEA ISLANDS

While the judicial interpretation of real property, trust, and estate laws has provided relief to an extent, legislative action and executive administration do not fully protect the Sea Islands and their people from unwarranted intrusion. Federal regulation of historically significant African-American land may slow the extreme rate of African-American land loss in the United States.²⁰⁵ Tribal Indian lands and indigenous

²⁰¹ See GUTHRIE, *supra* note 20, at 5 (noting that the population of the South Carolina coast prior to the mid-1960s was predominately African American).

²⁰² Goodwine, *supra* note 34, at 174 (“The beauty from the natural foliage and the smiles of the native people calls into question the beauty of congested roads surrounded by pre-fabricated buildings, golf courses, and tennis courts.”).

²⁰³ See, e.g., Press Release, Ecological and Historic Preserve, Timucuan Announces Significant Archaeological Discovery, National Park Service (Nov. 10, 2011), *available at* <http://www.nps.gov/timu/parknews/archaeological-discovery.htm> (announcing that a slave cemetery was discovered on Kingsley Plantation, a historical site near American Beach).

²⁰⁴ See Goodwine, *supra* note 34, at 186 (“There have been numerous legal cases on Daufauskie [a South Carolina Sea Island] in regard to the blocking of public roads so that the Gullahs would not be able to use them.”); BAILEY, *supra* note 49, at 271–72 (“We [the Geechee of Sapelo Island] discovered later the state [of Georgia] was claiming the whole thing, because one man filed suit before the statute of limitations ran out. . . . Some families did file claims, and they’re still waiting for them to be resolved. We didn’t know anything about the terms of the sale. . . . It hit us for the first time that we could lose our island home if we weren’t careful.”).

²⁰⁵ See Chandler, *supra* note 124, at 389 (“In the last century, African Americans have lost nearly thirteen million acres of farmland in the United States. . . . From 1920 to 1978, the number of farms operated by African Americans in the United States declined at a rate of 93.8 percent compared with a 56.4 percent rate for white farm operators.”) (citations omitted); Mitchell, *supra* note 115, at 2–3 (“Remarkable levels of acquisition have been replaced by extraordinary levels of [rural African-American] land loss in the past half-century or so. . . . Opportunistic lawyers or land speculators have taken advantage of these legal rules in order to acquire black-owned land.”).

Native Hawaiian and Polynesian lands are statutorily protected, but historic African-American land is not specifically accounted for in the National Historic Preservation Act.²⁰⁶

A. *Federal and State Oversight*

The Guidelines for Traditional Cultural Properties are under review during the years 2012 through 2013 by the National Park Service.²⁰⁷ The recent definition of the term “traditional cultural property” focuses on National Register–eligible Native American property.²⁰⁸ A parallel preservation structure used for Native American land could be used for inclusion of Gullah and Geechee sacred and historic land sites.²⁰⁹ This Article proposes a broader definition of the term “traditional community” to engage in a richer narrative of cultural diversity in the United States. The Gullah and Geechee communities should qualify as “traditional,” thereby warranting historic protection and preservation under the updated guidelines. Standards for inclusion on the National Registry of Historic Places

²⁰⁶ See Mitchell, *supra* note 115, at 66 (“Just as the federal government, the courts, and the general public recognize that certain Indian-owned ancestral land constitutes a vital part of the American Indian heritage, the federal government should recognize that there is small amount of rural land still under black landownership that represents a part of the African American heritage. . . . In addition to this land, land set aside for specific black communities during the New Deal resettlement programs should be eligible for special federal protection.”) (citation omitted).

²⁰⁷ *Guidelines for Traditional Cultural Properties*, NAT’L CTR. FOR PRES. TECH. & TRAINING, <http://ncptt.nps.gov/articles/c2a/guidelines-for-traditional-cultural-properties/> (last visited Feb. 8, 2013).

²⁰⁸ See *Guidelines for Traditional Cultural Properties*, *supra* note 207; see also Parker & King, *supra* note 127, at 1; *Tribal Preservation Program*, NAT’L PARK SERV., http://www.nps.gov/tribes/Tribal_Historic_Preservation_Officers_Program.htm (last visited Feb. 8, 2013) (includes grants and research for the protection and preservation of Indian culture including that of federally recognized tribes along with Native Alaskan and Hawaiian groups).

