

SUPREME COURT OF NEW JERSEY

Docket No.: 089547

IN THE MATTER OF	:	On Petition for Certification from the
P.T. JIBSAIL FAMILY	:	Superior Court of New Jersey
LIMITED	:	Appellate Division
PARTNERSHIP	:	Docket No. A-699-22
TIDELANDS LICENSE	:	
NO. 1515-06-0012.1	:	<u>CIVIL ACTION</u>
TDI190001	:	
	:	SAT BELOW:
	:	Hon. Jessica A. Mayer, J.A.D
	:	Hon. Mary Gibbons Whipple, J.A.D
	:	Hon. Lorraine M. Augostini, J.A.D
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**SUPPLEMENTAL BRIEF OF RESPONDENT NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Date Submitted: June 27, 2025

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PRELIMINARY STATEMENT

The State of New Jersey owns all lands submerged by the tide from the mean high-water line out to three nautical miles offshore absent evidence of a conveyance. Like any proprietor of land, the State has the ability and authority to choose whether to convey any portion of those lands, because the act of conveyance is wholly distinct from any regulatory approvals that might be needed to further develop those areas.

The authority to make these conveyance choices was legislatively placed in a public body, the current iteration of which is the Tidelands Resource Council (TRC). When exercising this authority, the clear intent of the Legislature was to provide the TRC wide discretion to determine whether any such conveyance was in the public interest. The Legislature tasked the TRC with establishing geographic markers called exterior lines beyond which no fill could be laid or pier built. But a holistic reading of the various tidelands statutes shows that such lines are not immutable and do not limit the TRC's discretion to determine which tidelands can be conveyed. In fact, N.J.S.A. 12:3-13 makes clear that the TRC can not only establish such lines but that it can move them as well. With the explicit endorsement of judicial precedent, see Schultz v. Wilson, 44 N.J. Super. 591 (App. Div. 1957), the TRC has carried on a decades-long practice of establishing said exterior lines on a case-by-case basis through individual

conveyances, analyzing the existing conditions and other circumstances to determine whether a conveyance and the extent of any such conveyance is appropriate.

Petitioner now seeks to upend this practice arguing that conforming to existing lines limits the TRC from modifying its own conveyance, no matter how big or small the modification. In other words, unless the TRC acts within predetermined exterior lines or first defines the lines, it cannot move forward with a conveyance. Moreover, any previously determined exterior line drastically limits the TRC ability to issue a conveyance outside of that area.

Petitioner's argument must fail. It is not supported by the TRC's statutory authority, the legislative history underlying that authority, judicial precedent and common sense. Moreover, the stakes are real for the TRC and riparian property owners. Exterior lines already in place would suddenly limit the TRC's jurisdiction to convey tidelands outside of those areas under Petitioner's theory when that was never the understood purpose of those lines. Before any new conveyance could be made outside these lines or where no lines exist, the TRC would likely be forced to survey large areas of tidelands since any new conveyance now requires a widespread and binding regulatory determination before issuing a license to anyone or simply not convey anything at all. Finding for Petitioner could also encourage challenges (whether meritorious or

otherwise) to past conveyances that have long been relied upon. Not only would this result be inconsistent with the legislative design, but it would create needless practical and administrative burdens out of what is at its core a dispute between neighbors about a residential dock.

The Appellate Division correctly analyzed the myriad issues brought by Petitioner and its decision should be affirmed.

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

Respondent, New Jersey Department of Environmental Protection (NJDEP), adopts the statement of facts and procedural history in its opposition to the petition for certification, supplemented as follows.

Statutory and Regulatory Background.

The State of New Jersey owns “all lands underwater below the mean high-water mark,” known as tidelands, within its territory. In re Tideland’s License 96-0114-T, 326 N.J. Super. 209, 212 (App. Div. 1999).

New Jersey has owned its tidelands since Statehood. For its first sixty-four years New Jersey allowed riparian proprietors, generally described as one who owns the upland adjacent to tidally flowed land, see Hous. Auth. of Atl. City v. State, 188 N.J. Super. 145, 149 (1983) “to make improvements within high and low water mark in front of his lands” and to the extent improved, the

¹ These sections have been combined for the convenience of the court.

riparian proprietors owned those tidelands (“Right of Reclamation”). Bailey v. Driscoll, 19 N.J. 363, 369 (1955) (Bailey I). This Right of Reclamation was later codified into the Wharf Act of 1851 after this Court’s 1850 decision in Gough v. Bell gave credence to New Jersey’s local, customary modifications of long-standing English common law principles. Gough v. Bell, 22 N.J.L. 441, 464 (E. & A. 1850). The Wharf Act statutes were fully repealed by 1891 and “[t]he repealing statutes expressly stated they shall not be construed to restore any supposed right, usage, custom, or local common law, founded upon the tacit consent of the State or otherwise to fill in any land under water below mean high tide.” O’Neil v. State Highway Dep’t of New Jersey, 50 N.J. 307, 324-25 (1967) (citations omitted).

With the repeal of the Wharf Act the Legislature replaced an old statutory scheme with the riparian proprietor at its center with a new scheme driven exclusively by the management and control of the then-created Board of Riparian Commissioners. N.J.S.A. 12:3-1. The statutory scheme from 1864 onward, known as the Tidelands Act, N.J.S.A. 12:3-1 et. seq., required interested parties to apply for rights and required the Boards’ “grant or permission” for any development in the tidelands. N.J.S.A. 12:3-4. A tidelands grant is a “conveyance in fee simple of real property,” Panetta v. Equity One, Inc., 190 N.J. 307, 309 (2007), and an estate in land evinced by possession and ownership.

See Restatement 1st of Property, § 9. In short, those with a grant of ownership rights, either existing at the time of enactment or received thereafter, had all the property rights of a fee simple owner except: 1) the right to fill beyond bulkhead line without further permission; 2) the right to erect structures beyond the pierhead line without further permission; and 3) the right to restrict the public's access to reasonable use of the tidelands as common property. N.J.S.A. 12:3-4; Matthews v. Bay Head Improv. Asso., 95 N.J. 306, 319 (1984).

The Tidelands Act first requires an applicant receive “permission” prior to any conveyance of the State’s property rights to another. See N.J.S.A. 12:3-4 (“Without the grant or permission of the [DEP] no person or corporation shall fill in, build upon or make any erection . . . under the tidewaters of this State”). The TRC issues licenses such that the term license, as in tidelands license, is synonymous with permission, meaning “an interest in land in the possession of another which (a) entitles the owner of the interest to a use of the land, and (b) arises from the consent of the one whose interest in the land used is affected thereby, and (c) is not incident to an estate in land, and (d) is not an easement.” Restatement 1st of Property, § 512. The TRC’s “permission” arises from the specific property rights, if any, that the TRC approves “upon application to” the TRC by one who “is desirous to obtain a lease, grant, or conveyance” in the tidelands after March 20, 1891. N.J.S.A. 12:3-10.

