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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION-MONMOUTH COUNTY  
DOCKET NO.

ANNE MILGRAM,	:	<u>Civil Action</u>
ACTING ATTORNEY GENERAL	:	
OF NEW JERSEY,	:	
and	:	
STATE OF NEW JERSEY,	:	COMPLAINT
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	
Plaintiffs,	:	
v.	:	
D. Lobi Enterprises, Inc.	:	
a/k/a D. Lobi, Inc.,	:	
t/a Surf Rider Beach Club;	:	
LBP Corporation	:	
t/a Donovan's Reef Beach Club;	:	
JNM Holdings, Inc.	:	
t/a Chapel Beach Club;	:	
Rumson Management Company, Inc.	:	
t/a Chapel Beach Club;	:	
Naughty Nora's, Inc.	:	

t/a Chapel Beach Club;	:
John A. and Nancy B. Mulhern	:
t/a Chapel Beach Club;	:
Rozinante, Inc. t/a	:
The Sands Beach Club of Sea Bright;;	:
The Sands Beach Club of Sea Bright;;	:
Edgewater Beach, Inc.	:
t/a Water's Edge Beach Club;	:
Sea Bright Associates, Inc.	:
t/a Sea Bright Beach Club;	:
Sea Bright Associates	:
t/a Sea Bright Beach Club;	:
Driftwood Beach Club;	:
Driftwood Cabana Club	:
t/a Driftwood Beach Club;	:
Dixie Lime and Stone Co.	:
t/a Driftwood Beach Club;	:
Driftwood Beach Club L.P.	:
t/a Driftwood Beach Club;	:
Driftwood Beach Club, Inc.	:
t/a Driftwood Beach Club;	:
Ship Ahoy, Inc.	:
t/a Ship Ahoy Beach Club;	:
Ship Ahoy, LLC.	:
t/a Ship Ahoy Beach Club;	:
River to Ocean, LLC	:
t/a Ship Ahoy Beach Club;	:
Trade Winds Beach, Inc.	:
t/a Trade Winds Beach Club;	:
Trade Winds Beach-II, Inc.	:
t/a Trade Winds Beach Club;	:
Trade Winds Beach-III, Inc.	:
t/a Trade Winds Beach Club;	:
Kara Homes, Inc.	:
and	:
Borough of Sea Bright,	:
Defendants.	:

Plaintiffs, Anne Milgram, Acting Attorney General of New Jersey, and the State of New Jersey, Department of Environmental Protection, by way of complaint against the Defendants, say:

#### NATURE OF THE ACTION

1. This is a declaratory judgment action in which Plaintiffs seek a declaration of the parties' and the public's rights pursuant to three-party agreements signed in 1993 ("Original Agreements") surrounding a beach nourishment and replenishment project for the purposes of coastal erosion and storm protection, particularly in light of subsequent legal decisions that govern public rights of access to and use of the shores of tidal waterways. Those decisions include Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc., 185 N.J. 40 (2005) and National Ass'n of Homebuilders v. DEP, 64 F. Supp. 2d 354 (D.N.J. 1999).

#### THE PARTIES

2. Plaintiff, Anne Milgram, is the Acting Attorney General of New Jersey. As such, she is charged by law with representing the public interest inhering in the citizens of New

Jersey. Anne Milgram brings this action in her official position as the Acting Attorney General of New Jersey.

3. Plaintiff, State of New Jersey, Department of Environmental Protection ("DEP" or "State"), is a state agency charged with preserving, sustaining, protecting and enhancing the environment to ensure the integration of high environmental quality, public health and economic vitality.

4. Defendant, D. Lobi Enterprises, Inc., t/a Surf Rider Beach Club ("Surf Rider Beach Club"), is a New Jersey corporation doing business as a private beach club in New Jersey with a facility at 931 Ocean Avenue, Sea Bright, New Jersey 07760. Upon information and belief, Surf Rider Beach Club owns all or a portion of property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County, identified as Block 23, Lots 12 and 12.01, on the official tax map of the Borough of Sea Bright. Upon information and belief, Surf Rider Beach Club occupies, and may maintain portions of its buildings and other structures on, avulsively-filled State-owned riparian land to the exclusion of the public and the State of New Jersey.

5. Defendant, LBP Corporation t/a Donovan's Reef Beach Club ("Donovan's Reef Beach Club") is a New Jersey corporation doing business as a private beach club in New Jersey. Upon information and belief, Donovan's Reef Beach Club owns property along the shore of the Atlantic Ocean in the Borough of Sea

Bright, Monmouth County, identified as Block 7, Lot 9, on the official tax map of the Borough of Sea Bright.