²⁰⁹ See MCFEELY, *supra* note 40, at 150 (“[E]ach holding should be guaranteed to the present residents or their descendants, in perpetuity. There are precedents for this now on Indian lands and for householders in areas incorporated into national parks.”); see, e.g., Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. § 3001, 43 C.F.R. § 10; *Georgia’s State Historic Preservation Plan 2012–2016: Partnering for Preservation*, GA. DEPT. OF NATURAL RES., at 5 (2012), available at http://georgiashpo.org/sites/uploads/hpd/pdf/Pres%20Plan%202012-2016_low%20res.pdf [hereinafter *Ga. Historic Pres. Plan*] (“Archaeologists . . . mounted a series of successful field school investigations on Sapelo Island The investigations resulted in the identification of a very large Mission Period Guale Indian site which may be that of the mission Santa Josef de Sapala.”); Terlonge, *supra* note 178, at 71 (“Additionally, lawmakers should extend mandatory . . . requirements and enact legislation akin to Native American cultural protection laws in order to protect the Gullah. The Gullah deserve it.”).

and the designation of Traditional Cultural Properties should recognize the depth and extent of Gullah and Geechee culture in the Sea Islands. A streamlining of the registry process is also recommended to overcome monetary and legal barriers to Gullah and Geechee property nomination and induction in the National Register of Historic Places.²¹⁰

In the meantime, state property laws should be reviewed to curtail the use of partition sales and blight statutes on Gullah and Geechee land in the Sea Islands.²¹¹ Condemning blighted property “is likely to result in takings from solely low-income areas.”²¹² Partition sales exacerbate socioeconomic problems because “the economic inability of many black co-tenants to purchase all the real estate [subject to a forced sale] provides speculators with an easy bidding market.”²¹³ Urban renewal and gentrification should be limited with input from affected communities to promote the preservation and protection of Gullah and Geechee land and culture.²¹⁴ The use of restrictive covenants to exclude classes of people,

²¹⁰ See *National Register Bulletin 15*, NAT'L PARK SERV. (1990) (revised 1991, 1995, 1997), available at <http://www.nps.gov/nr/publications/bulletins/nrb15>; Parker & King, *supra* note 127, at 12–18. Meeting at least one of the four National Register Criteria is a condition precedent to eligibility for federal designation of traditional cultural properties. *Id.* The property at issue shall also not be ineligible according to the six criteria stated in 36 C.F.R. § 60.4. Although undocumented, Gullah and Geechee property appears to fit into this complex set of evaluation criteria. *Id.*

²¹¹ See Amanda W. Goodin, *Rejecting the Return to Blight in Post-Kelo State Legislation*, 82 N.Y.U. L. REV. 177, 179 (2007); CASTLE COAL., 50 STATE REPORT CARD: TRACKING EMINENT DOMAIN REFORM LEGISLATION SINCE KELO 3–4 (2007); see also Nathan Koppel, *There Goes the Neighborhood: A Fight Over Defining 'Blight'*, WALL ST. J. (Apr. 30, 2009), <http://online.wsj.com/article/SB124105581784671561.html> (proposing that the term “blight” is too broadly defined in many states, leading to the unjustified redevelopment of private property).

²¹² Goodin, *supra* note 211, at 179 (“This result poses fundamental fairness and environmental justice concerns if the use of eminent domain for development imposes net costs on property owners in low-income areas, while society as a whole enjoys the benefits.”); Bert Gall, *Homes of 5,000 Florida Residents Declared “Blighted,”* INST. FOR JUSTICE (Dec. 2006), <http://www.ij.org/homes-of-5000-florida-residents-declared-qblightedq-2>.

²¹³ John G. Casagrande, Jr., *Acquiring Property Through Forced Partitioning Sales: Abuses and Remedies*, 27 B.C. L. REV. 755, 757 (1986) (“The economic inability of many black co-tenants to purchase all the real estate [subject to a forced sale] provides speculators with an easy bidding market. Furthermore, these partitioning sale actions are sometimes instigated by lawyers to collect fees, and by judges who personally benefit by purchasing the properties.”); KAHRL, *supra* note 61, at 250–52 (“In the extent of black-owned land lost to forced partition sales, and in the sheer mendacity and duplicity of speculators, lawyers, and developers engaged in the liquidation of heirs’ properties, few regions of the coastal South could rival the South Carolina Sea Islands.”) (citation omitted).

²¹⁴ See generally *Kelo v. City of New London*, Conn., 545 U.S. 469, 522 (2005) (Thomas, J., dissenting) (noting that urban renewal and gentrification often come at the expense of displacing African Americans and the elderly) (citing Wendell Pritchett, “Public Menace”

even if such action is race-neutral on its face, should be statutorily prohibited.²¹⁵ The strategic use of existing state and federal historic preservation protection should be enforced to hold developers accountable, through assessments or otherwise, for the diminution in cultural value to the area and the deterioration of the coastal ecosystem that results from real estate development.²¹⁶ Non-profit and charitable organizations may also assist in sustaining the waning cultural history of the Gullahs and Geechees.²¹⁷

B. *Historic Preservation and Protection*

A hybrid approach of registering historic places and designating historic land as part of the state historic preservation and national park

of Blight: Urban Renewal and the Private Uses of Eminent Domain, 12 YALE L. & POL'Y REV. 1, 47 (2003)).