The Tidelands Act, N.J.S.A. 12:3-1 to -71, requires anyone seeking to build upon, fill, or reclaim these areas to first receive approval from the TRC, which the Legislature authorized to issue grants and licenses in the tidelands on behalf of the State. When the Board of Riparian Commissioners, the predecessor to the TRC, was created in 1864 it was tasked with, among other things, annual reports to the Legislature, reviewing and deciding on applications to purchase the State's tidelands, establishing exterior lines, and surveying the State's tidelands and those owned by others. Today many regulatory functions are shared or allocated to DEP and other administrative agencies, but the TRC continues to be responsible for reviewing and either approving, denying, or modifying all applications for tidelands conveyances.

Before receiving a license from the TRC, an applicant must first have all regulatory and permitting approvals required for their proposed development of the tidelands. For example, the Waterfront Development Act ("Act"), N.J.S.A. 12:5-1 to -11, requires a waterfront development ("WFD") permit from DEP to erect a dock in the State's water-flowed lands. Last Chance Dev. P'ship v. Kean, 232 N.J. Super. 115, 123-24 (App. Div. 1989); N.J.S.A. 12:5-3. A WFD permit, in turn, requires compliance with the Coastal Zone Management Rules, N.J.A.C. 7:7-1.1 to -28.4, which also incorporate requirements from the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 to -21, and the Wetlands Act of 1970,

N.J.S.A. 13:9A-1 to -10. Then, any proposed development requires the requisite property interests, i.e. a tidelands grant, lease or license.

As the “public body responsible for the stewardship of the State’s riparian lands,” N.J.S.A. 12:3-12.1, the TRC may “change, fix and establish” exterior lines—the exterior line beyond which it shall be unlawful to fill the tidelands without the TRC’s permission, known as the bulkhead line, and the exterior line beyond which it is unlawful to erect structures in the tidelands without the TRC’s permission, known as pierhead lines—in the tidewaters, N.J.S.A. 12:3-13, beyond which “no encroachment of any kind shall be permitted.” N.J.S.A. 12:3-14. The Legislature also included a similar provision that “from time to time” the TRC shall “fix and establish, around or in front of all islands, reefs and shoals situate in the tidal waters of this state, exterior lines in said waters, beyond which no permanent obstruction shall be made or maintained.” N.J.S.A. 12:3-19. As explained below, the only exterior lines the Legislature indicated cannot change are certain lines that would have already been established directly by the Legislature at the time of N.J.S.A. 12:3-13’s enactment in 1872.

This State regulatory framework for the tidelands, where both the TRC and DEP play vital roles, also works in tandem with the federal oversight of the navigable waters of the US. For example, the TRC must establish, from time to time, exterior lines “after consultation with the Army Corps of Engineers,”

N.J.S.A. 12:3-19, which happens during the waterfront development permit approval process. N.J.S.A. 13:19-6; N.J.A.C. 7:7-8.3(b); N.J.A.C. 7:7-1.5, -12.9, -16.9; N.J.A.C. 7:7-4.8; (JMTa398).

This Case.

Appellant, Janine Morris Trust (JMT), and Co-Respondent, Jibsail Family Limited Partnership (Jibsail), own neighboring properties that front the Barnegat Bay. (JMTb3)². In the late 1980s, JMT's predecessor-in-interest obtained a tidelands license from the TRC and a WFD permit from NJDEP to construct a dock extending 105-feet. (JMTa453).

In 2006, NJDEP issued a permit to Jibsail's predecessor-in-interest that allowed it to construct a 128-foot long dock. (JMTa3). Consistent with the discussion above, that permit required the holder to obtain a tidelands grant, lease or license from the TRC. Jibsail's predecessor thus acquired a seven-year license in 2007. (JMTa104-110). Jibsail was assigned the license and in 2015 and renewed that license for ten years. (JMTa37-39; 51-53). The validity of those approvals are not at issue.

However, in 2017, Jibsail applied both to the NJDEP for a WFD permit and to TRC to modify its tidelands license so that it could construct a 185-foot-

² "JMTb" refers to JMT's Petition. "JMTa" refers to Petitioner's Appellate Division Appendix. "JMTSCa" refers to the Appendix to the Petition.

long extension off its existing 128-foot-long dock. Such extension would allow the required four feet of clearance to dock their boat without damaging the Bay's subaquatic vegetation in accordance with N.J.A.C. 7:7-9.6. As part of its license application, Jibsail established that all dock structures in the area were sufficiently distanced to provide navigational clearances as part of their WFD permit, (JMTa396), which was reviewed and approved by the Army Corps of Engineers. (JMTa165-67). After constructing the dock extension, slight inconsistencies between the approved survey and the as-built dock were discovered. (JMTb4). Jibsail thereafter sought a modified license to legalize the as-built dock location. Ibid.

JMT objected to the longer dock and sought its removal under the theory that the TRC's 2017 modification of Jibsail's tidelands license infringed upon JMT's riparian and navigation rights. (JMTa209). Then and now, JMT asserts that the TRC lacked authority to permit a dock extension because it went beyond a pierhead line as reflected a Borough of Lavallette tax map. The TRC rejected that position and unanimously approved the license modification. (JMTb12). The TRC found that the Jibsail dock did not intersect with JMT's pierhead line as established by its own license and that sufficient means of navigation would continue to exist in the immediate area. (JMTa551).

At the Appellate Division, JMT argued that the License approval was ultra vires and void ab initio. (JMTSCa68). In JMT’s view, the TRC could not convey a license to build a dock beyond an exterior line on a Borough of Lavallette tax map because this “pierhead line was established as required under New Jersey statute, and the Jibsail dock . . . [went] beyond the pierhead line.” (JMTSCa80); In re P.T. Jibsail Fam. Ltd. P'ship Tidelands License No. 1515-06-0012.1 Tdi 190001., 2024 N.J. Super. Unpub. LEXIS 824, at *21.

The TRC argued that it has the authority to set and change pierhead lines, it established a pierhead line by the license, and the pierhead line on the tax map was irrelevant. (JMTSCa64-65). The TRC specifically pointed to Schultz v. Wilson for the proposition that exterior lines such as the pierhead line could be established and altered through individual conveyances such as a license. (JMTSCa81).

The Appellate Division affirmed the TRC’s approval of the License, finding that the TRC had “clear statutory authority to approve Jibsail's license modification application” and “that its decision was amply supported by the record.” (JMTSCa80-82). In re P.T. Jibsail Fam. Ltd. at *22. It further found “no prohibition in the statutes or otherwise that preclude[d] the TRC from doing so, as it [was] legislatively empowered to manage all the State's tidelands.” Ibid.

On February 14, 2025, this Court granted JMT’s petition.