6. Defendants, JNM Holdings, Inc. t/a Chapel Beach Club, Rumson Management Company, Inc. t/a Chapel Beach Club, and Naughty Nora's, Inc. t/a Chapel Beach Club ("Chapel Beach Club") are New Jersey corporations doing business as a private beach club in New Jersey. John A. Mulhern and Nancy B. Mulhern t/a Chapel Beach Club ("Chapel Beach Club") are a corporation, partnership, or pair of individuals doing business as a private beach club in New Jersey. Upon information and belief, Chapel Beach Club owns all or a portion of property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County, identified as Block 23, Lot 3, on the official tax map of the Borough of Sea Bright. Upon information and belief, Chapel Beach Club occupies, and may maintain portions of its buildings and other structures on, avulsively-filled State-owned riparian land to the exclusion of the public and the State of New Jersey.

7. Defendants, Rozinante, Inc. t/a The Sands Beach Club of Sea Bright and The Sands Beach Club of Sea Bright ("Sands Beach Club") are New Jersey corporations doing business as a private beach club in New Jersey. Upon information and belief, Sands Beach Club owns property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County,

as Block 23, Lot 13, on the official tax map of the Borough of Sea Bright.

8. Defendant, Edgewater Beach, Inc. t/a Water's Edge Beach Club ("Water's Edge Beach Club") is a New Jersey corporation doing business as a private beach club in New Jersey. Upon information and belief, Water's Edge Beach Club owns all or a portion of property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County, identified as Block 4, Lot 6, on the official tax map of the Borough of Sea Bright. Upon information and belief, Water's Edge Beach Club occupies, and may maintain portions of its buildings and other structures on, avulsively-filled State-owned riparian land to the exclusion of the public and the State of New Jersey.

9. Defendants, Sea Bright Associates, Inc. t/a Sea Bright Beach Club and Sea Bright Associates t/a Sea Bright Beach Club ("Sea Bright Beach Club") are New Jersey corporations doing business as a private beach club in New Jersey. Upon information and belief, Sea Bright Beach Club owns all or a portion of property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County, identified as Block 23, Lot 4, on the official tax map of the Borough of Sea Bright. Upon information and belief, Sea Bright Beach Club occupies, and may maintain portions of its buildings and other structures on,

avulsively-filled State-owned riparian land to the exclusion of the public and the State of New Jersey.

10. Defendants, Driftwood Beach Club, Driftwood Cabana Club t/a Driftwood Beach Club, Dixie Lime and Stone Co. t/a Driftwood Beach Club, Driftwood Beach Club L.P. t/a Driftwood Beach Club, and Driftwood Beach Club, Inc. t/a Driftwood Beach Club ("Driftwood Beach Club") are or were New Jersey corporations or partnerships doing business as a private beach club in New Jersey. Upon information and belief, Driftwood Beach Club owns all or a portion of property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County, identified as Block 1, Lots 7, 8, 9, 10 and 11A (presently shown as Lot 5 in Block 4) on the official tax map of the Borough of Sea Bright. Upon information and belief, Driftwood Beach Club occupies, and may maintain portions of its buildings and other structures on, avulsively-filled State-owned riparian land to the exclusion of the public and the State of New Jersey.

11. Defendants, Ship Ahoy, Inc. t/a Ship Ahoy Beach Club, and Ship Ahoy, LLC. t/a Ship Ahoy Beach Club ("Ship Ahoy Club") are New Jersey corporations doing business as a private beach club in New Jersey. Upon information and belief, Ship Ahoy Club owns property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County, identified as Block

23, Lot 14, on the official tax map of the Borough of Sea Bright.

12. Upon information and belief, Defendants, Trade Winds Beach, Inc. t/a Trade Winds Beach Club, and Trade Winds Beach-II, Inc. t/a Trade Winds Beach Club, and Trade Winds Beach-III, Inc. t/a Trade Winds Beach Club ("Trade Winds Beach Club") are or were New Jersey corporations and/or partnerships doing business as a private beach club in New Jersey with a facility at 1331 Ocean Avenue, Sea Bright, NJ 07760. Upon information and belief, Trade Winds Beach Club owns or did own all or a portion of property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County, identified as Block 7, Lot 4 (identified as Block 1, Lots 16-19, in the Original Agreement,) on the official tax map of the Borough of Sea Bright. Upon information and belief, Trade Winds Beach Club occupies, and may maintain portions of its buildings and other structures on, avulsively-filled State-owned riparian land to the exclusion of the public and the State of New Jersey.