²¹⁵ See, e.g., Andrew W. Kahrl, *Warning: Black People at Leisure*, HARV. U. PRESS BLOG (Apr. 16, 2012), http://harvardpress.typepad.com/hup_publicity/2012/04/warning-black-people-at-leisure-andrew-kahrl.html (explaining that white Americans opposed to beach integration “implemented a host of racially laden but ostensibly color-blind measures of exclusion designed to make public beaches ‘public’ in name only. During the years when African Americans stepped up demands for the right to enjoy public beaches, many wealthy shoreline municipalities, especially along the northeastern seaboard, adopted entry fees (with different rates for residents and non-residents), removed public locker rooms, or—in some cases—placed outright bans on non-resident access”). See generally *Highland Beach, Maryland (1893–)*, BLACKPAST.ORG, <http://www.blackpast.org/?q=aah/highland-beach-maryland-1893> (“Charles Douglass claimed his greatest success in establishing Highland Beach was in circumventing restrictive property covenants in the area that prevented the sale of real estate to blacks and other people of color.”); Powell, *supra* note 107 (“That Moses was highhanded, racist and contemptuous of the poor draws no argument even from the most ardent revisionists. . . . That there was a human cost, that half a million people were displaced and neighborhoods broken to realize his vision, is beyond question. . . . He built his most elegant playgrounds for the white and comfortable. . . .”) (commenting on the work of legendary New York developer, Robert Moses, as highlighted in the book by Robert Caro entitled, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* (1974)).

²¹⁶ See, e.g., National Historic Preservation Act, 16 U.S.C. § 470w-4 (2000) (“In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys’ fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.”). *But see* SEABROOK, *supra* note 28, at 10 (explaining that limited resources exist for governmental historic preservation in light of budgets set by Congress for the administration and maintenance of national parks).

²¹⁷ See, e.g., SEABROOK, *supra* note 28, at 12 (referencing the Wilderness Society and the National Parks and Conservation Association as charitable organizations for environmental conservatism); BAILEY, *supra* note 49, at 283 (discussing how the State of Georgia hired a professional to conduct a genealogy study of African-American land-owning families of the 1870 census that resulted in a solid account to help resolve claims to land on Sapelo Island).

system²¹⁸ may present a viable solution for cultural retention and environmental preservation on the Sea Islands.²¹⁹ Partnerships and resulting agreements are poised to make strides in preserving the cultural land and landmarks while maintaining environmental standards.²²⁰ Historic land ownership in the Sea Islands could remain a point of interest for the National Park Service through structured agreements providing for the maintenance of cultural property and public access to natural and cultural resources.²²¹ A blend of cultural recognition with local, state, and

²¹⁸ See, e.g., Additional Areas for National Park System, 16 U.S.C. § 1a-5 (1998) (the Secretary of the Interior was required to study the low country culture of the Gullah south for potential inclusion in the National Park System).

²¹⁹ See, e.g., National Historic Preservation Act of 1966, Pub. L. 102-575 (1992) (codified at 16 U.S.C. 470 et seq.); see also Lysa Allman-Baldwin & Thomas Dorsey, *Sag Harbor and The Hamptons Guide*, SOUL OF AMERICA, <http://www.soulofamerica.com/sag-harbor-the-hamptons-guide.phtml> (last visited Feb. 8, 2013) (“Listed on the National Register for Historical Places, Eastville is home to several Afrocentric historical sites such as St. David AME Zion Church, the AME Zion Cemetery, and the Eastville Community Historical Society, housed in the former Sears Roebuck Catalog House on Highway 114.”); Center for Public Archaeology at Hofstra University, *Eastville Community*, MAPPING THE AFR. AM. PAST, <http://maap.columbia.edu/place/59> (last visited Feb. 8, 2013) (describing the African-American and Native American history in the historic whaling town of Eastville, Long Island); National Register of Historic Places, *Continuation Street, Azurest South, Chesterfield County, Virginia*, NAT'L PARK SERV., http://www.dhr.virginia.gov/register/Counties/Chesterfield/020-5583_Azurest_South_1993_Final_NRHP_nomination.pdf (last visited Feb. 8, 2013) (“At Sag Harbor, a resort for wealthy whites, including the Roosevelt family, Miss [Amaza Lee] Meridith and her family and friends created Azurest North, an enclave of vacation homes for middle-class blacks.”).

²²⁰ See, e.g., Viola Walker, *The Dunes at American Beach*, AM. BEACH PROP. OWNERS' ASS'N (Strategic Planning Commission), July 2012, <http://www.historicamericanbeach.com/images/abpoa%20newsletter%20july%202012.pdf> (reporting on the memorandum of understanding between the National Park Service, the Fish and Wildlife Service, Florida A & M University School of the Environment, and the American Beach Property Owners' Association as a conservation effort to protect the coastline, sand dunes, and American Beach community as a whole).

