

**SUPREME COURT OF NEW JERSEY
DOCKET NO. 089547**

**IN THE MATTER OF P.T.
JIBSAIL FAMILY LIMITED
PARTNERSHIP TIDELANDS
LICENSE NUMBER 1515-06-
0012.1 TDI 190001.**

**On Petition For Certification From:
Superior Court of New Jersey,
Appellate Division
Docket No. A-0699-22**

Civil Action

SAT BELOW:

**Hon. Jessica A. Mayer, J.A.D.
Hon. Mary Gibbons Whipple, J.A.D.
Hon. Lorraine M. Augostini, J.A.D.**

**BRIEF OF RESPONDENT P.T. JIBSAIL FAMILY LIMITED
PARTNERSHIP IN OPPOSITION TO PETITION FOR CERTIFICATION**

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TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	1
COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY.....	4
LEGAL ARGUMENT	10
POINT I	10
THE PETITION FOR CERTIFICATION SHOULD BE DENIED BECAUSE THIS CASE DOES NOT MEET THE STANDARD FOR CERTIFICATION.....	10
POINT II	13
THE APPELLATE DIVISION PROPERLY REJECTED PETITIONER’S ARGUMENT THAT TRC ACTED BEYOND ITS STATUTORY AUTHORITY.....	13
A. The Appellate Division properly rejected Petitioner’s argument that TRC’s decisions regarding Jibsail’s dock violated the applicable statute and established administrative procedures	13
B. The Appellate Division properly rejected Petitioner’s argument That TRC acted beyond its statutory authority in fixing the exterior line or pierhead line for Jibsail’s property.....	14
C. The Appellate Division properly affirmed TRC’s finding that Jibsail’s dock satisfied the CZM Rules and that there was fair support that Jibsail’s dock did not hinder navigation.....	18
CONCLUSION	20

TABLE OF AUTHORITIES

Cases	Page
<u>Bailey v. Driscoll</u> , 19 N.J. 363, 374 (1955).....	17
<u>Fox v. Woodbridge Twp. Bd. of Educ.</u> , 98 N.J. 513, 516 (1985).....	11
<u>In re Route 280 Contract</u> , 89 N.J. 1 (1982).....	11
<u>In re Tideland's License 96-0114-T</u> , 326 N.J. Super. 209 (App. Div. 1999).....	13
<u>LeCompte v. State</u> , 65 N.J. 447 (1974).....	13
<u>Matter of Mora</u> , 241 N.J. 326 (2020).....	11
<u>N.J. Div. of Youth & Family Servs. v. R.D.</u> , 207 N.J. 88 (2011).....	11
<u>Panetta v. Equity One Inc.</u> , 190 N.J. 307, 318 (2007).....	13
<u>Reilly v. AAA Mid-Atlantic Co. of New Jersey</u> , 194 N.J. 474, 496 (2008).....	11
<u>Schultz v. Wilson</u> , 44 N.J. Super. 591, 606, 607 (App. Div. 1957).....	15, 17
Statutes	
N.J.S.A. 12:3-1 to 12:3-71.....	13
N.J.S.A. 12:3-1.....	16
N.J.S.A. 12:3-3.....	16
N.J.S.A. 12:3-10.....	13, 14, 16, 20
N.J.S.A. 12:3-12.1.....	13, 14
N.J.S.A. 12:3-13.....	16
N.J.S.A. 12:3-14.....	16
N.J.S.A. 12:3-17, <i>repealed by</i> P.L. 1979, c. 311.....	15
N.J.S.A. 12:3-19.....	14, 16
N.J.S.A. 12:3-20.....	16
N.J.S.A. 12:3-23.....	9
N.J.S.A. 12:3-42.....	15
N.J.S.A. 13:1B-13.....	14