13. Defendant, Kara Homes, Inc. ("Kara Homes"), is a residential home builder with corporate offices located at 197 Route 18, Suite 235S East Brunswick, NJ 08816. Upon information and belief, Kara Homes owns all or a portion of property along the shore of the Atlantic Ocean in the Borough of Sea Bright, Monmouth County, identified as Block 7, Lot 4 (identified as



Block 1, Lots 16-19, in the Original Agreement,) on the official tax map of the Borough of Sea Bright. Upon information and belief, Kara Homes occupies, and may maintain portions of its buildings and other structures on, avulsively-filled State-owned riparian land to the exclusion of the public and the State of New Jersey.

14. The Defendants identified in Paragraphs 4-13 will be generally referred to as "the Defendant beach clubs" where applicable. This includes Defendant Kara Homes, which allegedly purchased all or a portion of the relevant property from the Trade Winds Beach Club and thereby stands as a successor in interest.

15. Defendant, Borough of Sea Bright, is a municipality which owns property along New Jersey's northern Atlantic Ocean coastline. The Borough maintains an office at 1167 Ocean Avenue, Sea Bright, New Jersey 07760.

#### FACTUAL BACKGROUND

16. In New Jersey, hurricanes and other tropical storm systems, as well as other Atlantic coastal storms such as "nor'easters," can produce extremely high winds, torrential rain (leading to flash floods), and tornadoes, and drive oceanic storm surges onto coastal areas with catastrophic effects.

17. Coastal storms on the open seas can cause large waves, heavy rains, and high winds. The most devastating effects of strong coastal storms occur when they pass close to the shoreline or cross coastlines, making landfall.

18. Coastal storms that pass close to the coastline or make landfall can, among other things, directly damage or destroy buildings, vehicles, roads and bridges, and cause an increase in sea level.

19. More importantly, coastal storms can result in loss of human life or serious injury or illness due to drowning, flying debris, the infusion of disease when combining the destruction of sanitation facilities with warm summer weather, an outbreak of infections due to wading in sewage-polluted standing water, fires caused by damaged buildings and utilities, power outages that prohibit vital communication and hamper rescue efforts, and the destruction of access ways complicating efforts to transport necessities such as food, clean water, temporary shelters, and medicine.

20. Due to this coastal erosion caused by a variety of weather-related factors, and the related increased vulnerability to storms, certain beaches need to be replenished to defend against significant loss of human life, injury, and property damage and protect the public health, safety, and economies of shore communities. The United States Army Corps of Engineers

("Army Corps") is the Federal entity that undertakes these Shore Protection Projects.

21. The River and Harbor Act of 1958 (85 P.L. 500, 72 Stat. 297) authorized a specific coastal erosion control project known as the Atlantic Coast of New Jersey, Sandy Hook to Barnegat Inlet, Beach Erosion Control Project ("Sandy Hook to Barnegat Inlet beach nourishment and replenishment project").

22. Water Resources Development Acts ("WRDA") provide direction to the Army Corps on the hundreds of projects it undertakes (e.g., 99 P.L. 662, 100 Stat. 4179-4180). Each WRDA contains authorizations, de-authorizations and housekeeping provisions regarding Army Corps water resources development activity.

23. Section 854(a) of the Water Resources and Development Act of 1986 (99 P.L. 662, 100 Stat. 4179-4180) ("WRDA 1986") modified the River and Harbor Act of 1958 by providing that the first Federal increment of the Ocean Township to Sandy Hook section of the Sandy Hook to Barnegat Inlet beach nourishment and replenishment project would consist of a publicly-funded berm of approximately 50 feet along the ocean shore in the Boroughs of Sea Bright and Monmouth Beach at a total cost of approximately \$40,000,000.

24. Section 854(c) of WRDA 1986 further provided: "Before initiation of construction of any increment of the

project for beach erosion control, Sandy Hook to Barnegat Inlet, New Jersey, non-Federal interests shall agree to provide public access to the beach for which such increment of the project is authorized in accordance with all requirements of State law and regulations."

25. WRDA 1988 (100 P.L. 676, 102 Stat. 4012) amended Sec. 854 of WRDA 1986, whereby the berm would be extended approximately 100 feet (from the original 50 feet in WRDA 1986) and the total cost for the initial Sea Bright to Monmouth Beach increment would be \$91,000,000 (from the original \$40,000,000 in WRDA 1986), with an additional annual cost of \$1,200,000 for periodic beach nourishment over the life of such increment.