²²¹ See National Historic Preservation Act, 16 U.S.C. § 470b (2012) (“No grant may be made under this Act . . . unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary [of the Interior] after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965.”); NAT'L PARK SERV., *supra* note 24 (“Such [archeological] research is directly related to current significant anthropological concerns and is essential to park visitor understanding [on Cumberland Island] of the integral role of slavery in the economic structure of the Sea Islands plantations. The nature of such work is relevant and propitious as the nation awakens to the needs of her minorities and recognizes the often vital role they played in American history.”); Mario de Valdes y Cocom, *The Blurred Racial Lines of Famous Families*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/secret/famous/stafford.html>

national government intervention could serve to ease corporate expansion in the Sea Islands.²²²

C. *Case Studies in Cultural Land Retention in the Context of Corporate Land Development*

Coastal land preservation for public recreational use is one of the goals of the National Park Service. The Service was successful in preserving Cumberland Island, a Sea Island off the coast of southern Georgia, as a National Seashore.²²³ The National Park Service also lists the American

(documenting that Robert Stafford formed a family with his slave that spanned a number of years and produced several children) (“This interracial family received a certain amount of public attention in 1889 when a suit was brought in New York by a number of Stafford’s grandchildren to recover 40,000 acres of his Cumberland plantation from Mrs. Andrew Carnegie.”); Andrew Koransky, *Brief Timeline of History on Cumberland Island*, U. OF VT. (Mar. 15, 1999), http://ecoinformatics.uvm.edu/SET/cumberland_history.html (providing that Cumberland Island was regarded by the National Park Service as a place of national significance along the Atlantic coastline).

²²² See *A Community in Transition*, NAT’L PARK SERV., http://www.nps.gov/timu/history/culture/ambch_communityintransition.htm (last visited Feb. 8, 2013) (“A property owners’ association and a local historical society [on American Beach], named in honor of A. L. Lewis, intend to preserve at least a part of that heritage through a museum and community center. The National Register of Historic Places has designated the original 33 acres as worthy of historic preservation. The Trust for Public Land has coordinated the purchase of the Rendezvous Restaurant on behalf of Nassau County.”); see, e.g., Gerry Volgenau, *Remembering Its Past*, CHI. TRIB. (Feb. 27, 2000), http://articles.chicagotribune.com/2000-02-27/travel/0002270373_1_mavynnee-betsch-american-beach-florida-african-american-heritage-trail (American Beach is part of the Florida African American Heritage Trail that includes a number of historical sites). *But see* BAILEY, *supra* note 49, at 327 (“Our [Geechee] stamp is all over this [Sapelo] island, but you have to know how to see it. We [Geechees] put up a sign to let visitors know when they are entering Hog Hammock and we put one at Behavior Cemetery. Those signs are in our community, but the rest of the island is administered by the state [of Georgia], and on state land you will not see any historical markers commemorating our history and contributions to Sapelo.”). See generally *Kingsley Plantation*, CITY OF JACKSONVILLE, <http://www.coj.net/departments/parks-and-recreation/waterfront-management-and-programming/preservation-project/kingsley-plantation.aspx> (last visited Feb. 8, 2013) (explaining that Kingsley Plantation on the Timucuan Preserve is a part of African-American Sea Island history that is supported by three governmental agencies including the Preservation Project, Jacksonville, Florida State Parks, and the National Park Service).

²²³ Salter, *supra* note 22; *Gullah/Geechee Heritage Corridor*, *supra* note 30; Declaration of National Policy, 16 U.S.C. § 461 (2012) (listing the national heritage and river corridors which include the Gullah/Geechee Cultural Heritage Corridor, Pub. L. 109-338, §§ 295–295L, 120 Stat. 1832 (2006)); RYMER, *supra* note 85, at 163 (explaining that the rest of Cumberland island is a national seashore partly because the efforts of a local lobbyist, MaVynee Betsch).

Beach Historic District in Florida and Behavior Cemetery on Sapelo Island on the National Register of Historic Places.²²⁴ However, a number of African-American history landmarks are not protected, as they do not appear on the National Register of Historic Places.²²⁵ Moreover, the Gullah/Geechee Cultural Heritage Corridor Commission established pursuant to the federal Gullah/Geechee Cultural Heritage Act under the National Park Service is not in a position to purchase land.²²⁶ Additional Sea Island Gullah and Geechee sites should be nominated for inclusion in the National Register of Historic Places as part of a comprehensive plan to protect the vulnerable history of the Gullahs and Geechees in the region. Such a plan could be administered in cooperation with for-profit and non-profit groups.²²⁷ A legal defense fund could also be established and endowed by private donors and corporate sponsors to benefit Gullah and Geechee historic preservation.²²⁸

²²⁴ See, e.g., National Register of Historic Places, *American Beach Historic District: American Beach, Florida*, NAT'L PARK SERV., <http://www.nps.gov/history/nr/feature/afam/2003/florida.htm> (last visited Feb. 8, 2013); National Register of Historic Places, *Behavior Cemetery: McIntosh County, Georgia*, NAT'L PARK SERV., http://www.nps.gov/history/nr/feature/afam/2001/nr_properties.htm#behavior (last visited Feb. 8, 2013).