Regulations

N.J.A.C. 7:1, *et seq*.....18

N.J.A.C. 7:7-1.4.....19

N.J.A.C. 7:7-9.2(d).....19

N.J.A.C. 7:7-9.2(d)3ii(2).....19

N.J.A.C. 7:7-9.6(b).....19

N.J.A.C. 7:7-9.6(b)(6)(vi).....4

N.J.A.C. 7:7-9.7.....4

N.J.A.C. 7:7-12.5.....4

Court Rules

R. 2:12-4.....10, 11

PRELIMINARY STATEMENT

This matter involves a waterfront homeowner's attempt to challenge a modification to a tidelands license granted by the Tidelands Resource Council ("TRC"), an arm of the New Jersey Department Environmental Protection ("NJDEP"), for a neighbor's legally compliant dock. Appellant-Petitioner Janine Morris Trust (hereinafter, "Petitioner") has no property interest in the State-claimed tidelands area of Barnegat Bay where the offending dock is located, and Petitioner's property is not impacted by the modified tidelands license or the dock. Petitioner's concern boils down to Petitioner's objection to the view of the dock from Petitioner's property and the dock's purported interference with Petitioner's use and enjoyment of its individual property. This matter does not raise a question of general public importance or involve any injustice, and does not merit the attention of this Court.

Respondent P.T. Jibsail Family Limited Partnership ("Jibsail") is the owner of a single family home at 83 Pershing Boulevard in the Borough of Lavallette, Ocean County, New Jersey. The adjacent property at 85 Pershing Boulevard is owned by Petitioner. Both property owners have docks approved by NJDEP's Division of Land Resource Protection that are covered by revocable tidelands licenses (rental agreements) granted by TRC for the use of the State's tidelands areas where the docks are located.

On May 19, 2017, NJDEP issued Waterfront Development Permit No. 1515-06-0002.1 WFD 170001 to Jibsail authorizing an extension of Jibsail's dock to meet NJDEP's regulatory requirements ("2017 Initial Permit"). As a condition of the 2017 Initial Permit, Jibsail obtained a tidelands license ("2017 Initial License").

After Jibsail's dock was constructed, Jibsail sought to modify the 2017 Initial Permit and 2017 Initial License to account for the as-built location of the dock which was angled 1.7 ft. to the south of the location approved in the 2017 Initial Permit. The dock was constructed 1.7 ft. in the opposite direction of Petitioner. There was no change to the length of the dock approved by the 2017 Initial Permit.

NJDEP approved Jibsail's permit modification ("2019 Modified Permit") to account for the de minimis change to the dock. Despite notice, Petitioner did not initially appeal the 2017 Initial Permit or 2017 Initial License. In connection with Petitioner's objection to the 2019 Modified Permit, Petitioner opposed Jibsail's application to modify the 2017 Initial License conforming the tidelands license area to the 2019 Modified Permit. Petitioner also sought to include a late challenge to the 2017 Initial License seeking to revoke that approval.

TRC considered Petitioner's arguments and ultimately, acted pursuant to statute and settled administrative procedures, in granting Jibsail's modification to the 2017 Initial License ("2022 Modified License"). That decision is the subject of Petitioner's petition and the underlying Appellate Division decision.

The crux of Petitioner's challenge to TRC's authority to grant Jibsail a tidelands license is the length of Jibsail's dock which, as TRC confirmed, complies with all applicable NJDEP regulations. NJDEP regulations require a dock in submerged aquatic vegetation ("SAV") habitat to be long enough for its boat mooring area to reach at least four feet of water depth. Consistent with other docks along the State's shoreline in SAV, Jibsail's dock was required to meet this requirement.

Petitioner argues that TRC did not have statutory authority to grant a tidelands license to Jibsail for the dock because the dock extended beyond a purported pierhead line that could not be amended. However, Petitioner failed to identify any statutory provision that support this prohibition. Petitioner also ignores the approvals Jibsail received from NJDEP and the U.S. Army Corps of Engineers ("ACE") for the dock and the fact that the conveyance issued by TRC to Jibsail is a revocable tidelands license only not a grant. Petitioner does not have a preference over the State of New Jersey to control the use and occupancy of tidelands.

TRC considered Petitioner's arguments and approved Jibsail's 2022 Modified License. On appeal, the Appellate Division affirmed. It was proper to do so.