26. For purposes of this action, the relevant section of the Federally-authorized Sandy Hook to Barnegat Inlet beach nourishment and replenishment project is the Sea Bright portion of the Sea Bright to Monmouth Beach increment of such project.

27. Each increment of the Sandy Hook to Barnegat Inlet beach nourishment and replenishment project involves a State Aid Agreement between the State and the benefiting municipalities, including the Borough of Sea Bright, before the increments are to proceed, and a Project Cooperation Agreement between the State and the Army Corps for the entire project as a whole. These agreements outline the costs to and the responsibilities of each entity mentioned in this paragraph.

28. The State of New Jersey and the Borough of Sea Bright signed the State Aid Agreement for the Sea Bright portion of the Sea Bright to Monmouth Beach increment of this project (Contract No. 1238) on November 11, 1989.

29. The State of New Jersey and the United States Army Corps of Engineers signed the Project Cooperation Agreement for the Sandy Hook to Barnegat Inlet beach nourishment and replenishment project on July 30, 1992.

30. The State and the Borough of Sea Bright entered into three-party agreements with each of the Defendant beach clubs in 1993 (the aforementioned "Original Agreements").

31. The State and the Borough of Sea Bright entered the Original Agreements with Surf Rider Beach Club on June 6, 1993, Donovan's Reef Beach Club on May 12, 1993, Chapel Beach Club on May 15, 1993, Sands Beach Club on May 15, 1993, Water's Edge Beach Club on May 16, 1993, Sea Bright Beach Club on June 10, 1993, Driftwood Beach Club on June 11, 1993, Ship Ahoy Club on June 11, 1993, and Trade Winds Beach Club on August 18, 1993.

32. The nearly identical Original Agreements purport to address the rights of the parties and the public with respect to a portion of the large, multi-million dollar publicly funded beach nourishment and replenishment project in Sea Bright, as referenced above in Paragraphs 21-26.

33. Specifically, the Original Agreements purport to allow only very limited public access to and use of the beach that, at the time, was still to be constructed with public funds and on the property of each of the Defendant beach clubs and of Defendant Borough of Sea Bright.

34. As a precondition to the Original Agreements signed in 1993, the Borough of Sea Bright agreed to purchase the oceanfront property of the former Peninsula House Beach Club, identified as Block 23, Lots 2.01, 2.02, 3 and part of 4 on the official tax map of the Borough of Sea Bright, and convert the upland portion of the property to a public parking facility and operate the beach portion of the property as a public beach with unlimited public access and use.

35. In accord with an agreement signed by the State and the Borough of Sea Bright on August 4, 1992 ("August 4, 1992 agreement"), the Borough of Sea Bright operates the oceanfront property of the former Anchorage Pool and Surf Club ("Anchorage Club") as a municipal public beach, identified as Block 23, Lot 11 on the official tax map of the Borough of Sea Bright, although this property is owned by the State of New Jersey.

36. Since the completion of the initial nourishment of the Sea Bright portion of the Sandy Hook to Barnegat Inlet beach nourishment and replenishment project in 1995, Defendant beach clubs have charged annual fees to their private member patrons

for the rights of access to and use of this publicly-funded beach, and have raised private revenues through such fees and other charges for private use of the beach.

37. Upon information and belief, the Borough of Sea Bright currently charges a daily municipal beach fee of \$7.00 and a seasonal beach fee of \$95.00.

38. Before this 1995 beach nourishment project began, the beaches located in Sea Bright had eroded down to a narrow strip.

39. Upon information and belief, nearly all of the beaches lying seaward of each of the Defendant beach clubs and throughout the Borough of Sea Bright were built and periodically replenished, beginning in 1995, with public funds (65% federal, 26.25% State and 8.75% municipal in accordance with the PCA, Section 103 of WRDA 1986, 99 P.L. 662 and the State Aid Agreement).

40. As a result of the completion of the initial nourishment in 1995 and subsequent replenishment in 2003 of the Sea Bright portion of the Sandy Hook to Barnegat Inlet beach nourishment and replenishment project, the beach lying seaward of the Defendant beach clubs was expanded by the government from a narrow strip of dry sand to a dry sand beach extending approximately 250 feet above the mean high water line. (While WRDA 1988 authorized a berm of approximately 100 feet throughout

the project area, a process called advanced nourishment involves initially constructing a wider and varied berm to account for rapid erosion of the profile design, so that the berm does not narrow to a width below the authorized berm in between replenishment cycles.)

41. The Sea Bright portion of the Sandy Hook to Barnegat Inlet beach nourishment and replenishment project will cost well over \$40 million in public funds over the 50 - year life of the project, of which at least \$29.4 million has been spent from 1995 to date.