²²⁵ National Heritage Area Act, 16 U.S.C. § 461 (2012), see, e.g., Terlonge, *supra* note 178, at 69–70 (“Although the Act takes tremendous steps toward preserving Gullah artifacts, its efforts toward protecting the living culture are lacking. The Act makes arrangements for the identification and preservation of cultural artifacts but makes no provision for a program that would enable the Gullah people, who use the traditional methods and create the artifacts, to continue their work. Understanding the inadequacies of the Gullah/Geechee Cultural Heritage Act requires an understanding of the difference between protection and preservation. . . . While the Gullah/Geechee Cultural Heritage Act purports to preserve the Gullah culture, it is designed to protect the artifacts of the Gullah culture from strictly a preservationist standpoint. The Act takes no steps to protect the Gullah culture as it exists—to keep it a living culture. The Act’s efforts to merely preserve artifacts and historical sites will do little to keep the living culture alive in the manner that intellectual property protection could. The United States government must make an effort to protect the traditional knowledge that the members of the Gullah community possess.”).

²²⁶ See Dewan, *supra* note 115.

²²⁷ See, e.g., *Georgia’s State Historic Preservation Plan*, *supra* note 209, at 10; see also Paraschos, *supra* note 5 (“Since 1988, the Trust has used its annual lists of ‘11 Most Endangered’ places as a way to raise awareness of the threats facing America’s most significant historic places. . . .”).

²²⁸ See Smith, *supra* note 119, at 599 (“Some land trusts do not have the resources to monitor easements properly or to mount legal challenges when they find violations. As a solution, some academics and concerned practitioners advocate that states institute third-party enforcement of conservation easements, which would allow state attorneys general, private citizens or other conservation organizations to step in where a land trust may not have the resources to challenge a violation.”).

D. *The National Historic Preservation Act*

The National Historic Preservation Act legislates on behalf of the American public to preserve places of historic significance.²²⁹ Federal, tribal, state, and local agencies collectively provide for the identification, establishment, acquisition, maintenance, and general oversight for locations of cultural significance as defined by the Act.²³⁰ The National Historic Preservation Act coordinates the efforts of special interest groups to further legislative action to preserve historic land and structures.²³¹ State Historic Preservation Offices in Florida,²³² Georgia,²³³ and South Carolina²³⁴ also provide resources for the preservation of historic sites, but they do not widely cover Gullah and Geechee property. Private individuals and entities partner with governmental agencies to retain national landmarks under the Act.²³⁵ Resources for the historic preservation program authorized by the Act are provided by the Historic Preservation Fund.²³⁶

²²⁹ National Historic Preservation Act of 1966, 16 U.S.C. § 470(b)(2) (2000) (“The Congress finds and declares that . . . the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.”).

²³⁰ *See id.* § 470-1; *see also id.* § 470a (the Secretary of the Interior in conjunction with national historic and archaeological associations nominate significant property onto the World Heritage List in accordance with the Convention concerning the Protection of the World Cultural and Natural Heritage); *id.* § 301 (“‘Preservation’ or ‘historic preservation’ includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.”).

²³¹ *See id.* § 470a(b)(1) (“The Secretary [of the Interior], in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs.”).

²³² *See Division of Historical Resources*, FLA. DEP’T OF ST., <http://www.flheritage.com/> (last visited Feb. 8, 2013).

²³³ *See Historic Preservation Division*, GA. DEP’T OF NAT. RES., <http://georgiashpo.org/> (last visited Feb. 8, 2013); Georgia African American Historic Preservation Network, GA. DEP’T OF NAT. RES., http://www.georgiashpo.org/historic/African_American (last visited Feb. 8, 2013).

²³⁴ *See State Historic Preservation Office, African American Heritage Commission*, S.C. DEPT. OF ARCHIVES AND HISTORY, <http://shpo.sc.gov/res/Pages/SCAAHC.aspx> (last visited Feb. 8, 2013).

²³⁵ *See* National Historic Preservation Act §§ 470–471.

²³⁶ *See id.* § 470h-2; *see also id.* § 4702w-2 (stating that the Secretary of the Interior may accept gifts, donations, and bequests to fulfill the purposes of the National Historic Preservation Act).

Tax incentives and grants are also available for the preservation of American history.²³⁷ Resources should continue to expand the certification of African-American historic sights to retain and restore the American history lost in the Sea Islands.²³⁸ Congressional findings pursuant to the National Historic Preservation Act include the following sentiment:

[I]n the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation. . . .²³⁹

The significant role that Gullahs and Geechees have held in the preservation of pristine lands that comprise the Sea Islands should be formally recognized and acknowledged by governmental interests in establishing cultural parks²⁴⁰ within historic conservation districts.²⁴¹ In accordance with the National Preservation Act, corporate entities should actively strive to preserve the cultural integrity of the Sea Island experience

²³⁷ See 26 I.R.C. § 170(h) (2006); 26 I.R.C. § 47 (2006); *see also* National Historic Preservation Act § 112(b) (indicating that historic preservation programs should “encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources.”); 26 I.R.C. §§ 405–406 (grants and donations may come from private individuals, corporate entities, and non-profit organizations); *Visiting American Beach*, *supra* note 165 (“The National Park Services owns the 8.5 acre sand dune. The ‘Evans Rendezvous’ building [African-American place of interest] (not available for touring) was acquired by the Trust for Public Land. The majority of land at American Beach is held by private landholders—please respect their privacy.”). *But see* BAILEY, *supra* note 49, at 328 (“They’re [State of Georgia Department of Natural Resources] willing to give us [Geechees on Sapelo Island] grants to help renovate the old church at Raccoon Bluff for cultural and church events, but they say that although the church is ours, the land it sits on belongs to the state.”).