The Petition presents issues relevant to Petitioner only and does not involve any actual injustice. Therefore, this case does not merit this Court's time.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY¹

On May 19, 2017, NJDEP's Division of Land Resource Protection issued the 2017 Initial Permit to Jibsail authorizing the construction of a 167.3 ft. extension to an existing residential dock constructed by a prior property owner. (Aa225-Aa230)². Jibsail's initial application requested a 185 ft. dock extension. (Aa72-73; Aa383). Based on NJDEP's review of the Policy Compliance Statement submitted by Jibsail's professional engineer, Charles E. Lindstrom, P.E., NJDEP found that Jibsail's dock extension met N.J.A.C. 7:7-9.6(b)(6)(vi)(Submerged Vegetation Habitat Rule), which requires four feet of water for boat moorings, at a length of 167.3 ft. (Aa390-Aa397). The dock also met N.J.A.C. 7:7-9.7 (Navigational Channels Rule) and N.J.A.C. 7:7-12.5 (Recreational Docks and Piers Rule), which require that the dock not affect or hinder navigation and access to adjacent water areas. Jibsail's dock is 163 ft. from the navigation channel and exceeds the distance NJDEP requires the dock to be from Petitioner's property. (Aa429; JRa29). Photocell lights and reflectors were also installed along the dock as required by NJDEP. (JRa2). On August 17, 2017, Jibsail's dock was approved by the ACE. (Aa231-Aa234).

¹ For the sake of brevity, the procedural history and counterstatement of facts have been combined.

² "Aa" refers to Petitioner's Appellate Appendix. "JRa" refers to Jibsail's Appellate Appendix. "SCa" refers to Petitioner's Supreme Court Appendix.

Prior to the issuance of the 2017 Initial Permit to Jibsail, NJDEP Division of Land Resource Protection issued permits for docks similar in length to the owners of the properties immediately adjacent to Jibsail's property. (Aa197-Aa206; Aa291; Aa542; JRa30; JRa31). In addition to NJDEP's regulations, those docks and the shoreline curve dictated the location of Jibsail's dock. (Aa197-Aa206; Aa291; JRa30, JRa31). Docks similar in length are present throughout the State's tidewaters as shorter docks in SAV violate NJDEP's regulations.

As a condition of the 2017 Initial Permit, Jibsail filed an application for a tidelands license for the State-claimed tidelands area where the dock approved by the 2017 Initial Permit was located. (Aa57-Aa59; Aa160). TRC granted Jibsail a 10 year revocable tidelands license for the 1,598.4 sq. ft. of tidewaters as shown on the plan approved as part of the 2017 Initial Permit ("2017 Initial License"). (Aa183-Aa195; Aa429). Licenses were also granted for the neighboring docks. (Aa179-Aa182).

After the construction of Jibsail's dock in 2018, and receipt of Petitioner's objections, NJDEP inspected Jibsail's dock and determined that the contractor inadvertently placed the end of the dock 1.7 ft. from of the location approved by the 2017 Initial Permit (away from Petitioner's property). (Aa270). On November 1, 2018, Jibsail filed an application to modify the 2017 Initial Permit to reflect this minor modification which included a Policy Compliance Statement. Jibsail also

filed an application to modify the 2017 Initial License to reflect the minor 1.7 ft. change in the dock's location. The length of the dock approved by the 2017 Initial Permit had not changed. (JRa29).

On March 20, 2019, NJDEP issued the 2019 Modified Permit approving Jibsail's dock as constructed. (JRa27-JRa29; Aa271). On August 17, 2017, Jibsail's dock was approved by ACE. (JRa23-JRa26).

Despite notice, Petitioner did not appeal the 2017 Initial Permit or the 2017 Initial License. (Aa485). After Jibsail's dock was constructed, Petitioner notified NJDEP of its objection to the length of Jibsail's dock. However, the length approved by NJDEP in the 2017 Initial Permit and the 2019 Modified Permit is the same. The only difference in the dock between the 2017 Initial Permit and the 2019 Modified Permit is the 1.7 ft. placement away from Petitioner's property. (JRa29).