42. Under federal law, the entire project area must provide a public benefit. See 33 U.S.C. § 426e(d).

43. Under the Original Agreements, the public may use only a fifteen (15) foot wide strip of dry sand along the water's edge in front of the Defendant beach clubs to walk in a north-south direction ("transit corridor"), or to fish during non-swimming hours.

44. Under the Original Agreements, the use of the transit corridor is limited to a pedestrian right of transit and fishing only, and the beach clubs otherwise retain the right to control, prohibit, or limit public use of the replenished beach.

45. In addition, the Original Agreements state that the respective Defendant beach clubs may further limit the



rights of fishing or pedestrian passage in bathing areas at their sole option.

46. In July, 2005, the New Jersey Supreme Court clarified that the Public Trust Doctrine requires unrestricted public access to and use of both the ocean and the beach up to the mean high water line, as well as a reasonable area of dry sand above the mean high water line, on privately owned land bordering tidal waterways such as the Atlantic Ocean. Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc., 185 N.J. 40 (2005); see also N.J.A.C. 7:7E-8.11.

47. In August, 1999, subsequent to the execution of the Original Agreements, the United States District Court for the District of New Jersey clarified that the public has rights of access to and use of formerly tidally flowed land that is now filled, despite the fact that these lands had been conveyed in the past to private entities through a State tidelands grant. The court found the exercise of State authority to uphold those public rights to be a valid exercise of the police power of the State based on the Public Trust Doctrine. National Ass'n of Homebuilders v. DEP, 64 F. Supp. 2d 354 (D.N.J. 1999).

48. In Liu v. City of Long Branch, 363 N.J. Super 411 (Law Div. 2003), the Superior Court, Monmouth County, held that a publicly-funded replenished beach did not belong to beachfront

property owners because the "new beach" resulted from avulsion, not accretion.

49. Upon information and belief, Defendant beach clubs insist that they may continue to have exclusive use of this publicly funded beach, need not provide public access to the ocean or beach beyond that referenced in the Original Agreements, and may receive additional future sand replenishment at public expense, over the remaining forty (40) years of the Sandy Hook to Barnegat Inlet beach nourishment and replenishment project.

#### FIRST COUNT - PUBLIC TRUST DOCTRINE

50. Plaintiffs repeat and re-allege each and every allegation of Paragraphs 1 through 49 as if fully set forth at length herein.

51. The Public Trust Doctrine is a common law doctrine of ancient origin. The essence of the Doctrine is the legal right of the public to use certain lands and waters, including those presently or formerly flowed by the tide

52. The rights of the public are vested in the State of New Jersey as owner and trustee of those public rights of access to and use of natural resources protected by the Public Trust Doctrine.

53. The Doctrine provides that riparian lands are preserved for public use in navigation, fishing, recreation and similar uses. The State, as trustee for the people, has the authority to preserve and protect the right of public access to and use of riparian lands and tidal waterways for those purposes.

54. All riparian lands in New Jersey are subject to the Public Trust Doctrine. These public trust rights may not be waived, conveyed or taken away, and any transaction with the State that affects those public rights must be interpreted consistent with the Public Trust Doctrine.

55. Most of the expanse of the dry sand beach extending approximately 250 feet above the mean high water line in the Borough of Sea Bright was extracted from the bottom of the ocean using public funding through the aforementioned beach nourishment and replenishment project.

56. Public demand for beach access in the Borough of Sea Bright is demonstrated by the consistent closing of neighboring Sandy Hook Gateway National Recreation Area due to overcrowding. Sandy Hook is immediately adjacent to and north of Sea Bright. Upon information and belief, with more than 20,000 visitors on a single summer weekend, Sandy Hook often reaches its maximum carrying capacity before noon.

57. Defendant beach clubs currently maintain private, exclusive access to and use of the entire dry sand beach area above the mean high water line to the exclusion and detriment of the public, even though the beach was built by pumping in publicly-owned sand with public funds.

58. Public access to and use of publicly owned upland sand areas in the Borough of Sea Bright is further limited by insufficient parking facilities, restrooms and perpendicular access routes.

59. Any portion of beach benefiting from replenishment paid for through Shore Protection Projects using public funding is public trust property that must be placed in the public trust and open unconditionally to public access and use, subject to New Jersey's statutory and regulatory provisions pertaining to the maintenance and enhancement of dunes as shore protection structures.

60. Allowing public access to and use of the beaches owned by the Defendant beach clubs will not interfere with, or permit unrestricted access to, any legally permitted structures or legally conducted activities of the Defendant beach clubs on the beach. In addition, allowing public access to and use of the beaches on and adjacent to the Defendant beach clubs will not interfere with the Defendant beach clubs' continued use of the beach.