²³⁸ See *A Community in Transition*, NAT’L PARK SERV., http://www.nps.gov/timu/history/culture/ambch_communityintransition.htm (last visited Feb. 8, 2013).

²³⁹ National Historic Preservation Act § 470(b)(5).

²⁴⁰ See *id.* § 301(9) (“‘Cultural park’ means a definable area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.”).

²⁴¹ See *id.* § 301(10) (“‘Historic conservation district’ means an area which contains—(A) historic properties, (B) buildings having similar or related architectural characteristics, (C) cultural cohesiveness, or (D) any combination of the foregoing.”).

that may be marketed as a value added to coastal living.²⁴² The nation should continue to adhere to the policies set forth in the National Historic Preservation Act to protect our collective national heritage to include African-American life in the Sea Islands.²⁴³

E. Reinvestment Strategies in the Gullah and Geechee Communities

The strong Gullah and Geechee values of living “green” formed the foundation for the environmental preservation that is prevalent in the Sea Islands.²⁴⁴ The Gullahs and Geechees were esteemed stewards of the land without compensation or credit.²⁴⁵ The Gullahs and Geechees honorably lived off the land without compromising it.²⁴⁶ Environmental Impact Studies should adopt factors into land use evaluations that would take cultural integrity and ethical land development into account to recognize the contributions made by the Gullah and Geechee communities.²⁴⁷ Some preservation efforts were undertaken by federal agencies, including the U.S. Environmental Protection Agency, the National Park Service (“NPS”), and the Department of the Interior to evaluate the environmental preservation of Gullah and Geechee culture.²⁴⁸ “Of particular interest to

²⁴² See NAT'L PARK SERV., *supra* note 24; Southeast Archeological Center, *Archeological Investigations at Cumberland Island National Seashore: Stafford and Rayfield Plantations*, NAT'L PARK SERV., <http://www.nps.gov/seac/cuis.htm> (last visited Feb. 8, 2013).

²⁴³ See, e.g., *New Exhibits at American Beach*, NAT'L PARK SERV., http://www.nps.gov/timu/historyculture/timu_ambch_waysides.htm (last visited Feb. 8, 2013).

²⁴⁴ See BAILEY, *supra* note 49, at 40 (“At harvesttime, *everything* had a purpose. You didn't toss anything away.”); Press Release, Nat'l Audubon Soc'y, Head-of-State for the Gullah/Geechee Nation Receives Audubon & Toyota Conservation Fellowship (June 21, 2012). *But see* BAILEY, *supra* note 49, at 276 (“The tourist [to Sapelo Island] arrived soon [after the Department of Natural Resources of the State of Georgia]. . . . We started getting a boatload of tourists almost every day. Our green marsh grass and white beaches had always been a barrier that kept the outside world out but not anymore. They drew people here by the thousands and that was a whole new thing to get used to.”).

²⁴⁵ See GUTHRIE, *supra* note 20, at 3 (citing the Penn School that educated African Americans after the Civil War to stress the importance of land use and ownership). *But see* Shofner, *supra* note 36, at 48 (claiming that Charles Fraser was committed to land stewardship).

²⁴⁶ See MCFEELY, *supra* note 40, at 48–49 (explaining that the people on the Sapelo Island understood to use the land and its resources including oysters and trees respectfully).

²⁴⁷ See *generally* Environmental Impact Statements and Regulations, 70 Fed. Reg. 61285 (Oct. 21, 2005); Department of the Interior Notice of Availability, 68 Fed. Reg. 66480 (Nov. 26, 2003); Notice of Intent for Low Gullah Culture Special Resource Study, 67 Fed. Reg. 17456 (Apr. 10, 2002).

²⁴⁸ Environmental Impact Statements and Regulations, 70 Fed. Reg. 61285 (Oct. 21, 2005) (“EPA expressed continued concern about the need to provide additional mitigation to

the NPS are suggestions and ideas for managing cultural and natural resources associated with Gullah/Geechee culture and developing both new and existing interpretive programs to provide the public with greater opportunities to understand and experience Gullah/Geechee culture.”²⁴⁹ Additional studies geared toward preservation should be undertaken by future developers of the Sea Islands to evaluate land use plans in consultation with cultural communities affected by proposed land development projects.²⁵⁰ It is projected that the following guideline would apply to Gullah and Geechee historic properties on the Sea Islands and should be strictly adhered to by prospective land developers:

