

SUPREME COURT OF NEW JERSEY
Docket No.: 089547

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

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO.: A-699-22

Appellate Division Judges:
Hon. Jessica R. Mayer, J.A.D.
Hon. Lorraine Augostini, J.A.D.
Hon. Mary Gibbons Whipple, J.A.D.

Civil Action

On Appeal from a Final Agency
Decision of the New Jersey
Department of Environmental
Protection

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLANT-PETITIONER
JANINE MORRIS TRUST

LIEBERMAN BLECHER & SINKEVICH, P.C.
10 Jefferson Plaza, Suite 400
Princeton, New Jersey 08540
TEL.: (732) 355-1311 FAX: (732) 355-1310
*Attorneys for Appellant-Petitioner,
Janine Morris Trust*

Of Counsel: Michael G. Sinkevich, Esq. (ID: 036342007)
On the Brief: Michael G. Sinkevich, Esq. (ID: 036342007)
C Michael Gan, Esq. (ID: 229302016)
Co-Counsel: Philip G. Mylod, Esq. (ID: 033801987)

Dated: June 16, 2025

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT1

PROCEDURAL HISTORY AND STATEMENT OF FACTS3

LEGAL ARGUMENT.....3

 I. HISTORY OF RIPARIAN RIGHTS3

 II. THE TRC DOES NOT HAVE LEGISLATIVE AUTHORITY TO
 ESTABLISH PIERHEAD LINES THROUGH INDIVIDUAL
 CONVEYANCES.10

 III. N.J.S.A. 12:3-23 FURTHER SUPPORTS THE IMPORTANCE OF THE
 UNIFORM ESTABLISHMENT OF THE BULKHEAD AND PIERHEAD
 LINES.17

 IV. THE PRIOR ISSUED WATERFRONT DEVELOPMENT PERMIT AND
 THE SUBMERGED VEGETATION HABITAT RULE DO NOT FORCE THE
 TRC TO ISSUE A TIDELANDS INSTRUMENT.....19

CONCLUSION.....20

TABLE OF AUTHORITIES

Cases

<u>Bailey v. Council of Div. of Planning and Development</u> , 22 N.J. 366, 372 (1956)	11
<u>Bailey v. Driscoll</u> , 19 N.J. 363, 369 (1955)	3, 13, 17
<u>Burnett v. County of Bergen</u> , 198 N.J. 408, 421 (2009)	13
<u>City Council of City of Orange Tp. v. Edwards</u> , 455 N.J. Super. 261, 274 (App. Div. 2018)	16
<u>G.S. v. Dep’t of Human Servs.</u> , 157 N.J. 161, 172 (1999)	13
<u>Heyert v. Taddese</u> , 431 N.J. Super. 388, 429 (App. Div. 2013)	16
<u>Housing Auth. of Atlantic City v. State</u> , 188 N.J. Super. 145, 149 (Ch. Div. 1983)	17
<u>In re Petition for Referendum on City of Trenton Ordinance 09-02</u> , 201 N.J. 349, 359 (2010)	13
<u>New Jersey v. Delaware</u> , 552 U.S. 597, 642 (2008)	4
<u>Pollard v. Hagan</u> , 44 U.S. 212 (1845)	4
<u>Ross v. Edgewater</u> , 115 N.J.L. 477, 483 (1935)	4
<u>Sanchez v. Fitness Factory Edgewater, LLC</u> , 242 N.J. 252, 261 (2020)	13
<u>Schultz v. Wilson</u> , 44 N.J. Super. 591, 607 (App. Div. 1957)	10, 11, 13
<u>St. Peters Univ. Hosp. v. Lacy</u> , 185 N.J. 1, 14 (2005)	13
<u>Summer Cottagers’ Assoc. v. Cape May</u> , 19 N.J. 493, 504 (1955)	16
<u>United States v. California</u> , 322 U.S. 19, 30-31 (1947)	4, 5, 9
<u>United States v. Louisiana</u> , 339 U.S. 699 (1950)	5