ARGUMENTS

POINT I

THE APPELLATE DIVISION DECISION SHOULD BE AFFIRMED BECAUSE THE TRC'S DETERMINATION IS SUPPORTED BY A BROAD DELEGATION OF AUTHORITY FOR IT TO CONVEY STATE TIDELANDS IRRESPECTIVE OF A PRE-ESTABLISHED PIERHEAD LINE.

The TRC had authority to approve the minor modification of a residential dock license along Barnegat Bay. After confirming that the licensed area did not intersect with any area previously conveyed, that issuing the license was in the public interest, and after giving due consideration to its impact on navigation, it explicitly established the outer boundaries of the area it was licensing. This determination, and the way the TRC went about it, was entirely consistent with its longstanding legislative authority, established practice and judicial precedent.

In arguing otherwise, JMT claims that the TRC has a “fundamental duty” to pre-establish a particular form of exterior line, the pierhead line, for all adjacent riparian properties at once in contrast to an “ad hoc fixing of the line for each grant, lease or license that could impede an adjacent riparian owner’s fundamental right to navigation.” (JMTb1-2). JMT points to a specific pierhead line drawn on a Borough Tax map that is 100 feet from the bulkhead line. (JMTb2). Based on this line, JMT argues that any action providing license to

construct a dock past this line would be ultra vires, since the existence of this line implicitly binds the TRC in some way, possibly as tied to a previous determination of where the “fundamental right to navigation” would be impermissibly infringed. (JMTb6). Core to its argument is that an “ad hoc” determination by an expert agency giving due consideration to navigation is against the legislative intent of the Tidelands Act, setting a difficult to alter exterior line for all riparian properties represents a wiser policy, and that there is a “fundamental right of navigation” safeguarded by the procedural requirements JMT reads into that statute as opposed to a lesser due consideration. (JMTb1-2, 6). For these reasons, JMT seeks the destruction of the dock as the only permissible remedy either because the dock exceeds the 100 feet pre-established pierhead line on the tax map or because the procedures JMT reads into the statute, specifically N.J.S.A. 12:3-19, were not followed. Ibid.

Pursuant to achieving this outcome, JMT characterizes licensing a dock past the tax map line as “ultra vires in the primary sense and void ab initio.” (JMTb6). For an act to be ultra vires in the primary sense, and therefore void, it must be “utterly beyond the jurisdiction of a [government actor].” Summer Cottagers' Asso. v. Cape May, 19 N.J. 493, 504 (1955). Otherwise, for merely “the irregular exercise of a basic power under the legislative grant in matters not in themselves jurisdictional” the act is potentially ratifiable. Ibid. Petitioners,

therefore, argue that when the TRC made a license to Jibsail to construct their dock, this was “utterly beyond” their jurisdiction as an agency entrusted with making licenses in the state-owned tidelands rather than, at worst, an irregular exercise of this basic power.

A. The TRC Has Broad Authority to Manage and Convey State Tidelands.

State ownership of tidelands and the TRC’s ability to make grants, leases or licenses are firmly established in New Jersey law. The TRC has been given broad discretion to alienate the State’s tidelands holdings and raise revenue subject only to broad consideration of the public interest. See N.J.S.A 12:3-10; N.J.S.A. 12:3-12.1; Bailey v. Council of Div. of Planning, 22 N.J. 366, 373 (1956) (Bailey II). “The State owns in fee simple all lands that are [now or were formerly] flowed by the tide up to the high-water line or mark,” O’Neill v. State Highway Dep’t, 50 N.J. 307, 321-28 (1965), to the extent they have not been validly conveyed to others. Le Compte v. State, 65 N.J. 447, 450 (1974). The TRC “determine[s] whether applications for the lease, license, or grant of riparian lands are in the public interest” and “obtain[s] the fair market value for the lease, license or grant of riparian lands.” N.J.S.A. 12:3-12.1. The proceeds from tidelands conveyances and the tidelands themselves are statutorily dedicated to the Fund for the Support of Free Public Schools established by our Constitution, N.J. Const., art. VIII, § 4, ¶ 2. N.J.S.A. 18A:56-5.

Operating in this proprietary capacity, the TRC has “one of the broadest delegations of authority in New Jersey government.” N.J. Law Revision Commission, Final Report and Recommendations, Environmental Statutes—Tidelands 2 (April 1998) (citing Atlantic City Elec. Co., v. Bardin, 145 N.J. Super. 438, 442-46 (App. Div. 1976)). The Tidelands Act is the source of much of that authority and is rife with proof that the TRC acts “with all instances of ownership” and should be understood to have the freedom to transact in line with the public interest. Gough v. Bell, 22 N.J.L. 441 (E&A 1850) (The rights of the State in its tidelands are “rights . . . of property and of conservation”). See In re Tideland's License 96-0114-T at 212 (TRC “has absolute discretion in making conveyances or granting licenses to its tidelands, subject to the governing statutory criteria and the demands of the public trust doctrine.”) (internal citations omitted); N.J.S.A. 13:1B-13. Still, the TRC’s authority is subject to the approval of the Commissioner of Environmental Protection, N.J.S.A. 13:1B-13, and is couched within the demands of the “public interest.” N.J.S.A. 12:3-12.1; See Le Compte at 560 (explaining that the TRC “is entrusted with complete discretion subject to approval of the . . . Commissioner in determining whether it will issue any grant, and, if so, at what price.”); see also Bailey II at 373 (“The discretion accorded this agency of the State is geared to something more than the enrichment of the school fund”).

In contrast, the TRC's authority is not limited by any rights held by shoreline landowners above the mean high-water line. Since 1891's repeal of the Wharf Act, no person or corporation has any property rights in areas below the mean high-water line without the State's permission. N.J.S.A. 12:3-4. To dispel any doubt about the breadth of this decree and to show that no lingering rights or interests of riparian proprietors remained after the repeal of the Wharf Act, the Legislature explained that this directive "shall not be construed to restore any supposed rights, usage or local common law, founded upon the tacit consent of the State or otherwise to fill in any land under water below mean high tide." Ibid.

B. The TRC's Broad Authority Includes the Establishment and Alteration of Exterior Lines Through Individual Conveyances.

The Tidelands Act clearly authorizes the TRC to both establish and change exterior lines. According to N.J.S.A. 12:3-13, "[t]he council may change, fix and establish any other lines than those now fixed and established for pier lines, or lines for solid filling in the tidewaters of the State." As more fully explained below, the TRC's authority to establish and alter exterior lines is statewide and unencumbered by any limitation other than certain lines that would have already been established by the legislature as opposed to set by the TRC at the time of N.J.S.A. 12:3-13's enactment in 1872.