Any comprehensive effort to identify historic properties in an area, be the area a community, a rural area, or the area that may be affected by a construction or land-use project, should include a reasonable effort to identify traditional cultural properties Where identification is conducted as part of planning for a construction or land-use project, the appropriate level of effort depends in part on whether the project under consideration is the type of project that

compensate for the loss of fens and peatland wetlands.”); Department of the Interior Notice of Availability, 68 Fed. Reg. 66480 (Nov. 26, 2003) (“The meetings assisted the National Park Service in developing alternatives for managing associated cultural and natural resources and creating interpretive and educational programs. . . . Under Alternative A, three coastal centers would be established through partnerships with government agencies and nonprofit organizations. The centers would be dispersed along the southeastern U.S. coast where host and neighboring communities could provide support. The centers would interpret the history and evolving culture of the Gullah people from colonial times to the 21st Century and would provide learning opportunities for the casual visitor as well as residents of communities. Under Alternative B, existing national park units would collaborate with state and local park sites located in the project area to administer multi-partner interpretive and educational programs. Cooperative agreements among agencies would identify and delegate administrative, operational, and program functions for each partner. Under Alternative C, a National Heritage Area would be established to connect and associate Gullah resources. The National Park Service would provide startup and related administrative assistance for the heritage area. . . . Under Alternative D, Alternatives A and C would be combined into a single alternative.”).

²⁴⁹ Notice of Intent for Low Gullah Culture Special Resource Study, 67 Fed. Reg. 17456 (Apr. 10, 2002) (“The DEIS process will formulate and evaluate environmental impacts associated with various types and levels of visitor use and resource management. . . . Issues currently being considered for EIS include a determination of Gullah/Geechee culture’s national significance and an assessment of the suitability and feasibility of various Gullah/Geechee-associated sites as potential additions to the National Park System. The EIS will identify cultural and natural resources of the Gullah/Geechee culture and evaluate a range of potential management options that might adequately protect these resources.”).

²⁵⁰ Parker & King, *supra* note 127, at 6–7.

could affect traditional cultural properties [I]f a rehabilitation project may result in displacement of residents, “gentrification” of a neighborhood, or other sociocultural impacts, the possibility that the buildings to be rehabilitated, or the neighborhood in which they exist, may be ascribed traditional cultural value by their residents or others should be considered. . . . The need for community participation in planning identification, as in other forms of preservation planning, cannot be over-emphasized.²⁵¹

Developmental costs and time constraints may be eased if real estate developers engage in routine consultation with the Gullah and Geechee communities during project planning phases.²⁵² Such course of conduct should be managed and reviewed by local authorities prior to the issuance of licenses and permits to build on Gullah and Geechee designated land. Additional legal protection may be sought by the Gullah and Geechee communities pursuant to Executive Order Number 11593 for the Protection and Enhancement of the Cultural Environment (1971)²⁵³ and Executive Order Number 13287 to Preserve America (2003).²⁵⁴ Besides the National Historic Preservation Act of 1966, federal statutory protection for Gullah and Geechee Sea Island land may also ensue from the Historic Sites Act of 1935,²⁵⁵ and the National Environmental Policy Act of 1969.²⁵⁶

CONCLUSION

The rich history of the Sea Islands justifies preservation, both culturally and ecologically.²⁵⁷ There are a number of environmental justice

²⁵¹ *Id.* at 7.

²⁵² *See id.* at 5; *see also* National Environment Policy Act, 42 U.S.C. § 4321 *et seq.*

²⁵³ Exec. Order No. 11,593, 3 C.F.R. 559 (1971–1975).

²⁵⁴ Exec. Order No. 13,287, 68 Fed. Reg. 10635 (Mar. 3, 2003).

²⁵⁵ *See* Historic Sites Act, 16 U.S.C. §§ 461–467.

²⁵⁶ *See* National Environmental Policy Act, 42 U.S.C. § 4321, §§ 4331–4335; *see also* National Historic Landmarks Program, 36 C.F.R. 65; Protection of Historic Properties, 36 C.F.R. 800; Procedures for State, Tribal, and Local Government Historic Preservation Programs, 36 C.F.R. 61.

²⁵⁷ *See* Joyner, *supra* note 49, at xiv (“Not even those [Sea] islands that have thus far eluded the bulldozers have immunity to development. To endure, a community must be able to bequeath its shared traditional expressive culture to the next generation. Without the living context in which that expressive culture arises, cultural endurance is by no means certain. It is not the wildlife of the islands that is the most endangered, says Emory Campbell, ‘We have become the new endangered species.’”) (citing Vernie

issues facing the Sea Islands today.²⁵⁸ A continuation of the dialogue to preserve the natural and cultural resources of the Sea Islands may enlighten mainstream community leaders about the environmental and cultural impact of corporate land development on coastal culture.²⁵⁹ Corporate interests should aspire to responsible land and community development.²⁶⁰ Sound public policy suggests that corporations develop land to reduce the negative environmental and cultural impact of beach resort projects.²⁶¹ Corporate interest should be set forth with cultural and ecological sensitivity.²⁶² The culturally diminishing returns that may be

Singleton, *We Are an Endangered Species: An Interview with Emory Campbell*, 10 SOUTHERN EXPOSURE, 37–39 (1982)).