Following the issuance of the 2019 Modified Permit, Petitioner filed a third party hearing request with NJDEP's Office of Legal Affairs. That request was denied and is the subject of In the Matter of Denial of Third Party Hearing Request of P.T. Jibsail Family Limited Partnership File No. 1515-06-0012.1 WFD 170001; WFD 180001; Office of Legal Affairs File No. 19-06, Docket No. A-002570-22. Petitioner also objected to Jibsail's application for a modification of the 2017 Initial License to reflect the minor modification approved by NJDEP in the 2019 Modified Permit. Petitioner sought to incorporate a challenge to the 2017 Initial License.

On March 3, 2020, TRC considered Jibsail's application for a modified tidelands license including, testimony from Petitioner, NJDEP, Jibsail, and other third parties. Petitioner argued before TRC that its individual riparian rights extend beyond Petitioner's property/bulkhead line into the navigable waters of Barnegat Bay and that Jibsail's tidelands license interferes with such rights and navigation. (SCa13). Jibsail disputed Petitioner's position and submitted videos and other evidence to TRC which show that Jibsail's dock does not interfere with Petitioner. (SCa4; SCa11-SCa14; JRa56-JRa68 and the thumb drive submitted to the Court with the accompanying videos). Petitioner's statement that TRC relied entirely on the 2017 Initial Permit and/or the 2019 Modified Permit for a finding that navigation is not hindered is inaccurate. (Pb6). TRC considered at length whether the dock impeded navigation. (SCa3-SCa18). The case manager from NJDEP who issued the 2017 Initial Permit testified before TRC that Jibsail's dock was constructed pursuant to NJDEP's Regulations acknowledging that shorelines change over time. (SCa10). TRC also sought legal guidance before issuing a decision and requested that the parties submit post-hearing briefs. (SCa20; Aa330; Aa331).

On March 18, 2020, the transcript of the March 3, 2020 TRC meeting was submitted to TRC and the parties. Jibsail and Petitioner then submitted post-hearing briefs. (JRa80-JRa92). Thereafter, Petitioner submitted a reply to Jibsail's post-hearing brief to which Jibsail objected as TRC had not requested. (Aa307).

On September 14, 2022, TRC approved the issuance of the 2022 Modified License with the same effective dates as the 2017 Initial License. (Aa547-Aa555; SCa33-SCa58). The decision was approved by NJDEP Assistant Commissioner for Watershed & Land Management on October 6, 2022. (Aa546-Aa555).

TRC's decision included detailed findings responsive to Petitioner's objections. (Aa546-Aa555). TRC concluded that the 2022 Modified License "does not intersect at or inshore of the established pierhead line of any other licensee or grantee in the area" including, Petitioner, and rejected Petitioner's position that it riparian rights extend to the channel. (Aa552). TRC also confirmed that "the established pierhead line is the outshore extent of an individual riparian owner's riparian rights to erect a dock or pier, or to claim preemptive rights related to a pending application before the Council". (Aa552).

With regard to the alleged impacts on navigation or access to adjacent navigable waters, TRC concluded that "sufficient space was afforded to both the applicant and all permitted and licensed structures in the immediate area" and "sufficient means of navigation was evidenced for both the applicant and the permitted and licensed structures in the immediate area". (Aa552). In reaching its decision, TRC gave "due regard to the interests of navigation for both the application and other permitted and licensed structures in the area". (Aa552).

Following TRC's approval of the 2022 Modified License, Petitioner filed a Notice of Appeal. (Aa560-Aa562). Petitioner argued that Jibsail does not have the standing to obtain a tidelands license for its dock because it extends beyond the fixed pierhead line and interferes with Petitioner's use and enjoyment of its property. (Aa557). Petitioner also argued that TRC's granting of the 2017 Initial License and the 2022 Modified License were arbitrary, capricious and unreasonable. (Aa557). Petitioner argued that it had a right of first refusal and should have been provided notice pursuant to N.J.S.A. 12:3-23. (Aa557).

