

ANNE MILGRAM, ATTORNEY  
GENERAL OF NEW JERSEY, et al.

Plaintiffs,

v.

D. LOBI ENTERPRISES, et al,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MONMOUTH COUNTY

DOCKET NO. C-296-06

Civil Action

CONSENT JUDGMENT BETWEEN  
PLAINTIFFS AND DEFENDANT  
SURFRIDER BEACH CLUB

WHEREAS, in 1993, the State of New Jersey and the Borough of Sea Bright entered into three-party agreements with Defendant D. Lobi Enterprises a/k/a Surfrider Beach Club and eight other beach clubs in the Borough of Sea Bright in connection with a joint federal, state and municipal shore protection project (the "1993 Agreements"); and

WHEREAS, in the 1993 Agreements, the State of New Jersey and Defendant Surfrider Beach Club and the other beach clubs agreed that the clubs would provide to the State of New Jersey the construction access easements necessary for the project and that public use of the beach in front of the Surfrider Beach Club and the other beach clubs would be limited to a 15-foot-wide limited use corridor; and

WHEREAS, on September 22, 2006, Plaintiffs filed suit against Defendant Surfrider Beach Club and others in the Superior Court of New Jersey, Chancery Division, Monmouth County; and

WHEREAS, Counts I and II of the Plaintiffs' Complaint allege that the terms of the 1993 Agreements limiting public access to a 15-foot wide limited use corridor are contrary to law and public policy, i.e., the Public Trust Doctrine as clarified by the New Jersey Supreme Court's

decision in Raleigh Ave. Beach Ass'n v. Atlantic Beach Club, Inc., 185 N.J. 40 (2005) and by other court decisions; and

WHEREAS, Counts I and II of the Plaintiffs' Complaint seek to reform the 1993 Agreements to obtain additional public access to the dry sand in front of Defendant Surfrider Beach Club and the other Defendant beach clubs; and

WHEREAS, Count III of the Plaintiffs' Complaint alleges that Defendant Surfrider Beach Club and certain other Defendant beach clubs are improperly occupying ungranted State-owned tidelands and limiting public access to these tidelands through their use for beach club operations; and

WHEREAS, Defendant Surfrider Beach Club has denied the material allegations of Plaintiffs' Complaint; and

WHEREAS, Plaintiffs and Defendant Surfrider Beach Club have engaged in an extensive mediation process conducted by Former Chief Justice James Zazzali (the Mediator); and

WHEREAS, in the interest of resolving all claims between them in this litigation, Plaintiffs and Defendant Surfrider Beach Club now agree to settle this matter in accordance with the following terms; and

WHEREAS, Plaintiffs have determined, based on an evaluation of all relevant facts and circumstances, including but not limited to the existence of the 1993 Agreements, that the settlement set forth herein is in the public interest and furthers the Public Trust Doctrine as set forth in the New Jersey Supreme Court's decision in Raleigh Ave. Beach Ass'n v. Atlantic Beach Club, Inc., 185 N.J. 40 (2005) and other legal opinions post-dating 1993 that the State believes have clarified public rights of access to and use of the shores of tidal waterways; and

WHEREAS, the Mediator has advised the court that, in his opinion, this Consent Judgment is consistent with the Public Trust Doctrine and is in the public interest.

NOW THEREFORE, IT IS on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, ORDERED AND ADJUDGED THAT:

1. PUBLIC USE AREA AND SURFRIDER BEACH CLUB USE AREA

a. The 15-foot limited use corridor provided for in Paragraphs 3(a)-(b) of the 1993 Agreement between the State of New Jersey, the Borough of Sea Bright, and Defendant Surfrider Beach Club will be replaced by a full public use area of 60% of the Beach (as hereinafter defined), up to a maximum of 150 feet, extending landward from the Annual Mean High Water Mark. As used herein, the Beach shall mean the area between the Erosion Line, as defined in blue on Exhibit A attached hereto (aerial map dated August 2009), and the Annual Mean High Water Mark. The 2009 Mean High Water Mark is shown in magenta on Exhibit A. For the remainder of the term of this Consent Judgment, the Annual Mean High Water Mark will be identified on June 15 annually. Defendant Surfrider Beach Club shall retain exclusive use and control over the beach area landward of the public use area of the Beach provided for herein, including the beach area that is within both granted tidelands and those tidelands covered by the lease contemplated under Paragraph 5(e) of this Consent Judgment.