²⁵⁸ See generally Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994) (“To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States. . . .”); Marshall et al., *supra* note 144 (“Environmental injustice, specifically in the dynamics of the eradication of a culture, is a significant threat to the Geechee Gullah nation. The issue of climate change and adaptation directly impacts the Geechee Gullah communities that have called the eastern Seaboard home since the late 18th century. In the mid 20th century, the issues have become more profound from improper land-use decision-making. Traditionally, developers have overlooked the geographical and societal environment, with economics emerging as the leading factor in the equation for decision-making on how to ‘develop’ the coastal region.”).

²⁵⁹ See BAILEY, *supra* note 49, at 333 (“I want us always to have a community on this [Sapelo] island. A community of people who enjoy quiet living, value the land, and want to raise children in a place that’s still a paradise for kids. I want the state [of Georgia] and people everywhere to be proud of us and to realize the distinct historic and cultural value we have as a people who’ve lived here ever since the time of slavery. We’re the *last* majority black population on a Georgia island that is reachable only by boat. Matter of fact, we’re about the last majority Geechee/Gullah population living on a major island unconnected to the mainland in the *entire string* of Sea Islands, from South Carolina to Florida.”).

²⁶⁰ See Rhinehart & Pompe, *supra* note 65, at 557 (“Private developers are making significant efforts to protect environmental resources that add to the net collective value of the community. These efforts are simply profit-maximizing behavior by developers responding to property owners’ growing demands to protect the environment and preserve the natural landscape.”).

²⁶¹ See generally DANIELSON, *supra* note 24, at 3 (“Hilton Head offers fertile ground for examining the influence of affluent private citizens and public officials. Private-community developers formed the initial growth machine; as Hilton Head flourished, they were joined by resort operators, real estate firms, bankers, and others whose fortunes were closely tied to growth.”).

²⁶² See generally KAHRL, *supra* note 61, at 5–6 (“[T]he shores that African Americans steadily lost over the course of the second half of the twentieth century (and continue to lose at alarming rates today) demonstrate the inextricability of environmental and human

cited by land developers as an impediment to economic growth may be linked to the mainstream suppression of the cultural ties that minorities have to these coastal areas.²⁶³ Attracting African Americans to and retaining them in the Sea Islands may also serve to diversify and sustainably grow the local economies to support a stable population that contributes to the health and prosperity of these coastal communities.²⁶⁴

Considerate political action and effective community organizing serve to strengthen the call to action to protect what is left of the natural and cultural beauty of the Sea Islands.²⁶⁵ An ecological economic movement may be inspired by the cultural traditions of the Gullah and Geechee people to produce goods and services while protecting the precious resources entrusted to their care.²⁶⁶ The foundational background for building a viable strategic plan is hereby presented to inspire sustainable growth and corporate responsibility in the land use and development of coastal areas of cultural significance.²⁶⁷

exploitation—power over lands and power over persons—and force us to reassess the familiar story of America’s triumph over segregation, its achievement of civil rights, and its slow, painful, but nevertheless inexorable progress toward a more just and equitable future.”).

²⁶³ See KAHRL, *supra* note 61, at 2.

²⁶⁴ See BAILEY, *supra* note 49, at 333 (“We need more people living in Hog Hammock again. We need to campaign to bring some of our Sapelo-born and -bred descendants home. If we can’t get enough of them, we may need to find some new people from a similar background who will recognize and respect our culture.”); *Ga. Historic Pres. Plan*, *supra* note 209, at 11 (“[H]istoric preservation in Georgia is spurring investment, attracting visitors, revitalizing downtowns, and effectively leveraging scarce resources.”); Dowse et al., *supra* note 58, at 114 (describing opportunities in “eco/cultural tourism” to include a sustainable clam project).

²⁶⁵ See, e.g., JONES-JACKSON, *supra* note 20, at 168 (“The [Sea] islanders’ ineffectiveness in resisting the often reckless advances of developers must be laid at the door of the very insularity that for so long protected their culture. Adherence to traditional ways has by and large robbed them of the ability to respond to the intrusion with equal and opposite force.”); BAILEY, *supra* note 49, at 275 (recognizing the effectiveness of the Hog Hammock Community Foundation on Sapelo Island to oppose African-American land loss); BREWER, *supra* note 114, at 9 (noting that most land trusts are generally started by small groups of individuals).

²⁶⁶ See generally JONES-JACKSON, *supra* note 20, at 148 (“The fishing techniques and the love and respect for the ocean [of the Gullah] are being passed on to the children . . .”); Goodwine, *supra* note 34, at 8 (“We need to recapture the interest and respect of our youth and pay attention to and care for our elders as our foreparents did. The blueprint for how this is done lies in our traditions”); BAILEY, *supra* note 49, at 333 (“We need new jobs to draw people back, ones that won’t pollute the environment and will pay decently, so people can afford to live on Sapelo. We’d need new housing for them too, and this will take a lot of work. It’s a tall order, a very tall one. Can we pull it off? I don’t know, but we have to try to turn things around and reverse our luck.”).

²⁶⁷ *A Vanishing South*, *supra* note 183 (“The question of how to balance economic development with cultural preservation has always been a tough one.”).