Jibsail, having constructed its dock in 2018 after receiving all of the approvals necessary, argued that its dock does not: violate any statutory or regulatory authority; hinder or pose a safety hazard to navigation; impair the ability of Petitioner to use its own dock; or interfere with Petitioner's individual riparian rights. TRC's issuance of the 2017 Initial License and 2022 Modified License is consistent with prior practice and statutory authority regarding tidelands licenses. The State of New Jersey, not Petitioner, owns the tidelands area licensed to Jibsail and controls use and occupancy. The extent of the tidelands areas used by Petitioner and Jibsail has been established by NJDEP permits and approved dock plans which were incorporated into both parties' respective tidelands licenses. (Aa429a; JRa29).

The Appellate Division issued its decision on May 8, 2024, affirming that TRC's decisions with regard to Jibsail's dock are within the statute and its

established administrative procedures. (SCa80; SCa82). The Appellate Division properly rejected Petitioner's argument that Jibsail's dock, as approved, is beyond an established pierhead line and is not in the public's interest. (SCa70). The Appellate Division also found no merit in Petitioner's arguments that Petitioner was deprived of proper notice and that Jibsail's dock violated Petitioner's rights as an upland owner or hindered navigation. (SCa70).

This Petition for Certification was filed on May 11, 2024. The question presented by Petitioner is limited to whether TRC has legislative authority to establish pierhead or exterior lines through individual conveyances. However, Petitioner's underlying appeal is of the 2022 Modified License only which did not amend the outward extent or exterior line of the Jibsail's licensed tidelands area fixed by the 2017 Initial License. (JRa15-JRa18; Aa429a; JRa29).

LEGAL ARGUMENT

POINT I

THE PETITION FOR CERTIFICATION SHOULD BE DENIED BECAUSE THIS CASE DOES NOT MEET THE STANDARD FOR CERTIFICATION.

R. 2:12-4 states:

Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the

interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons.

Where the “final judgment is essentially an application of settled principles to the facts” of the case or “the decision on review does not present a conflict among judicial decisions that requires clarification or calls for [the] Court’s supervision,” denial of certification is appropriate. Fox v. Woodbridge Twp. Bd. of Educ., 98 N.J. 513, 516 (1985); see also N.J. Div. of Youth & Family Servs. v. R.D., 207 N.J. 88 (2011); In re Route 280 Contract, 89 N.J. 1 (1982). Certification “should be granted only in limited instances.” Reilly v. AAA Mid-Atlantic Co. of New Jersey, 194 N.J. 474, 496 (2008). The grounds for certification outlined in R. 2:12-4 set a “high hurdle [that] a petition for certification must vault in order to justify Supreme Court review.” Ibid.

The grievance presented by Petitioner clearly is not a matter of general public importance. It is a local dispute between neighbors. What is at stake is Petitioner's desire to restrain Jibsail's riparian right to a dock and to protect the Petitioner's view which is not a protected property right. Petitioner's desire is not a matter of general public importance as contemplated by R. 2:12-4. This Court has denied certification in a similar case involving a dispute between neighbors regarding a dock. See Matter of Mora, 241 N.J. 326 (2020).

In order to expand the scope of this matter beyond Jibsail's dock, Petitioner argues that TRC is not permitted to set the exterior line of the tidewaters that an

individual riparian owner may use and occupancy. Petitioner argues that TRC must uniformly establish pierhead lines through the State before it can properly exercise its powers in granting tidelands licenses. Petitioner uses Jibsail's dock as an example as to why this question is important stating that the record reflects a clear showing that Jibsail's dock negatively impacts the ability of Petitioner to navigate to and from its own dock. (Pb14).

As addressed at length in Point II, the decisions made by TRC, as affirmed by the Appellate Division, were soundly based on the application of settled statutory authority and practice to Jibsail's individual riparian rights. (SCa70; SCa77). Petitioner's reliance on a pierhead line depicted on tax maps to restrict TRC's authority to fix a pierhead or exterior line applicable to Jibsail's property and issue a tidelands license for the area within such line is nothing more than a red herring.