Moreover, longstanding precedent in New Jersey confirms that the TRC can carry out its authority to establish and change exterior lines through individual conveyances. This Court's decision in Bailey I and later the Appellate Division's published decision in Schultz v. Wilson, 44 N.J. Super. 591, 607 (App. Div. 1957), establish the TRC's flexible administration of broad legislative policy under the Tidelands Act. Specifically, this Court has already determined that the TRC has legislatively delegated authority to set exterior lines, including through individual conveyances based on established policy considerations. Contrary to petitioner's reading, Bailey I fully analyzes the issue of whether "the Legislature impose[d] any limitation on the exercise of that power which would limit the outward extent of a riparian grant to a littoral owner," Bailey II at 369-370, and makes clear that the only limitation would be that "grants are to be confined within bulkhead and pier lines, either established or to be established throughout the State." Bailey I at 371. These lines, however, are not required to be uniformly drawn in the abstract prior to and independent of consideration of an individual applicant's particular situation, but can be made on a case-by-case basis depending on the transaction and the TRC's consideration of the public interest. See Schultz at 591 (interpreting Bailey I). In Bailey I, the Supreme Court rejected the Appellate Division's contrary view of the TRC's role and its attempt to impose just such a uniform requirement

imported from the common law. Bailey I, rather, declined to read the Tidelands Act as setting a more defined procedure that would bind the TRC apart from a requirement to generate an exterior line at some point beyond the mean-high water line in order to properly alienate tideland holdings under either N.J.S.A. 12:3-17 or N.J.S.A. 12:3-19.

Bailey I, therefore, stands for the proposition that the Tidelands Act only requires the TRC to draw a line, but this can be done flexibly so long as due consideration to navigation is satisfied. Bailey I at 373. The Court did ask: “What then is the relationship between ‘exterior lines’ and riparian grants?” Ibid. Reading the statute as a whole, but also quoting N.J.S.A. 12:3-19 in its decision directly, the Court viewed these lines as a means to “allow the littoral owner access to navigable waters” but imposed no limitations that are anything close to petitioner’s novel uniform procedure interpretation of N.J.S.A. 12:3-19. Ibid. The Court accepted that the purpose of the grant is fulfilled when “the exterior line itself is established by the TRC pursuant to N.J.S.A. 12:3-17, and so established it delineates navigable water.” Bailey I at 374. In its holding, the Court’s only other requirement was that the TRC’s line did not “intersect” the neighboring area that had been previously granted. Ibid. The exterior line drawing requirement was identified by the Court in Bailey I, but never

interpreted to bind the TRC to a pre-established uniform policy apart from the requirement of due consideration of navigability as determined by the TRC.

In Bailey II the Court confirmed that the only limitation on the TRC was setting these exterior lines and “that such lines were to be established so as to delineate navigable waters and that access to such waters was a primary consideration and inherent purpose in grants of land flowed or formerly flowed by tidewater.” Bailey II at 370. After the TRC’s established exterior line was again challenged, the Court sought “to determine whether the legislative power delegated to the Council has been exercised within the bounds of the discretion accorded it.” Id. at 372. Again, the New Jersey Supreme Court found no restrictions in the statute resembling what petitioners read into it and this decision would preclude the existence of such legislatively mandated preconditions as the Court was scrutinizing the same statutory provisions Petitioner’s rely on today.

Schultz simply reads Bailey I as allowing the TRC to act after broadly considering ability to navigate and again rejects a statutory reading that imposes more formal rules or procedures in establishing exterior lines through an implied limitation on the TRC’s authority. Schultz at 605-607. In Schultz, the required line was established in an individual conveyance whereas in Bailey I the line was established after the conveyance because the TRC had failed to include it

in the deed. Schultz at 606. Importantly, though, Schultz notes that the Court in Bailey I rejected the Appellate Division’s effort to adopt a uniform rule outside the statute of limiting potential grants to only the middle of a creek. Ibid. Instead, Shultz and Bailey demanded of the TRC only what the statute itself actually requires: establishing some exterior line that limits construction beyond the mean high-water line. Bailey II at 370; Schultz at 607. In both cases, the Court permitted a yet to be established line to satisfy the Legislature’s policy of giving due consideration for navigation through the use of exterior, or pierhead, lines.³ Further, Schultz explained that “[i]t would be unreasonable to assume that in fixing [the] exterior line the Council did not have in mind that in future grants the same exterior course would be followed . . . so as to establish a practical uniformity and assure littoral owners reasonable access to navigable waters.” Id. at 607. In other words, the TRC has flexibility to consider and decide individual applications using broad policy considerations communicated directly in the statutory language rather than rigid procedures.

³ The importance of this requirement may have been diminished by subsequent statutory amendments, as N.J.S.A. 12:3-12 was since amended to remove reference to exterior lines “to be established” as the limit of where the TRC could issue a grant and replaced it with the “seaward territorial jurisdiction of the State,” so any significant read into the role of exterior lines set by the TRC in the provision has since been dispensed with. L. 1979, c. 311.

Here, the TRC acted well within the scope of its broad delegated authority when it authorized a license modification to Jibsail that established the exterior lines for that area. The TRC conducted two public hearings concerning Jibsail's application and accepted written briefing from all interested parties prior to making a decision. It determined that the proposed dock would not intersect with any other established exterior line or the rights of any other licensee or grantee in the area, including Petitioner; and that sufficient means of navigation would continue to exist in the immediate area. Ultimately, the TRC determined that it was in the public interest to exercise its discretion to approve the Corrective License Application and that decision should be affirmed.

POINT II

THE APPELLATE DIVISION CORRECTLY FOUND THAT THE TRC HAS AUTHORITY TO ESTABLISH OR ALTER EXTERIOR LINES BY MODIFYING INDIVIDUAL CONVEYANCES.

In the face of clear statutory authority and judicial precedent, Petitioner relies on an expansive and unsupported reading of N.J.S.A. 12:3-19 and urges the Court to find that the Legislature's repeal of N.J.S.A. 12:3-17 indicated its intent to severely restrict the TRC's otherwise broad authority to manage the conveyance of the State's tidelands. As explained below, the statutory language, historical context and basic common sense prove otherwise.

A. N.J.S.A. 12:3-19 Does Not Mandate a Procedure for Establishing Uniform Exterior Lines and its Plain Language Goes Against Petitioner's Interpretation.

Petitioner's primary statutory support for its theory is N.J.S.A. 12:3-19. Petitioner argues that the 100-foot pierhead line drawn on a tax map was "established as required under New Jersey statute" and that a license to the Jibsail dock past the pierhead line drawn on the tax map "is a clear violation of the plain language of the statute, which clearly and unambiguously only permits the construction of permanent structures of any kind within the pierhead line" according to N.J.S.A. 12:3-19. (JMTb6). Necessary to this argument is the assumption that a new individual conveyance by the TRC past a previous line appearing on a tax map is inadequate to establish a new, controlling exterior line.