61. The State laws that exist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. Therefore, the Public Trust Doctrine is incorporated into and included in the Original Agreements.

62. Subsequent to the Original Agreements, the courts have clarified that the scope of the Public Trust Doctrine includes rights of public access to and use of privately owned dry sand beach and filled areas along the shores of tidal waterways.

63. Upon information and belief, Defendant beach clubs insist that they may continue to have exclusive use of this publicly funded beach, need not provide public access to the ocean or beach beyond that referenced in the Original Agreements, and may receive additional future sand replenishment at public expense, over the remaining forty (40) years of this project.

64. The Original Agreements must be interpreted and enforced consistent with what the courts have clarified is the governing State law at the time the parties entered into the agreements.

65. Defendant beach clubs' exclusive access to and use of the entire dry sand area that was placed seaward of the

former mean high water line through public funding is in violation of governing State law as clarified subsequent to the Original Agreements.

66. Enforcement of the terms of the Original Agreements as limiting public access to only a 15-foot wide transit corridor at the water's edge would be contrary to the law and public policy of this State.

WHEREFORE, Plaintiffs demand that judgment be entered against the Defendant beach clubs providing relief as follows:

- a. Ordering that Defendant beach clubs must provide public access to and use of the ocean seaward of the mean high water line on all properties under their control;
- b. Ordering that Defendant beach clubs must provide public access to and reasonable use of a portion of the dry sand area above the mean high water line without any restriction;
- c. Ordering that Defendant beach clubs must provide unrestricted public access to and use of all beaches built with public sand and funded through public monies;

- d. Reforming the Original Agreements to include express recognition of the public trust rights outlined in paragraphs a-c above;
- e. Declaring that title to Defendant beach clubs' properties is subject to the public rights outlined in paragraphs a-c above; and
- f. Awarding fees, costs and such other and further relief as the Court may deem just and proper.

SECOND COUNT - UNJUST ENRICHMENT

67. Plaintiffs repeat and re-allege each and every allegation of Paragraphs 1 through 66 as if fully set forth at length herein.

68. A cause of action for unjust enrichment exists where the Defendant receives a benefit and retention of that benefit without compensation would be unjust.

69. Nearly the entire existing beach in Sea Bright resulted from the beach nourishment and replenishment projects since 1995, and the approximately \$29.4 million cost of the projects has been paid for by public funds.

70. Since the initial beach nourishment project in 1995, Defendant beach clubs have enjoyed exclusive access to and use of the publicly-funded beach in front of their clubs.

71. Defendant beach clubs charge fees from their private member patrons for the rights of access to and use of this publicly-funded beach, and have generated profits through such fees and other charges for private use of the replenished beach since 1995. Upon information and belief, most have lengthy waiting lists for membership.

72. Since the initial beach nourishment project in 1995, Defendant beach clubs have denied the public any right to stop, sit or rest on the beach, or to swim, at any point on any of the publicly-funded beaches in front of the beach club properties, and allowed only limited rights of fishing and pedestrian access and transit.

73. Enforcement of the terms of the Original Agreements as continuing the Defendant beach clubs' exclusive use of this publicly-funded beach for revenue-raising purposes would be contrary to the law and public policy of this State and would unjustly enrich the Defendant beach clubs.

WHEREFORE, Plaintiffs demand that judgment be entered against the Defendant beach clubs providing relief as follows:

- a. Ordering that Defendant beach clubs must provide unrestricted public access to and use of the ocean seaward of the mean high water line on all properties under their control;



- b. Ordering that Defendant beach clubs must provide reasonable public access to and use of a portion of the dry sand area above the mean high water line without any restriction;
- c. Ordering that Defendant beach clubs must provide unrestricted public access to and use of all beaches built with public sand and funded through public monies;
- d. Reforming the Original Agreements to include express recognition of the public trust rights outlined in paragraphs a-c above;
- e. Declaring that title to Defendant beach clubs' properties is subject to the public trust rights outlined in paragraphs a-c above; and
- f. Awarding fees, costs and such other and further relief as the Court may deem just and proper.

THIRD COUNT - TIDELANDS CLAIM

74. Plaintiffs repeat and re-allege each and every allegation of Paragraphs 1 through 73 as if fully set forth at length herein.

75. As referenced above, Surf Rider Beach Club, Sea Bright Beach Club, Driftwood Beach Club, Trade Winds Beach Club, Kara Homes, Water's Edge Beach Club and Chapel Beach Club

occupy, and may maintain portions of its buildings and other structures on, avulsively-filled State-owned riparian land to the exclusion of the public and the State of New Jersey.