United States v. Texas, 399 U.S. 707 (1950).....5

Statutes

43 U.S.C. § 13015

43 U.S.C. § 13115, 9

43 U.S.C. § 13125, 9

L. 1875, C. 3088

N.J.S.A. 12:3-103

N.J.S.A. 12:3-12 8, 15

N.J.S.A. 12:3-12 (1871)..... 8, 14

N.J.S.A. 12:3-13 passim

N.J.S.A. 12:3-14 2, 10, 12, 14

N.J.S.A. 12:3-17 (1888).....11

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

N.J.S.A. 12:3-2 4, 12

N.J.S.A. 12:3-2012

N.J.S.A. 12:3-2317

N.J.S.A. 12:3-3 4, 10, 12

Other Authorities

A. 3448 (1979).....6

Assembly Agriculture and Environment Committee and Assembly Energy and
Natural Resources Committee, *Outer Continental Shelf Drilling Seminar
Report* (1978).....7

Regulations

N.J.A.C. 7:7-9.6(b)(6)19

PRELIMINARY STATEMENT

The question presented before this Court is whether the Tidelands Resource Council (“TRC”), an arm of the New Jersey Department of Environmental Protection (“NJDEP”), has the statutory authority to fix and modify pierhead lines through the issuance of individual tidelands licenses. On March 8, 2018, the TRC issued Respondent, P.T. Jibsail Family Limited Partnership (“Jibsail”), a tidelands license to construct a 168-foot dock extension, resulting in an approximately 300-foot-long dog-legged dock protruding into Barnegat Bay well beyond the existing pierhead line, and crossing in front of the existing dock of Appellant-Petitioner, Janine Morris Trust (“JMT”). On October 6, 2022, the TRC approved a modification of the license to allow for a discrepancy between the location of the dock as constructed and the boundaries of the previous license. The geographical location here is an island, more specifically West Point Island.

The TRC is required to establish pierhead lines around or in front of all islands situated in the tidal waters of the State, which are the legal boundaries beyond which no structures of any kind may be built. N.J.S.A. 12:3-19 clearly establishes the procedure that the TRC must follow in fixing the pierhead line as follows:

**The Tidelands Resource Council, with the approval of
the Commissioner of the 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... 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) N.J.S.A. 12:3-19. An analogous requirement exists for other tidelands in the State. See N.J.S.A. 12:3-13 (requiring the TRC to establish the pierhead lines for basins and file a map and surveys with the secretary of State); N.J.S.A. 12:3-14 (provides that after the map is filed with the Secretary there shall be no encroachments beyond the pierhead line as established).

The pierhead line along West Point Island, where the property at issue in this matter is located, was established as required by statute prior to the issuance of the 2018 license. The TRC granted Jibsail's license well beyond the established pierhead line without following the statutory requirements for changing the existing pierhead line. The case law cited by the Appellate Division, and relied upon by the Respondents, does not permit resetting of the pierhead line through the issuance of individual tidelands licenses.

As the TRC never had any legal authority to grant any rights beyond the pierhead line, and in fact is specifically prohibited from doing so, the entire

approval is *ultra vires* in the primary sense and *void ab initio*. For these reasons, the 2018 tidelands license and 2022 tidelands license modification must be vacated.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Appellant-Petitioner relies on the procedural history and statement of facts set forth in its Appellate Brief and Petition for Certification.

LEGAL ARGUMENT

I. HISTORY OF RIPARIAN RIGHTS

From 1851 through 1891, the New Jersey Legislature adopted legislation that effectively created three separate geographical classifications of lands under water: (1) tidelands of the Hudson River, New York Bay, and Kill von Kull; (2) other tidelands in the State; and (3) tidelands surrounding islands. Bailey v. Driscoll, 19 N.J. 363, 369 (1955). Legislation was adopted in 1851, 1864, and 1869 to regulate the tidelands under the Hudson River, New York Bay, and Kill von Kull. N.J.S.A. 12:3-1 to -9. In 1871, 1872, and 1877, the Legislature adopted statutes that authorized the lease, grant, or conveyance of other tidelands in the state. N.J.S.A. 12:3-10 to -12, N.J.S.A. 12:3-13 to -18. In 1891, the Legislature adopted statutes establishing bulkhead and pierhead lines¹ surrounding islands. N.J.S.A. 12:3-19 to -20.