b. In the event of any future beach fill by the federal, state and/or municipal governments, the public use area will include (1) the area outshore of the 2009 Mean High Water Mark, and (2) 60% of the area between the Erosion Line and the 2009 Mean High Water Mark, up to a maximum of 150 feet, extending landward from the 2009 Mean High Water Mark.

c. Nothing in this Consent Judgment limits the right of the members of the Surfrider Beach Club and their guests to access the foreshore, the ocean, and the public use area and to

otherwise enjoy in said areas any and all rights and privileges they currently have as beach club members.

d. The public use area may be marked by stakes or by modest signage, but it is not to be delineated by ropes, fences, or the like.

e. Notwithstanding any provision contained herein to the contrary, the Plaintiffs or Defendant may suspend the public-access provisions in Paragraphs 1(a)-(b) of this agreement when the mean high water line for a majority of the beach (defined as greater than 50% of the Defendant's oceanfront footage measured from north to south) has reached the Erosion Line ( the blue line on Exhibit A) and remains so for a period of thirty (30) consecutive days. This suspension may continue until the then-current mean high water line for the majority of the beach, as defined above, is entirely seaward of the Erosion Line and remains so for a period of at least thirty (30) consecutive days. If either the Plaintiffs or Defendant Surfrider Beach Club elects to exercise its suspension rights under this provision, public access to the beaches at Defendant Surfrider Beach Club's property during this suspension will revert to the 15-foot wide limited use corridor of the 1993 Agreements.

f. The public use area shall be deemed premises upon which public access has been required by agreement with the Department of Environmental Protection pursuant to N.J.S.A. 2A:42A-8. Any member of the public (other than a Beach Club member and their guests) entering upon or using the public use area shall be deemed a person entering or using the land for a use or purpose related to public access purposes within the meaning of N.J.S.A. 2A:42A-8.c. The purchase of a beach badge from the Borough of Sea Bright shall not be deemed a consideration paid to the Surfrider Beach Club, and hence any member of the public engaging in

sport or recreational activity in the public use area shall not be deemed to have been granted permission for a consideration within in the meaning of N.J.S.A. 2A:42A-8.e.

2. THE 1993 AGREEMENT AND THE CONSTRUCTION EASEMENT

a. By the terms set forth above, Paragraphs 3(a)-(b) of the 1993 Agreement are superseded by this Consent Judgment and shall be of no further force and effect immediately upon the satisfaction of all contingencies to this Consent Judgment becoming final and binding. The remaining provisions of the 1993 Agreement, including the construction easement granted to the State therein, will remain in effect for the duration of this Consent Judgment. Upon the expiration of this Consent Judgment, all remaining provisions of the 1993 Agreement shall be of no further force and effect. To the extent that there are any conflicts between the terms of the 1993 Agreement and this Consent Judgment, the terms of this Consent Judgment shall govern.

3. DURATION OF CONSENT JUDGMENT

a. This Consent Judgment shall remain in full force and effect until October 15, 2039.

4. ADDITIONAL PUBLIC ACCESS AMENITIES

a. Defendant Surfrider Beach Club will contribute \$30,000 for the construction of public-access amenities. This contribution shall be paid in two (2) installments of \$15,000 each with the first installment being due ten (10) business days of the date that this Consent Judgment is approved by, and Surfrider Beach Club obtains the conditional lease agreement from, the Tidelands Resource Council as required under paragraph 5 of this Consent Judgment. The second installment shall be paid on the one-year anniversary of such date. This money will be designated to a Sea Bright Public Access Fund. This Fund will be managed by the State and used to finance public-access improvements in the Borough. The improvements sought to be

constructed will first be identified by the State, in coordination with the Borough and in consultation with Amici Curiae American Littoral Society and Citizens Right to Access Beaches, and representatives of the Sea Bright beach clubs, which will not exceed two in number. The Borough will have final input on acceptance of any amenity to be constructed on Borough property, and when construction is completed and accepted by the Borough Council by Resolution, the Borough will thereafter be responsible for the operation and maintenance of the improvements. Except for the payments required under this Paragraph 4, Surfrider Beach Club shall have no obligations of any type or kind with respect to such amenities.