Petitioner's objection to Jibsail's dock is not relatable to the public. Not all of the residents of the State own waterfront property and/or boats. As further enumerated in Point II(C), Petitioner's navigation concerns were considered and no restrictions were found. Jibsail's dock complied with all applicable NJDEP regulations and Petitioner presented no evidence to the contrary. The length of the dock, similar to many constructed along the State's shoreline in SAV, was approved by NJDEP and ACE. (JRa1-JRa5; JRa19-JRa25; JRa27-JRa28; JRa30; JRa31). The angle of the dock was dictated by dock approvals granted by NJDEP to Jibsail's

neighbors and the curve in the shoreline. Petitioner's desire to force Jibsail to remove its dock, after being in place for 6 years, is not of general public importance.

POINT II

THE APPELLATE DIVISION PROPERLY REJECTED PETITIONER'S ARGUMENT THAT TRC ACTED BEYOND ITS STATUTORY AUTHORITY.

Even if Petitioner has met the standard for certification, which Petitioner does not, Petitioner has presented no basis to support that TRC was acting outside of its authority prescribed by the Tidelands Act, N.J.S.A. 12:3-1 to 12:3-71, or that TRC should not be given deference.

A. The Appellate Division properly rejected Petitioner's argument that TRC's decisions regarding Jibsail's dock violated the applicable statute and established administrative procedures.

The State of New Jersey owns all tidelands and regulates the use of the tidelands through TRC. LeCompte v. State, 65 N.J. 447 (1974); Panetta v. Equity One Inc., 190 N.J. 307, 318 (2007). The Tidelands Act outlines the authority and duties of TRC and permits TRC to issue tidelands licenses to those endowed with sufficient indicia of riparian ownership. N.J.S.A. 12:3-10; N.J.S.A. 12:3-12.1; see also In re Tideland's License 96-0114-T, 326 N.J. Super. 209 (App. Div. 1999).

As a condition of the 2017 Initial Permit, Jibsail applied for, and obtained, a 10 year revocable tidelands license in order to use the tidelands area in front of Jibsail's property for a dock. (JRa16-JRa17). Jibsail did not apply for a grant and

the State has not conveyed title to Jibsail for the tidelands area covered by the license. The difference in the type of conveyance challenged in this case is significant. Petitioner's individual riparian rights do not prevent the State of New Jersey from claiming title to and managing the tidelands outside of Petitioner's or Jibsail's licensed area. Both Petitioner and Jibsail retain only the privilege to use and occupy the tidelands pursuant to the terms in their respective revocable tidelands licenses as set by the State of New Jersey. (Aa33-Aa36; Aa243; Aa548-Aa552). The licensed areas in the 2017 Initial License (1,596.4 sq. ft.) and 2022 Modified License (1,588 sq. ft.) do not touch Petitioner's property or Petitioner's licensed area. Therefore, there is no legal support for the argument that TRC exceeded its statutory authority in granting a tidelands license for Jibsail's dock.

B. The Appellate Division properly rejected Petitioner's argument that TRC acted beyond its statutory authority in fixing the exterior line or pierhead line for Jibsail's property.

Petitioner argues that because Borough of Lavallette tax maps depict a pierhead line, Petitioner's dock cannot extend beyond that line and TRC does not have authority to issue a tidelands license for the dock beyond that line. (Aa361-Aa362). The Appellate Division properly rejected Petitioner's argument and held that TRC has the authority to fix a riparian owner's exterior line. (SCa80-SCa82).

TRC has broad authority to fix exterior lines outside of which no dock or pier can be constructed. N.J.S.A. 12:3-10, 12.1 and 19; N.J.S.A. 13:1B-13. This can be

in an individual riparian owner's tidelands instrument. Schultz v. Wilson, 44 N.J. Super. 591, 607 (App. Div. 1957); see also N.J.S.A. 12:3-42 (TRC has the authority where the boundaries defining the limits of the lands granted are irregular and do not constitute straight side lines running parallel to each other and extending from the shore to the bulkhead or pierhead lines, and provide reasonable access to riparian owners to deep water beyond bulkhead and pierhead lines).