¹ The terms “pier line” and “pierhead line” are used interchangeably throughout the statute and case law. See, e.g., N.J.S.A. 12:3-2; see also Schultz v. Wilson, 44 N.J. Super. 591, 607 (App.

A fundamental duty of the TRC is to establish bulkhead lines and pierhead lines. N.J.S.A. 12:3-2; N.J.S.A. 12:3-13; N.J.S.A. 12:3-19. The pierhead lines are the legal boundary beyond which no pier, wharf, bulkhead, erection, or permanent obstruction of any kind shall be made or maintained. N.J.S.A. 12:3-3; N.J.S.A. 12:3-13 to -14; N.J.S.A. 12:3-19; New Jersey v. Delaware, 552 U.S. 597, 642 (2008). The bulkhead lines are the legal boundary beyond which no permanent obstruction or fill shall be made or maintained other than wharves and piers. N.J.S.A. 12:3-3; N.J.S.A. 12:3-13 to -14; N.J.S.A. 12:3-19.

During this period, New Jersey, as one of the original colonies of the British nation, believed that it had absolute right and control of navigable waters off the coastline that used to belong to the King and that was vested by the revolution in the state. Ross v. Edgewater, 115 N.J.L. 477, 483 (1935); See Pollard v. Hagan, 44 U.S. 212 (1845) (holding that the shores of navigable waters and soils under them were not granted to the United States by the Constitution but were reserved to the states after cession from the crown); United States v. California, 322 U.S. 19, 30-31 (1947) (explaining that states had interpreted the Pollard case as giving states ownership of lands under the ocean and rejecting the prior argument that the original thirteen colonies had

Div. 1957). For purposes of consistency with the underlying Appellate Division opinion in this matter and the briefs that have been submitted, JMT will use the term pierhead line throughout this brief.

acquired such elements by their revolution against the British Empire). Therefore, the establishment of exterior lines was more than just to establish limits to construction, but to establish the jurisdiction of the State seaward.

Since the adoption of the tidelands statutes by New Jersey, the United States Supreme Court issued a series of decisions that clarified that the United States federal government owned all rights to lands lying beneath navigable waters of the ocean. See United States v. California, 332 U.S. 19 (1947) (holding that the federal government owned all rights to lands lying beneath navigable waters off the coast of California); United States v. Louisiana, 339 U.S. 699 (1950) (holding that the federal government owned all rights to lands lying beneath navigable waters into the Gulf off the Louisiana Coast); United States v. Texas, 399 U.S. 707 (1950) (holding that the federal government owned all rights to lands lying beneath navigable waters of the Gulf notwithstanding Texas' status as an independent and sovereign nation prior to admittance to the Union).

However, in 1953, the United States Congress passed legislation titled "The Submerged Lands Act of 1953." 43 U.S.C. § 1301, et seq. ("Submerged Lands Act"). The Submerged Lands Act gave the states proprietary rights to lands beneath navigable waters seaward to a line three geographical miles from the coastline of each state. 43 U.S.C. § 1311; 43 U.S.C. § 1312. In the same

year, Congress also adopted legislation titled “Outer Continental Shelf Lands Act,” which made clear that the United States had all rights to the part of the outer continental shelf that had not been given to the states from the Submerged Lands Act. Therefore, as of 1953, the State’s jurisdiction over tidelands extended seaward three geographical miles from the coastline.

In 1979², revisions came about primarily to accommodate off-shore drilling. The Legislature adopted new legislation that made amendments to N.J.S.A. 12:3-12, -13, -26, and repealed N.J.S.A. 12:3-17 entirely. A. 3448 (1979).