The Legislature has declared that, in the construction of all laws, "words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language." N.J.S.A. 1:1-1. Furthermore, it is "'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" Alaska Dep't of Env'tl. Conservation v. EPA, 540 U.S. 461, 489 n.13 (2004) (quoting TRW Inc.

v. Andrews, 534 U.S. 19, 31 (2001); see Household Fin. Corp. v. State Bd. of Tax Appeals, 119 N.J.L. 230, 234 (1937); see also Pine Belt Chevrolet v. Jersey Cent. Power & Light Co., 132 N.J. 564, 579 (1993) ("[a] construction that will render any part of a statute inoperative, superfluous, or meaningless, is to be avoided.") Also, "[i]n all statutory construction cases, the court begins by examining the language of the statute, considering the entire language of the statute in its plain, ordinary, and popular sense." 82 C.J.S. Statutes § 396 p. 492-93. The Wharf Act must also be strictly construed in favor of the State, which keeps the tidelands in trust for the public. Borough of Neptune City v. Borough of Avon-By-the-Sea, 61 N.J. 296, 303 (1972).

N.J.S.A. 12:3-19 does not establish "the procedure that the TRC must follow in fixing the pierhead line," (JMTb1), only that the TRC should establish a line in some way and from "time to time" around the specific class of tidelands features of "islands, reefs and shoals." N.J.S.A. 12:3-19. Petitioner misreads language that relates, first, to the commonsense licensing operation of defining where on state land an applicant can build their structure and, second, a signal of legislative policy that the TRC should be especially conscious of the value of these geographic features for commercial shipping. If there was any fear of chaos or ad hoc decision-making, it should be read in the specific situational context of this limited provision concerned with safeguarding commercial

development in these areas rather than as a foundational procedural concern in the full statute, which directs TRC to fix lines but does not prescribe the specific procedure for doing so.

N.J.S.A. 12:3-19 states:

The Tidelands Resource Council, with the approval of the Commissioner of Environmental Protection and after consultation with the Army Corps of Engineers, shall, from time to time, fix and establish, around or in front of all islands, reefs and shoals situate in the tidal waters of this State, exterior lines in said waters, beyond which no pier, wharf, bulkhead, erection or permanent obstruction of any kind shall be made or maintained, and also the interior lines for solid filling in said waters, beyond which no permanent obstruction shall be made or maintained other than wharves and piers and erections thereon for commercial uses; provided, however, that no exterior line around or in front of any such island, reef or shoal shall be fixed and established in front of any riparian grant which was made prior to February tenth, one thousand eight hundred and ninety-one, unless such exterior line shall be fixed and established, after consultation with the Army Corps of Engineers, at such distance as will, in the judgment of the Tidelands Resource Council, leave sufficient waterway in front of said grants for navigation, and when the council shall have so fixed and established said lines after consultation as aforesaid, it shall file a survey and map thereof in the Office of the Secretary of State, showing the lines for piers and solid filling so fixed and established.

[(emphasis added)]

First, the exterior lines in N.J.S.A. 12:3-19 merely represent the TRC's role in alienating for sale or lease State tidelands holdings and any more rigid

“procedures” that the TRC “must follow” should not be read into it, especially at so late a date. (JMTb1). Tidelands holdings begin at the mean high-water line and, to alienate these lands for potential lease, license, or sale to property owners the TRC simply must draw some parallel line defining the property right the State has parted with and where an encroachment would otherwise begin. There is no reason to view “beyond which no [structure] shall be made,” N.J.S.A. 12:3-19, as anything more than where the property owner would trespass, as the most obvious meaning, and convert it into a boundary for the TRC’s own authority. To the extent these lines may serve any alternate purpose, it is to reserve areas for commercial development in particular areas of the Tidelands as explained below. Next, this alienation of State land required the filing of a survey, but all this speaks to is a practical question of administration rather than threshold legislative authority as it is for “the sake of security, order, and regularity only.” Arnold v. Mundy, 6 N.J.L. 1, 67-68 (1821). Indeed, the provision is silent on what exact method or policy the TRC is supposed to use beyond setting a line. There is no procedure to follow “in fixing the pierhead line,” (JMTb1) (emphasis added), as they claim, since the pierhead line itself is the only explicit requirement and setting it remains entirely in the discretion of the TRC. There does not appear to be any special reason to convert this

procedure into anything more than the logical requirement to define the line of trespass and then record the required information for purposes of regularity.

Second, the purpose of N.J.S.A. 12:3-19 is to set a broad policy with regards to “islands, reefs and shoals” and their potential commercial development for the TRC to implement in its proprietary decision-making. Nowhere does the Legislature require consideration of “an adjacent riparian owner’s fundamental right to navigation.” (JMTb2). The preamble explains clearly that the purpose of this section was to “greatly promote foreign and inland commerce” through the development of “islands situate in the tidal waters of this state” as well as “reefs and shoals in the tidal waters of this state awash or submerged at mean high water” and that “it is just and wise that the state should so legislate as to permit its said lands to be used” for “the erection and construction thereon of docks, wharves, piers, warehouses and other structures” to be used in commerce. L. 1891, c. 5. This helps to explain another feature of this provision: that the exterior lines set for private property owners may, or even should, be disregarded for the development of piers or wharfs for “commercial uses” and the only navigation rights the TRC is required to consider are for grants “made prior to February tenth, one thousand eight hundred and ninety-one.” N.J.S.A. 12:3-19. It is therefore, on both the reading of the full provision and its preamble, clear that the legislative intent was not to

protect a fundamental right of the adjacent property owners, but to subordinate that right to other considerations, such as an interest in industrial commercial development in cases where there was no previous grant that required consideration of navigation. The Legislature gave the TRC flexibility in granting, leasing, or licensing the State's tidelands holdings, but prioritized some interests above others. The prioritized interest here would not be Petitioners' private interests in ensuring the navigational status quo for property owners, in this case a "straight shot" to their shorter dock. (JMTb14).

Petitioner's argument assumes that a provision that is singularly focused on "islands, reefs and shoals" imposes a limitation on the TRC's jurisdiction over the tidelands more generally. The passage of N.J.S.A. 12:3-19 was to make clear that the TRC enjoyed expansive authority to issue grants or licenses in the tidelands, including its "islands, reefs and shoals," not to limit it. The goal of this provision was "that there should be a law giving [the TRC] the power to control the occupation and improvement of reefs and bars in tidal streams, the right to do so being questioned under present acts" because "[i]f such a power were clearly vested in the [TRC] a large revenue could, in their judgment, be obtained." Minutes of the votes and proceedings of the 115th General Assembly of the State of New Jersey (1891), pg. 35 (available at

dspace.njstatelib.org/items/302ea5b3-1f50-4885-86e0-035eabc2c16a).⁴

Whether it is because the tidelands are usually conceived of as soil under tidally flowed waters or for some other reason, there was simply a question as to whether reefs, shoals, or islands were automatically included and the Legislature wished to remove any doubt regarding how expansive the TRC's domain was. Its intention was certainly not to halt all tidelands conveyances around islands, perhaps the entire New Jersey barrier coastline, until exterior lines could be surveyed and catalogued.⁵

Moreover, this provision should be read in light of its clear legislative intent and policy guidance to foster industrial development, which was a more salient issue in 1891, rather than as an evergreen procedural mandate that must restrain the TRC in some way in 2025. By 1870, private improvements had begun to interfere with commercial development “owing to the increasing size of steamers and sailing vessels.” Testimony taken before the Committee of the Senate and House of Assembly of the State of New Jersey to Investigate the Granting of Riparian Lands by the State, etc. pg. 442 (available at

⁴ The “http” has been omitted to disable hyperlinks.