The Appellate Division's reliance on Schultz v. Wilson, 44 N.J. Super. 591, 607 (App. Div. 1957) to affirm TRC's established practice of fixing exterior lines was proper. (SCa81-SCa82). In that case, the Court affirmed the validity of the riparian grant where the exterior line was set by the grant itself. Schultz v. Wilson, 44 N.J. Super. 591 (App. Div. 1957). Regardless of the repeal of N.J.S.A. 12:3-17, the Court confirmed the "established practice" of TRC in fixing exterior lines in individual conveyances. Id. at 606. Petitioner's reliance on the repeal N.J.S.A. 12:3-17 to the create error in the Appellate Division's reliance on Schultz v. Wilson, 44 N.J. Super. 591, 607 (App. Div. 1957) is misplaced. N.J.S.A. 12:3-17 provides:

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.

N.J.S.A. 12:3-17 only permits shore owners to request that surveys and maps be prepared and filed showing the exterior lines that have been fixed. The repeal of N.J.S.A. 12:3-17 does not impact TRC's authority to fix or amend exterior lines

through individual conveyances. Petitioner's argument that TRC is required to establish uniform, and permanent, pierhead lines in all of the State's tidewaters is contrary to other provisions in the Tidelands Act and TRC's established practice. A reversal of that practice would require TRC to revoke thousands of tidelands licenses forcing the removal of the dock structures approved therein.

Petitioner's argument that TRC's authority to fix exterior lines contradicts N.J.S.A. 12:3-3, 14 and 20 is also misplaced. N.J.S.A. 12:3-3 applies to the tidewaters of Hudson river, New York bay and Kill von Kull not Barnegat Bay and N.J.S.A. 12:3-20 concerns the sale or lease of riparian lands around islands, reefs or shoals not a license. Conversely, N.J.S.A. 12:3-10 does not limit TRC's authority to license the tidelands area inshore of the exterior lines referred to in N.J.S.A. 12:3-19. The phrase "time to time" in N.J.S.A. 12:3-19 contemplates that TRC, in consultation with NJDEP and ACE, has legal authority to occasionally or sometimes fix and establish exterior lines. N.J.S.A. 12:3-19 does not require TRC to establish *permanent* exterior lines restricting the use and occupancy of tidelands claim areas in perpetuity. N.J.S.A. 12:3-19; see also N.J.S.A. 12:3-1 (permitting TRC to "fix the exterior line beyond which no permanent obstruction") and N.J.S.A. 12:3-13 (permitting TRC to "change, fix and establish any other lines than those now fixed and established for pier lines").

The Court in Schultz v. Wilson, did not read Bailey v. Driscoll, 19 N.J. 363, 374 (1955) as requiring that the pierhead and bulkhead line be established prior to the making of an individual conveyance. Schultz v. Wilson, 44 N.J. Super. 591, 606 (App. Div. 1957). The Court held that bulkhead and pier lines are established or “to be established”. Bailey v. Driscoll, 19 N.J. 363, 374 (1955).

Petitioner points to no statutory provision that prohibits TRC from fixing or amending a riparian owner’s exterior line. To challenge Jibsail’s own exterior line, Petitioner relies on tax maps. (Aa262; Aa361). Tax maps are created by a municipality’s engineer, are not accurate as to dimensions, and do not convey ownership or rights. Lines included on a tax map that have not been approved by NJDEP have no weight and do not limit the statutory authority of NJDEP to regulate activities regarding the use and development of coastal resources or TRC to license tidelands. Additionally, Petitioner’s assertion that no other maps depicting the exterior line applicable to Jibsail’s property are in the record is incorrect. The exterior extent of Jibsail’s riparian rights or, the exterior/pierhead line, was fixed by the 2017 Initial License and 2022 Modified License. Those licenses encompass the tidelands area depicted on the plans approved by NJDEP and ACE in connection with the 2017 Initial Permit and 2022 Modified Permit. The 2017 Initial Permit and 2019 Modified Permit, along with the approved plans, were also recorded by the

Ocean County Clerk. (Aa224; Aa274). NJDEP also prepares and updates maps to reflect tidelands conveyances such as Jibsail's. (JRa11).