The statement in support of the legislation stated that

This bill would explicitly extend the jurisdiction of the Natural Resources Council from the “bulkhead line” to the 3 mile seaward jurisdiction of the State, thereby establishing a single mechanism for the granting of riparian grants, leases, or licenses. This extension would implement one of the recommendations of the Assembly Committees on Agriculture & Environment and Energy & Natural Resources, which recommendation was contained in the *Outer Continental Shelf Drilling Seminar Report*, issued November 20, 1978.

[Sponsor’s Statement to A.3448 (L.1979, C.311).]

In relevant part to tidelands, the report had noted that

² N.J.S.A. 12:3-17 was also amended in 1888, but did not amend the operative text in question before this Court.

Due to the language of our riparian statutes, as interpreted by several court decisions, there now appears to be no mechanism, short of case-by-case gubernatorial and legislative approval, for granting or leasing riparian lands from the “bulkhead line” to the State’s 3-mile seaward jurisdiction. As a means of overcoming this gap, some expeditious mechanism, such as explicitly extending the jurisdiction of the Natural Resources Council, should be established to approve riparian leases for pipeline corridors.

[Assembly Agriculture and Environment Committee and Assembly Energy and Natural Resources Committee, *Outer Continental Shelf Drilling Seminar Report*, at 16 (1978)]

N.J.S.A. 12:3-17 was originally enacted in 1875. As adopted, the legislation stated that,

Whereas, Applications are frequently made to the riparian commissioners for grants of lands under tidewaters in various parts of the state, requiring surveys to be made and maps to be prepared and filed with the secretary of state, and some provision should be made to have these surveys extended from time to time as the citizens of the state may require, and in order to provide the necessary means for carrying on this work without any additional tax on the treasury of the state, therefore

Be it enacted by the Senate and General Assembly of the State of New Jersey,

That the riparian commissioners may and shall at the request of shore owners extend their surveys over the tide-waters of this state, and prepare maps and have the same filed as now provided by the act to which this is a supplement and the supplements thereto, and to provide the necessary means to pay the

expenses incurred by them in this work without charge to the treasury; they may retain and expend for this purpose not to exceed in the aggregate five per centum of the amounts named in the grants or leases made to riparian owners; rendering in their annual report a detailed statement of the amount so retained and disbursed under this act.

And be it enacted, That this act shall be deemed a public act and take effect immediately.

Approved April 5, 1875.

[(emphasis added) L. 1875, C. 308]

In addition to repealing N.J.S.A. 12:3-17 entirely, the 1979 Amendment also made notable edits to N.J.S.A. 12:3-12. Significantly and applicable to islands, the legislature left N.J.S.A. 12:3-19 intact, aside from updating the office designations.

N.J.S.A. 12:3-12 provided the TRC authority to grant or lease land presently or formerly under tidewater. N.J.S.A. 12:3-12. Such power had originally been limited to “such lands, or any part thereof lying between what was, at any time heretofore, the original high-water line and the exterior lines established or to be established.” (emphasis added) N.J.S.A. 12:3-12 (1871). The 1979 Amendment changed this language to state “such lands, or any part thereof lying between what was, at any time heretofore, the original high-water line and the seaward territorial jurisdiction of the State.” N.J.S.A. 12:3-12.

Reading through the history and evolution of the tidelands statutes reveals the legislative intent of the statutes and the importance of the amendments as to the jurisdiction and authority of the TRC. When the tidelands statutes, N.J.S.A. 12:3-1, et seq., were originally enacted in the 1800s, New Jersey believed that it had ownership and rights to the lands under the ocean by virtue of its revolution against the British Empire. Therefore, the establishment of “exterior lines” was more than just establishing the limits of the structures, but also the limits of the State’s jurisdiction to provide grants and leases to the public.

In 1947, the United States Supreme Court abrogated this belief and established that the federal government owned the land under the sea. United States v. California, 332 U.S. 19 (1947). In 1953, the United States Congress enacted the Submerged Lands Act, which gave states proprietary rights to lands beneath navigable waters seaward to a line three geographical miles from the coastline of each state. 43 U.S.C. § 1311; 43 U.S.C. § 1312.