⁵ Adopting Plaintiff's interpretation could conceivably require the State to halt tidelands conveyances and muster a huge amount of resources to survey, study, draw and catalog the exterior lines statewide. Even if the requirement were only applicable to “islands”, that term is not defined. Arguably, New Jersey's entire barrier coastline from Sandy Hook south to Cape May is a group of islands. The economic consequences are difficult to quantify or predict.

archive.org/details/testimonytakenbe02newj/page/n3/mode/2up). This period represented a shift into a stage of development “the object of which [was] to secure to the general commercial interest of the port proper landing facilities, not for use of the party owning the upland.” Ibid. Because coasts themselves also shift and change, a strict and uniform establishment of a predetermined binding line would have been untenable for effective management.

Therefore, rapid technological change and the size of commercial ships created another area of flux at the time the statute was written, but the response was to reinforce rather than limit the flexibility of the TRC. Given this historic backdrop, projecting an overriding legislative intent to guarantee the status quo of private navigation on the policymakers of 1891 makes for a willfully poor reading as the evidence suggests the legislature was at best indifferent to these concerns. A much more justified inference is that the TRC needed flexibility to act, but also a sense of the Legislature’s policy for dealing with these historic changes. This provision does not, as Petitioner suggests, break with the rest of the Tidelands Act which gives the TRC broad authority to weigh the various interests and objectives of the Legislature, specifically for “islands” and for the sake of adjacent residents.

Additionally, the legislative object of “islands, reefs, and shoals” should be interpreted and understood together, further insulating this section from

Petitioner’s demand to survey and draw a pre-established uniform line around anything that might colloquially be considered an “island” to communicating the fact that these features within the tidelands also needed to be considered when granting licenses from the coastline. As the preamble makes clear, the provision is addressed to these three features off the mainland that, according to the legislature, could be used for the erection of commercial structures in 1891. At the very least, and consistent with their inclusion alongside reefs and shoals, this would refer to smaller islands of similar scale that might support a portion of these commercial structures rather than a requirement for a complete survey and regulatory treatment of “all islands” throughout New Jersey, which would be as impractical and unnecessary as surveying and establishing lines around all shoals or all reefs prior to consideration of a particular case.

Applying the principle of noscitur a sociis where the three terms are interpreted together for their intended meaning, less absurdity results from the legislature’s chosen language. By removing the flexibility to only establish such lines “from time to time,” including when a particular grant or license application makes them relevant, Petitioner argues that the legislature wanted something akin to a total catalog of all “islands, reefs, or shoals” with an implied requirement that the TRC bind itself to a complex act of regulation all at once. Again, the mention of these three special features is better interpreted as a signal

of policy that the TRC should potentially be more conservative and less generous when these features are present given what the Legislature saw as untapped commercial potential. Given this, it is very possible that the intended meaning of N.J.S.A. 12:3-19 simply is not very relevant 150 years later given the current state of commercial development and pier building technology, but that is not a problem of statutory interpretation. The Court should not contort the meaning and intention of this provision against the flexibility of the TRC to force relevance when commercial shipping is more developed and these lines showing possible commercial shipping channels are simply known and understood as a practical and historical matter.

Finally, Petitioner's alternative explanation that the legislative intent was to safeguard the fundamental right of navigation for adjacent property owners completely falls apart when reading the actual language of the statute. Petitioner intentionally withholds key substantive provisions that fatally undermine its argument. See (JMTb9-10) (quoting only a portion of N.J.S.A. 12:3-19). First that any existing pierhead lines may, potentially should, be subject to violation for any commercial applicant and then also that the TRC is only restricted by private interests in the specific cases where there is a riparian grant made prior to 1891. Even in those cases, rather than an absolute right, the holder of a grant made prior to 1891 is only entitled to "sufficient waterway in front of said grants

for navigation” as determined “in the judgment of the Tidelands Resource Council.” N.J.S.A. 12:3-19. This is a limited exception to the implied rule of giving potentially no consideration to navigation to non-commercial shipping interests under this particular section of the statute. In other words, the actual unedited language states the opposite of what Petitioners claim: an explicitly considered lack of concern for a fundamental right of private property owner’s accustomed navigational practices because the legislature viewed those rights as less important than the ability to establish commercial uses in these areas. Additionally, the fact that the section includes the express legislative directive for the TRC to view these lines as completely non-binding for commercial uses fatally undercuts the interpretation that these are meant as jurisdictional limitations on the TRC. Instead these lines would have whatever regulatory significance the TRC wished to give them, but should also in no way limit the development of commercial shipping according to an explicit policy preference of the Legislature. The statutory interpretation of Petitioner, therefore, simply does not hold water even when limited to a reading of the operative plain language.

**B. The repeal of N.J.S.A. 12:3-17 Does Not Diminish the TRC's
Authority or the Holding of Schultz.**

Petitioner claims that the legislative repeal of N.J.S.A. 12:3-17 tacitly overruled Schultz's holding that the TRC can establish exterior lines through individual conveyances. This is simply incorrect.

N.J.S.A. 12:3-17 was initially adopted by L. 1874, c. 427 and remained in effect until its repeal by L. 1979, c. 311 (effective January 17, 1980). Before its repeal, N.J.S.A. 12:3-17 read as follows:

Extension of Surveys over tidewaters. The board shall,
at the request of shore owners, extend its surveys over
the tidewaters of this state and prepare and file maps
thereof in the office of the secretary of state showing
what lines have been fixed and established for the
exterior lines for solid filling and pier lines.

To be sure, the Schultz decision does contain a single citation to N.J.S.A. 12:3-17. But its holding that the TRC can adopt exterior lines through individual conveyances is a product of the court's reading of the Bailey I decision. Schultz, at 606. And while the Bailey I court does refer to N.J.S.A. 12:3-17 in its decision, it does so merely to lend further support to its holding premised on N.J.S.A. 12:3-10 and -12 that "grants are to be confined within bulkhead and

pier lines, either established or to be established throughout the State.” Bailey I at 371. In fact, the legislative history for the 1979 amendments confirms that repealing N.J.S.A. 12:3-17 was nothing more than a minor, administrative change, a “technical amendment” inserted at the request of NJDEP and the Attorney General’s Office. Statement to A.3448, L. 1979 c. 311 (November 26, 1979). It certainly was not intended to be a legislative repeal of the Bailey I or Schultz holdings.