5. TIDELANDS

a. Judgment is hereby entered quieting title in the State of New Jersey in all un-granted, avulsively-filled State-owned tidelands seaward of the Surfrider Beach Club property pursuant to the terms set forth in Appendix A. Nothing herein shall affect the validity of existing State tidelands grants held by Defendant Surfrider Beach Club. Exhibit D hereto depicts the areas of State-owned tidelands and the areas of existing State tidelands grants held by Defendant Surfrider Beach Club.

b. The foregoing notwithstanding, Surfrider Beach Club shall at all times be considered the riparian owner and retain all attendant rights and privileges at law and equity. While an upland owner, Surfrider Beach Club shall have a non-exclusive easement common with the public across the lands in which title is quieted in favor of the State for purposes of access to the ocean. Nothing herein shall be construed to limit future legislative action concerning riparian rights or public access, nor shall it limit Surfrider Beach Club's ability to challenge any such legislative action.

c. Plaintiffs will recommend to the Tidelands Resource Council that Defendant Surfrider Beach Club resolve all State tidelands claims for past usage and future usage for the duration of this agreement through a single payment of \$1,369.

d. The State retains its rights under N.J.S.A. 12:3-1 et. seq. to impose all reasonable and appropriate conditions for Defendant's use of the ungranted State tidelands at the expiration of this Consent Judgment.

e. This Consent Judgment is contingent upon final approval by the Tidelands Resource Council, subject to review and approval by the Commissioner of Environmental Protection and the Attorney General. Plaintiffs will recommend to the Council that it enter into a conditional lease agreement for all ungranted tidelands with a term that runs until October 15, 2039 with Defendant Surfrider Beach Club in accordance with this Consent Judgment.

f. In the event this Consent Judgment has not been approved by the Tidelands Resource Council, and reviewed and approved by the Commissioner of Environmental Protection and the Attorney General, within 180 days of the entry hereof, this Consent Judgment shall be vacated, the complaint, and answer with defenses and counterclaim reinstated, and the matter shall be scheduled for trial.

g. All of the terms and conditions of this Consent Judgment including, without limitation, those that pertain to public access shall not take effect until this Consent Judgment is approved by, and Surfrider Beach Club obtains the conditional lease agreement from, the Tidelands Resource Council as required under this paragraph 5.

6. FUTURE REGULATORY APPROVALS

a. Plaintiff State of New Jersey, Department of Environmental Protection, will not impose any public access requirements as a term or condition of any permits or approvals it

issues to Defendant Surfrider Beach Club for normal beach maintenance, pool maintenance, typical beach club operation activities, seasonal structures, and repair, reconstruction, or expansion of any beach club structure within the existing footprint, excepting only the requirement that Defendant Surfrider Beach Club comply with this Consent Judgment.

7. MISCELLANEOUS

a. Beach Badges and Fees: Except for members of Defendant Surfrider Beach Club and their guests, municipal beach badges will be required in public-use areas in front of Defendant Surfrider Beach Club if the club elects to provide lifeguards and beach cleaning services. Surfrider Beach Club shall have no obligation to provide any services in connection with the public's access, occupancy and use of the Beach and/or the ocean including, without limitation, provision of lifeguards or other safety personnel, and cleaning and maintenance. To the extent that Surfrider Beach Club provides any such services in the public-use area and/or the ocean, Surfrider Beach Club will provide them equally to members and non-members alike. The Borough shall take reasonable steps to ensure the availability of municipal beach badges on its website and at the municipal beach. This reflects the limit of the Borough's responsibility in this regard. Should the Borough and the Beach Clubs strike some additional arrangement for the sale of Municipal Beach Badges in the future, such arrangement is wholly voluntary.