The Appellate Division properly affirmed TRC's determination that Petitioner's and Jibsail's individual riparian rights are confined to their respective tidelands licensed areas. (SCa79-SCa80; Aa243; JRa29). Jibsail's dock is inshore of its exterior line and does not impact Petitioner's reasonable access to the navigational channel. (SCa79-SCa80; Aa34-Aa36; Aa237-Aa243; Aa552; JRa29).

Petitioner acknowledged that every property has riparian lines that extend outward into the water and that the extent of those lines can be questioned as they are not in perpetuity. (SCa13). Petitioner also admits that the purpose of riparian instruments and the establishment of "exterior lines" were to provide the owner with access to navigable waters. (Pb13). That is exactly what TRC did here, and it was proper for the Appellate Division to affirm that action.

C. The Appellate Division properly affirmed TRC's finding that Jibsail's dock satisfied the CZM Rules and that there was fair support that Jibsail's dock did not hinder navigation.

The Appellate Division properly held that the record before TRC reflected that NJDEP Division of Land Resource Protection determined that the length, location, and configuration of Jibsail's dock satisfied the Coastal Zone Management Rules, N.J.A.C. 7:1, et seq. (hereinafter the "CZM Rules") when it issued the 2017 Initial Permit and the 2019 Modified Permit to Jibsail. (SCa75-SCa76). The CZM

Rules constitute the substantive standards by which NJDEP regulates activities regarding the use and development of coastal resources. N.J.A.C. 7:7-1.4.

NJDEP's Submerged Vegetation Habitat Rule and Shellfish Habitat Rule require that the location and size of the dock to be adjusted to minimize the total area of protected habitat covered by the structure. There is no de minimis exception to that requirement. N.J.A.C. 7:7-9.6(b); N.J.A.C. 7:7-9.2(d). Boat mooring shall be located where at mean low water a minimum water depth of four feet is present in the designated slips of the dock. N.J.A.C. 7:7-9.2(d)3ii(2).

For the reasons set forth in Jibsail's permit applications, Jibsail's dock complies with the above requirements. (SCa76). If the dock was any shorter, it would not comply with the requirement that the mooring be in four feet of water. Petitioner has presented no evidence to the contrary and ignores that in connection with NJDEP's review, NJDEP approved a reduction of the length of the dock by 17.7 ft. in the 2017 Initial WFD Permit. The length of the dock remained unchanged in the 2019 Modified Permit, the underlying approval that is the subject of the 2022 Modified License.

Petitioner argues that Jibsail's dock hinders navigation or access to adjacent moorings, water areas, and docks. Jibsail's dock is 163 ft. from the navigation channel and complies with NJDEP's Navigational Channels Rule and Recreational Docks and Piers Rule. The impact of Jibsail's dock on Petitioner's navigation is

speculative. NJDEP and the ACE considered navigability as a factor in approving Jibsail's 2017 Initial WFD Permit and 2019 Modified Permit. (SCa77). TRC also examined navigation in accordance with N.J.S.A. 12:3-10 and properly determined that there was sufficient means of navigation. (SCa77; Aa276; Aa533; JRa56-JRa68 and the thumb drive submitted to the Court with the accompanying videos). Therefore, the Appellate Division properly discerned that there was no basis to conclude that TRC's decision with respect to navigation was arbitrary, capricious, or unreasonable. (SCa77). Petitioner's arguments to the contrary have no merit and the record does not reflect any impact on the public.

In light of the foregoing, the Appellate Division properly affirmed TRC's authority and discretion to follow historically settled and relied upon statutory authority in granting Jibsail's tidelands license. Therefore, certification should not be granted.

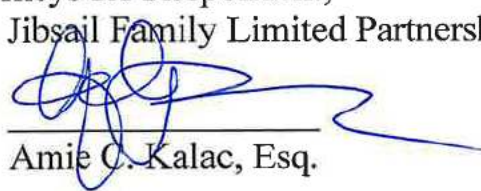
CONCLUSION

For the foregoing reasons, the Petition for Certification should be denied.

Respectfully submitted,
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Dated: August 5, 2024

By:


Amie C. Kalac, Esq.