In response, New Jersey adopted legislation in 1979 that removed the use of “exterior lines” to establish the extent of its jurisdiction, and made clear its jurisdiction was in fact to the three-mile seaward limit. As part of these amendments, the legislature repealed N.J.S.A. 12:3-17 in its entirety, which permitted the TRC upon request of the shore owner to extend the surveys over the tide waters of the state and establish what could be granted.

However, what remained undisturbed in the tidelands statutes, *inter alia*, is the statutory authority given to the TRC as to what could be done within the bulkhead lines and pierhead lines. As set forth in more detail below, the language of N.J.S.A. 12:3-19, which relates to islands in tidewaters, still prohibits piers, wharfs, bulkheads, and permanent obstructions of any kind beyond the pierhead line. The same prohibition continues to remain for tidelands of the Hudson River, New York Bay, and Kill von Kull, and other tidelands in the State. N.J.S.A. 12:3-3, N.J.S.A. 12:3-13, N.J.S.A. 12:3-14.

II. THE TRC DOES NOT HAVE LEGISLATIVE AUTHORITY TO ESTABLISH PIERHEAD LINES THROUGH INDIVIDUAL CONVEYANCES.

A review of the tidelands statutes, N.J.S.A. 12:3-1 to -71, reveals no statutory authority to permit the TRC to establish bulkhead or pierhead lines through individual conveyances. The only purported support for this proposition was reliance on an Appellate Division case from 1957, Schultz v. Wilson, 44 N.J. Super. 591, 607 (App. Div. 1957), certif. denied, 24 N.J. 546 (1957). However, in Schultz, the Appellate Court relied on the now repealed N.J.S.A. 12:3-17 for the statutory authority.

In Schultz, as relevant to the question before this Court, the appellant contended that a riparian grant issued to respondent was invalid because the exterior pierhead and bulkhead lines had not been established prior to the

issuance of the grant. Schultz, 44 N.J. Super. at 605-06. The Court determined that while the exterior lines were not previously established, the riparian deed expressly fixed the exterior line “in accordance with the express statutory authority, [N.J.S.A. 12:3-17], and the established practice of the [TRC] in fixing exterior lines in riparian deeds and accompany maps.” Id. at 606.

N.J.S.A. 12:3-17 stated “[t]hat the riparian commissioners may and shall at the request of shore owners extend their surveys over the tide-waters of this state, and prepare maps and have the same filed as now provided by the act to which this is a supplement and the supplements thereto.” N.J.S.A. 12:3-17 (1888). In 1957, Schultz relied upon this language as authority for the TRC to establish exterior lines through individual conveyances.

Schultz also cited Bailey v. Council of Div. of Planning and Development, 22 N.J. 366, 372 (1956),³ noting that the Court stated “‘normally’ these lines would be established prior to a riparian grant” as further support for the proposition that the line may be fixed in the grant itself. Schultz, 44 N.J. Super. at 607 (citing Bailey, 22 N.J. at 372). However, again, these decisions were issued prior to the repeal of N.J.S.A. 12:3-17 that was relied upon by the Court.

³ This opinion concerned the second time the Bailey matter appeared before the Supreme Court following the initial remand in Bailey v. Driscoll, 19 N.J. 363 (1955).

As revealed by a full review of the history and evolution of the tidelands statutes, the need to establish exterior lines to establish the jurisdiction of the TRC was no longer required following the adoption of the Submerged Lands Acts, which established the State's ownership to the 3-mile limit. Therefore, in 1979, the legislature adopted legislation that repealed N.J.S.A. 12:3-17. A similar statutory provision allowing fixing the bulkhead and pier lines through individual conveyances was never enacted in its place.

Instead, what remains are the existing statutes which make clear that the bulkhead lines and pierhead lines should be established and fixed in a more uniform matter and must be filed with the Secretary of State. N.J.S.A. 12:3-2; N.J.S.A. 12:3-13; N.J.S.A. 12:3-19. The prohibition of placing fill beyond the bulkhead line and prohibition of structures beyond the pierhead line also remained in place. N.J.S.A. 12:3-3; N.J.S.A. 12:3-14; N.J.S.A. 12:3-19. If the TRC could simply amend these lines on an application-by-application basis, there would be no point in establishing a bulkhead line or pierhead line in advance.