Moreover, while Petitioner focuses on the repeal of N.J.S.A. 12:3-17, it ignores the other changes made by L. 1979, c. 311, which expanded the already broad authority of the TRC. See New Jersey Law Revision Commission, Final Report and Recommendations at pg. 10. Prior to the 1979 amendments, N.J.S.A. 12:3-12 said that the TRC could “grant or lease . . . between what was anytime heretofore, the original high water line and the exterior lines established or to be established.” L. 1979, c. 311. As Bailey I explained, this provision authorized the TRC to issue conveyances of State tidelands within exterior lines.

The 1979 amendments made the TRC’s authority to grant or lease tidelands co-terminus with State ownership by harmonizing the TRC’s authority with the State’s jurisdiction. N.J.S.A. 12:3-12 thereafter allowed the TRC to authorize conveyances anywhere between the “the original high water line and the seaward territorial jurisdiction of the State.” In other words, it did away

with one of the only limitations the Bailey I court could identify when examining the TRC's jurisdiction back in 1955.

More importantly for purposes of this matter, L. 1979, c. 311 also amended N.J.S.A. 12:3-13 which previously authorized the TRC "to change, fix or establish any other lines than those now fixed and established for pier lines or lines for solid filling in the waters of the bay of New York or the Hudson River." As a result of the 1979 amendments, the TRC is now authorized to "change, fix or establish . . . lines in the tidewaters of the State." N.J.S.A. 12:3-13. This portion of the same amendment that repealed N.J.S.A. 12:3-17 makes clear that the Legislature fully intended for the TRC to have the authority to change exterior lines statewide.

C. The TRC is At Most Only Restrained by Exterior Lines Set by the Legislature and When State Ownership is Unclear.

Made even more clear with the passing of the 1979 amendments, the legislative intent of the Tidelands Act included giving the TRC flexibility to manage and raise revenue from the tidelands with the only jurisdictional limit being State territorial ownership. Any limitation on the jurisdiction of the TRC where there would not be discretion to appropriately weigh the public interest would be in the narrow case of a legislatively fixed line or where the fact of state ownership is not clear. This is first evident in the structure of the statute, which gives the TRC the ability to "change, fix and establish" lines. N.J.S.A. 12:3-13.

Arguing that an entity with the express power to change lines is also bound by those same lines is confused and unworkable without something to indicate what lines are or are changeable lines and what lines are binding lines. But Petitioner's argument appears to be that if established lines can be changed at all, as the Act clearly permits, then the lines are meaningless and in effect become superfluous language. These are, however, still lines that define property rights for a limited period and for a particular transaction. Rather than being "chaotic," (JMTb10), establishing lines and filing surveys is a precondition for knowing where property rights begin or end. Petitioners cannot claim that no line, once set, is never subject to change by the TRC as that would make the purposeful express grant of power to change lines superfluous. They do not, however, point to anything coherent in the statute that distinguishes between the type of lines the TRC can and cannot change.

Where the Legislature restricted the TRC's ability to change exterior lines, it did so with specificity. This is potentially found in N.J.S.A. 12:3-13, which includes "other lines than those now fixed and established for pier lines." Ibid. The "now" in this case refers to when the provision was originally passed: 1872. The jurisdictional limitations, therefore, are lines established prior to 1872 as an eternal and ever present "now" would effectively swallow the ability to ever change any line, which the Legislature expressly granted and intended in this

provision. On closer examination, the distinction especially makes sense as the previously established lines at that point were to settle an ongoing dispute with New York regarding the tidewaters of the Hudson river, New York bay and Kill von Kull. See generally People v. Central R. Co., 42 N.Y. 283 (1870). This can be seen in N.J.S.A. 12:3-2, dealing expressly with this particular special zone, which also references the TRC's ability in N.J.S.A. 12:3-13 to change exterior lines. N.J.S.A. 12:3-2 may be read as allowing the TRC to change even lines established prior to 1872 and the unchangeable lines would only apply to the even narrower case of "said lines drawn on said maps over or upon lands within the boundaries of the grant made to the Morris Canal and Banking Company." Leaving aside whether this prohibition applies to all pre-1872 lines or only a subset, the particular exterior lines for tidelands near the New York state line were also unique in that they were expressly "adopted and declared to be fixed and established" by the legislature in 1869. L. 1869, c. 383. These lines were drawn pursuant to a legislatively directed survey and the adoption of a report also submitted to the legislature in 1865. N.J.S.A. 12:3-2. The 1864 legislative act was specifically "to ascertain the present rights of the state" in other words, whether or not the state owned these areas and had a claim to them at all. L. 1864, c. 391. These specific lines, and any lines the legislature would set, would genuinely have an authority and an underlying jurisdiction that would bind the

TRC and make for a compelling, and narrow, limitation on the power found in N.J.S.A. 12:3-13 to change exterior lines. Petitioner's theory that any line that appears on any map carry the same authority or limitation is simply not tenable and would clearly undermine the express power given to the TRC to "change" lines that have been established after 1871.

The other genuinely binding, jurisdictional line referenced in the statute sets the limit on the TRC expressly as the territorial limit of the State. N.J.S.A. 12:3-12 specifies that grants or leases can be made between "the original high-water line and the seaward territorial jurisdiction of the State." Ibid. In 1979, the legislature amended "exterior lines established or to be established" to "seaward territorial jurisdiction" motivated in part by the prospect of offshore oil drilling. L. 1979, c. 311. The ability to make this change was due to the Submerged Lands Act of 1953 which definitively clarified the State's territorial jurisdiction by giving all states a seaward jurisdiction of three miles. 43 USCS §§ 1311-1312. Given that territorial jurisdiction was now a clear concept without the need to set or establish exterior lines with only the consciousness that federal ownership may begin at some point off the shore, the legislature of 1979 clarified that this was the true, and perhaps always intended, jurisdictional limit of the TRC. The ambiguity resolved, the general concept of an exterior line from the mean high-water line setting the TRC's jurisdiction under N.J.S.A.

12:3-12 was no longer needed, although there is nothing to indicate that the TRC was unable to change this exterior line if it was still within the territory of the State before the 1979 amendment. The amendment to the territorial jurisdiction as the TRC's jurisdiction is in accordance with the previous jurisdictional limit from the 19th century survey at the New York state line.

This illustrates that the TRC's jurisdiction and discretion to change exterior lines is limited only by the State's ownership interests and not—as Petitioners would have it—by the existence of a previously drawn line on a tax map allegedly representing a required commitment to a binding jurisdictional limitation. Rather, the TRC sets lines that establish where a property owner is permitted to build in the tidelands and not where the TRC is permitted to permit a property owner to build in the tidelands.