76. Surf Rider Beach Club has failed to obtain an instrument of title from the State Tidelands Resource Council, N.J.S.A. 13:1B-10, and the reviewing State officials, N.J.S.A. 13:1B-13, for these State-owned lands. Without such an instrument of title, Surf Rider Beach Club has no title rights to this land. N.J.S.A. 12:3-4.

77. Sea Bright Beach Club has failed to obtain an instrument of title from the State Tidelands Resource Council, N.J.S.A. 13:1B-10, and the reviewing State officials, N.J.S.A. 13:1B-13, for these State-owned lands. Without such an instrument of title, Sea Bright Beach Club has no title rights to this land. N.J.S.A. 12:3-4.

78. Driftwood Beach Club has failed to obtain an instrument of title from the State Tidelands Resource Council, N.J.S.A. 13:1B-10, and the reviewing State officials, N.J.S.A. 13:1B-13, for these State-owned lands. Without such an instrument of title, Driftwood Beach Club has no title rights to this land. N.J.S.A. 12:3-4.

79. Trade Winds Beach Club has failed to obtain an instrument of title from the State Tidelands Resource Council, N.J.S.A. 13:1B-10, and the reviewing State officials, N.J.S.A.

13:1B-13, for these State-owned lands. Kara Homes allegedly purchased all or a portion of the relevant property from the Trade Winds Beach Club and thereby stands as a successor in interest. Without such an instrument of title, Trade Winds Beach Club and/or Kara Homes has/have no title rights to this land. N.J.S.A. 12:3-4.

80. Water's Edge Beach Club has failed to obtain an instrument of title from the State Tidelands Resource Council, N.J.S.A. 13:1B-10, and the reviewing State officials, N.J.S.A. 13:1B-13, for these State-owned lands. Without such an instrument of title, Water's Edge Beach Club has no title rights to this land. N.J.S.A. 12:3-4.

81. Chapel Beach Club has failed to obtain an instrument of title from the State Tidelands Resource Council, N.J.S.A. 13:1B-10, and the reviewing State officials, N.J.S.A. 13:1B-13, for these State-owned lands. Without such an instrument of title, Chapel Beach Club has no title rights to this land. N.J.S.A. 12:3-4.

82. Upon information and belief, Surf Rider Beach Club, Sea Bright Beach Club, Driftwood Beach Club, Trade Winds Beach Club, Kara Homes, Water's Edge Beach Club and Chapel Beach Club have used State-owned riparian land for their exclusive use and charged fees to their members for access to and use of this State-owned riparian land.

83. The Attorney General has the authority to prosecute actions against persons or corporations trespassing upon or occupying the lands of the State heretofore under water. N.J.S.A. 12:3-8.

84. Occupation of this State-owned riparian land by Surf Rider Beach Club, Sea Bright Beach Club, Driftwood Beach Club, Trade Winds Beach Club, Kara Homes, Water's Edge Beach Club and Chapel Beach Club without payment to the State of the grant fees or license fees required by the Tidelands Resource Council and the reviewing State officials, N.J.S.A. 13:1B-13, denies those payments to the Fund for the Support of Free Public Schools, N.J. Const. (1947) Art. VIII, Sect. 4, Para. 2, to which the receipts of riparian lands are dedicated, N.J.S.A. 18A:56-5, 6.

85. The failure and refusal to pay for this occupation and use of State-owned riparian lands is a violation of State law. It further denies the State of New Jersey its title and its statutory rights under the law to set conditions for such instruments, N.J.S.A. 12:3-12, including conditioning such approval on public access and use as required by State law, including the Public Trust Doctrine.

WHEREFORE, Plaintiffs demand that judgment be entered against Defendants Surf Rider Beach Club, Sea Bright Beach Club,

Driftwood Beach Club, Trade Winds Beach Club, Kara Homes, Water's Edge Beach Club, and Chapel Beach Club providing relief as follows:

- a. Quieting title in the State of New Jersey in all ungranted, avulsively-filled, State-owned lands occupied by the Defendants Surf Rider Beach Club, Sea Bright Beach Club, Driftwood Beach Club, Trade Winds Beach Club, Kara Homes, Water's Edge Beach Club and Chapel Beach Club, free of any claim of title by these Clubs;
- b. Ordering that the Defendants Surf Rider Beach Club, Sea Bright Beach Club, Driftwood Beach Club, Trade Winds Beach Club, Kara Homes, Water's Edge Beach Club and Chapel Beach Club remove any and all structures in the area quieted in the State of New Jersey, and opening that area for the use and enjoyment of the Public of the State of New Jersey;
- c. Ordering that the Defendants Surf Rider Beach Club, Sea Bright Beach Club, Driftwood Beach Club, Trade Winds Beach Club, Kara Homes, Water's Edge Beach Club and Chapel Beach Club pay the State of New Jersey a license fee for the occupation and use of the area quieted in the State of New Jersey from the time of their first occupation until the date of this Court's order;

- d. Ordering payment of reasonable attorneys' fees and costs pursuant to N.J.S.A. 12:3-8; and
- e. Awarding such other and further relief as the Court may deem just and proper.

FOURTH COUNT - BREACH OF CONTRACT

86. Plaintiffs repeat and re-allege each and every allegation of Paragraphs 1 through 85 as if fully set forth at length herein.

87. In accordance with the aforementioned State Aid Agreement, Defendant Borough of Sea Bright is responsible for twenty-five percent of the non-Federal share of Federal beach nourishment and replenishment projects.

88. The United States Army Corps of Engineers replenished the beaches of Sea Bright during the summer of 2003 at a total cost of \$6,357,382.00.

89. The non-Federal share of this project cost was \$2,225,083.70, of which the Borough of Sea Bright shared twenty-five percent, or a cost of \$556,270.92. The State paid the balance of \$1,668,812.78.

90. Defendant Borough of Sea Bright has breached this State Aid Agreement in that it has not paid its share of this beach nourishment project.

91. Upon information and belief, the Borough of Sea Bright is in arrears as to other financial obligations in relation to the beach nourishment and replenishment projects under the State Aid Agreement.

92. Further, while the Borough of Sea Bright agreed, as a precondition to the Original Agreements, to purchase the former Peninsula House property to convert the upland portion of the property to a public parking facility and operate the beach portion of the property as a public beach with unlimited public access and use, the Borough of Sea Bright breached this covenant by keeping portions of the former Peninsula House property and adjacent beach inaccessible and in disrepair, and by seeking to barter away a portion of the site to the neighboring, privately-owned Chapel Beach Club in exchange for landlocked property, on which the Borough intended to construct a new municipal building.

93. The privately-owned Chapel Beach Club does not provide unlimited public access and use of the beach in front of the Club, though it was built with public funds for the public benefit.

94. Plaintiff, as Trustee for the people, seeks assurance that the Borough of Sea Bright will pay its share of this beach nourishment project and comply with the terms of the

precondition to the Original Agreements with regards to the former property of the Peninsula House Beach Club.

WHEREFORE, Plaintiffs demand that judgment be entered against Defendant Borough of Sea Bright providing relief as follows:

- a. Declaring that Defendant Borough of Sea Bright provide an accounting of all expenditures and debts relating to beach nourishment and replenishment projects from 1993 to present; and
- b. Declaring that Defendant Borough of Sea Bright forward to the Treasurer, State of New Jersey an amount at least equal to \$556,270.92, plus interest; and
- c. Ordering that Defendant Borough of Sea Bright immediately restore, and provide unrestricted public access to and use of, all beaches and parking areas on the former Peninsula House property and adjacent beach; and
- d. Ordering that Defendant Borough of Sea Bright record in the chain of title to the property of the former Peninsula House Beach Club, Block 23, Lots 2.01, 2.02, 3 and 4, a DEP-approved conservation restriction, as per N.J.S.A 13:8B-1 et seq., that



preserves that property in favor of the State for public access and use, including adequate parking, in perpetuity; and

e. Awarding fees, costs and such other and further relief as the Court may deem just and proper.

ANNE MILGRAM  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

BY: Gerard Burke  
Gerard Burke  
Assistant Attorney General

Dated: 9/22/06

DESIGNATION OF TRIAL COUNSEL PURSUANT TO RULE 4:25-4

Pursuant to R. 4:25-4, Gerard Burke, is hereby designated as trial counsel on behalf of Plaintiffs, Anne Milgram, Acting Attorney General of New Jersey, and the State of New Jersey, Department of Environmental Protection.

ANNE MILGRAM  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Gerard Burke  
Gerard Burke  
Assistant Attorney General

Dated: 9/22/06

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned certifies, pursuant to R. 4:5-1, that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding. I am not aware of any other persons who should be joined in this action and am not aware of any other persons who are subject to joinder.

ANNE MILGRAM  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Gerard Burke  
Gerard Burke  
Assistant Attorney General

Dated: 9/22/06