b. Regulation of the Public-Use Area: The public-use areas in front of Surfrider Beach Club will be considered unsupervised municipal beaches and will be governed by the rules that apply to supervised and unsupervised municipal beaches in the Borough of Sea Bright and reasonable non-discriminatory rules that Surfrider Beach Club applies equally to all users of the beach in front of Surfrider Beach Club, both members and non-members alike, concerning the prohibition or other restrictions on the following: smoking; possession and consumption of



alcoholic beverages; use of electronic devices (e.g., radios, CD players, iPods, MP3 players) without earphones; ball playing; use of the beach during beach cleaning operations; swimming or wading outside of designated guarded areas; swimming or wading when lifeguards are not on duty; use of surf boards; littering; use of china, glassware or other breakable or metallic utensils; use of glass bottles; unattended children under 12 years of age; disrespectful or dangerous behavior, horseplay or foul language; lewd or indecent conduct or attire; gambling; and fishing in bathing areas during such hours that the club designates for bathing. The beach club may install modest signage to identify the rules applicable to the public-use areas in front of the club.

c. In the event Surfrider Beach Club wishes to adopt rules or regulations other than those specified above, it shall give written notice to the Plaintiffs, and unless Plaintiffs provide Surfrider Beach Club with written objection to such rules within 30 days, those rules shall be deemed acceptable and enforceable. In the event Plaintiffs provide written notice of objection within 30 days, the Plaintiffs shall present the matter to this Court by way of motion pursuant to R. 1:10 to decide whether said rule is reasonable and consistent with the public trust doctrine, which decision may be made in a summary manner. In the event of an appeal, the decision of this Court shall be upheld so long as it is not arbitrary, capricious or unreasonable.

d. Signage: Department-approved signage must be installed and maintained in front of existing public-access points and any new public-access points.

e. Modification of Agreement: No modification of this agreement will be effective without the written approval of the Plaintiffs and Defendant Surfrider Beach Club.

f. This agreement may be executed in counterparts.

8. REVIEW AND APPROVAL BY THE COURT

a. The Court has reviewed this Consent Judgment and finds and declares that this Consent Judgment furthers the Public Trust Doctrine and is in the public interest.

\_\_\_\_\_  
Hon. Thomas W. Cavanagh, Jr., P.J. Ch.

The undersigned hereby consent to the form and entry of this Consent Judgment.

ANNE MILGRAM, ATTORNEY GENERAL,  
STATE OF NEW JERSEY

Date: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF NEW JERSEY, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Date: \_\_\_\_\_

By: \_\_\_\_\_

D. LOBI ENTERPRISES

Date: \_\_\_\_\_

By: \_\_\_\_\_

BOROUGH OF SEA BRIGHT

Date: \_\_\_\_\_

By: \_\_\_\_\_

## APPENDIX A

Pursuant to Paragraph 5(a) of this Consent Judgment, judgment is hereby quieted in the State of New Jersey in all lands within the subject property outshore of the line entitled "1993/1995 Mean High Water Line" in Exhibit D to this Consent Judgment. These lands are hereby quieted in the State of New Jersey free of any claim of the Surfrider Beach Club, except as stated herein.

The lands quieted in the State of New Jersey shall not include any areas subject to State tidelands grants, such grants being identified in Exhibit D. Title is hereby quieted in the Surfrider Beach Club in all lands within the subject property inshore of the 1993/1995 Mean High Water Line, and to all lands between the 1993/1995 Mean High Water Line and the eastern boundary of the applicable State tidelands grants, free of any claim of title of the State of New Jersey, except as stated herein.

The title of the State of New Jersey and the title of the Surfrider Beach Club are subject to natural erosion and accretion in those portions of the subject property that are ungranted. Once the current mean high water line erodes to the location of the 1993/1995 Mean High Water Line, in an ungranted area, then the common law rules concerning title by natural accretion, natural erosion and natural avulsion shall apply, to that extent.

Either party may move to amend this Judgment to identify the area quieted in the State and in the Surfrider Beach Club by metes and bounds upon 60 days notice to the other party.

A copy of Exhibit D shall be maintained in the office of the Bureau of Tidelands Management in the Division of Land Use Regulation, New Jersey Department of Environmental Protection, P.O. Box 439, Trenton, New Jersey 08625 in File Number \_\_\_\_\_. This Judgment shall be recorded in the Bureau's records in Liber \_\_\_\_\_ starting at page \_\_\_\_\_ and in the real property records of the Monmouth County Clerk's Office.