D. Petitioner's Core Statutory Interpretation and Construction is Dubious and Misguided.

Petitioner's attempt to write new conditions into the Tidelands Act to invalidate the TRC's actions clings to the canon of construction that an interpretation should not “render any language inoperative, superfluous, void, or insignificant,” (JMTb10), but Petitioner mistakes subtlety for superfluity and shortcuts the more foundational guiding principle: “determin[ing] the Legislature's intent.” Sanchez v. Fitness Factory Edgewater, LLC, 242 N.J. 252,

260 (2020). Here, that intent was to confer broad authority on the TRC to manage tidelands conveyances statewide, not limit it.

As explained above, Petitioner misreads the need for exterior lines, which exist to carve out the property rights the State is parting with from the mean high-water line, as having “no point” unless these lines also bind the TRC permanently into the future. (JMTb10). This is simply a failed argument on its face as the point of the lines is to establish where a property owner is permitted to build, an entirely necessary purpose. As explained above, the legislative intent can be readily gleaned both from the plain language and the historic period. The legislature was redefining the property owners’ rights to the tidelands to now require express approval from the TRC, which was not the practice under the Wharf Act. The statutory language should, therefore, be read in accordance with this and its plain meaning pursuant to that overriding goal: that these lines serve the purpose to restrain the property owner. Petitioners insist that N.J.S.A. 12:3-14, which simply states that “no encroachment of any kind shall be permitted to be made beyond said lines so fixed and established” must apply to the TRC since an individual encroachment beyond where the TRC has permitted “would already be a violation.” (JMTb11). But N.J.S.A. 12:3-3 when enacted applied only to the area of the Hudson River with N.J.S.A. 12:3-14 applying the rule to the rest of the State tidewaters. Reiterating that

individuals cannot build past the permitted line is not so self-evident as to require some secret inferred motive to bind the TRC itself because it was passed in 1872, the era of the Wharf Act and customary rights to property owners, so there was a need to expressly stress that no encroachment past the grant or license from the TRC is permitted. L. 1872, c. 548.

The need to read the language in the context of 1872 is justified as the Court “must be guided by the legislative objectives sought to be achieved by enacting the statute.” Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012). The Tidelands Act was originally passed over a hundred years ago, so some of these objectives from the period of enactment such as concern for developing piers on reefs or shoals, might not persist. When following this guidance to interpret according to the objectives of the enactment, there must be some consciousness of the time of enactment. In light of the overall goal at the time of empowering the TRC to manage these areas and restrain any development of the tidelands without the TRC’s express permission, imposing implied restrictions in the other direction simply must be avoided as it “would be inconsistent with the overall purpose of the statute” if not directly contradictory to it. Young v. Schering Corp., 141 N.J. 16, 25 (1995).

To the extent the Court is inclined to read N.J.S.A. 12:3-19 as requiring a predetermined line to be drawn around “all islands” as opposed to setting

exterior lines by individual conveyance, this would be contrary to the overall statutory scheme of tidelands management and an overly literal reading. When the “strict application of the words will lead to an absurd result or one at odds with public policy or ‘an overall statutory scheme’” then the Court may “turn to extrinsic sources, such as legislative history.” Farmers Mut. Fire Ins. Co. of Salem v. New Jersey Property-Liability Ins. Guar. Ass'n, 215 N.J. 522, 536 (2013). In this case, requiring a special uniform line around islands is at odds with the system of management in the rest of the statute, which requires no such jurisdictional line apart from territorial boundaries. The legislative history for this section regarding islands is readily at hand in the preamble and identifies the concerns as those of commercial shipping development in the 19th century. The overall statutory scheme to give the TRC wide discretion in managing the State’s tideland holdings in a proprietary capacity should not be undermined by creating a special, unnecessary rule for islands unmoored from the legislative intent in enacting that section, which may not be relevant today after over a hundred years of development and technological change.

Petitioner’s demand that the actions of the TRC must be found void ab initio is completely unsupported legally. The TRC is clearly entrusted to make grants, leases, or licenses of the state’s tidelands and that is exactly what they have done in the case of Jibsail’s dock. The caselaw makes clear that “[t]here

is a distinction between an act utterly beyond the jurisdiction of [an entity] and the irregular exercise of a basic power under the legislative grant in matters not in themselves jurisdictional.” Summer Cottagers' Asso. at 504. Leaving aside how irresponsible it would be to make a swathe of the TRC’s transactions that have been used to raise constitutionally dedicated school funds void ab initio would be, the TRC’s primary function is to make these leases and licenses in the tidelands, so how could it be an act “utterly beyond” their jurisdiction? The TRC clearly continues to maintain jurisdiction even under Petitioner’s theory as they are still able to make grants or licenses past the imagined unchangeable pierhead lines in the case of commercial uses. It is, therefore, a point about whether the legislature imposed a certain, somewhat bewildering, administrative procedure on the TRC itself rather than an act that goes “utterly beyond” the TRC’s jurisdiction.

The demand that anything is made void ab initio should be disregarded as it would not only impact the Jibsail dock but those previously conveyed interests in State tidelands as well. In fact, the scope of reliance interests involved in such an instance is difficult to track in any detailed manner, as is the number of wild deeds and competing chains of title such a ruling would create.

E. Reversing Schultz and Bailey to Remove the TRC's Ability to Make Individual Conveyances is Not Supported by Stare Decisis Principles.

The TRC has acted under the imprimatur of the Court for over seventy years after Bailey I and Schultz and reversing this imprimatur is contrary to stare decisis principles which “carries such persuasive force that we have always required a departure from precedent to be supported by some special justification.” Luchejko v. City of Hoboken, 207 N.J. 191, 208 (2011) (citations and internal quotations omitted). This reticence to reverse prior decisions “promotes consistency, stability, and predictability in the development of legal principles and respect for judicial decisions.” State v. Witt, 223 N.J. 409, 439 (2015). These special considerations may be when the “passage of time illuminates that a ruling was poorly reasoned,” “when changed circumstances have eliminated the original rationale for a rule”, “or when a standard defies consistent application by lower courts.” Luchejko at 209. While certain applicants or their neighbors may be miffed by a particular decision, there is no indication that any special justification is present here requiring the Court to adopt Petitioner’s entirely abstract and implied quibbles with how the TRC goes about its core duty of managing and effectuating conveyances in tideland areas. While Petitioner contends it is “chaotic” and “ad hoc,” (JMTb10), the tidelands are indisputably owned by the State and the State can distribute them as it sees

fit in the public interest, which might not be the same as an individual property owners' interest.

CONCLUSION

For the reasons set forth herein, the State submits that the decision of the Appellate Division should be affirmed.

Respectfully submitted,

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