Moreover, N.J.S.A. 12:3-20 states that "the [TRC], together with the Commissioner of Environmental Protection, may sell or let to any applicant therefor any of the lands under water and below mean high-water mark, embraced within the lines fixed and established pursuant to [N.J.S.A 12:3-19]."

(emphasis added). The TRC’s interpretation would make the limitation “embraced within the lines fixed and established” completely superfluous if the TRC could simply amend the lines through individual conveyances.

The court’s role in interpreting a statute is to ensure that an interpretation “gives effect to all of the statutory provisions and does not render any language inoperative, superfluous, void[,] or insignificant.” (alterations in original) Sanchez v. Fitness Factory Edgewater, LLC, 242 N.J. 252, 261 (2020) (citing G.S. v. Dep’t of Human Servs., 157 N.J. 161, 172 (1999)). Furthermore, “statutes must be read in their entirety; each part or section should be construed in connection with every other part or section to provide a harmonious whole.” In re Petition for Referendum on City of Trenton Ordinance 09-02, 201 N.J. 349, 359 (2010) (quoting Burnett v. County of Bergen, 198 N.J. 408, 421 (2009)). “When reviewing two separate enactments, the Court has an affirmative duty to reconcile them, so as to give effect to both expressions of the lawmaker’s will.” Ibid. (quoting St. Peters Univ. Hosp. v. Lacy, 185 N.J. 1, 14 (2005)).

Significant distinctions exist between the instant matter and the Schultz v. Wilson, 44 N.J. Super. 591 (App. Div. 1957), and Bailey v. Driscoll, 19 N.J. 363 (1955), cases. At the time that Schultz and Bailey were decided, the TRC’s authority to grant, lease, or license tidelands was limited to “such lands, or any part thereof lying between what was, at any time heretofore, the original high-

water line and the exterior lines established or to be established.” N.J.S.A. 12:3-12 (1871). As such, in order for the TRC to grant the tidelands instruments at issue in Schultz and Bailey, exterior lines had to be established since exterior lines did not already exist in those cases. The historical cases expressly relied upon the now repealed N.J.S.A. 12:3-17 in allowing the TRC to establish the pierhead lines in those cases.

The confusion is that Schultz and Bailey refer to the exterior line required by N.J.S.A. 12:3-12 as the pierhead line. Schultz and Bailey concerned the geographical classification of tidelands referred to as “other tidelands of the State.” As such, those cases would have been governed by N.J.S.A. 12:3-13 and N.J.S.A. 12:3-14.⁴ Those statutory provisions require, *inter alia*, the establishment of maps and surveys that are to be filed with the Secretary of State that set the pierhead line beyond which no permanent structures can be maintained. Id. At the time of the Schultz and Bailey decisions, the exterior line required pursuant to N.J.S.A. 12:3-12 and the pierhead line required pursuant to N.J.S.A. 12:3-13 and N.J.S.A. 12:3-14 may have been one in the same. However, that is no longer the case.

⁴ It should be noted that neither Schultz nor Bailey cite to N.J.S.A. 12:3-13 and N.J.S.A. 12:3-14, and the cases do not discuss the limits of placing permanent structures.

As set forth above, N.J.S.A. 12:3-12 was amended in 1979 to state that the TRC has authority to grant, lease, or license “such lands, or any part thereof lying between what was, at any time heretofore, the original high-water line and the seaward territorial jurisdiction of the State.” N.J.S.A. 12:3-12. This exterior jurisdictional line is different than the pierhead line, which has been already been established in this case. [Aa361; Aa539; Aa545.]⁵

The property at issue in this matter is on West Point Island, which is an island governed by N.J.S.A. 12:3-19 and N.J.S.A. 12:3-20. Similar to N.J.S.A. 12:3-13 and N.J.S.A. 12:3-14, N.J.S.A. 12:3-19 requires, *inter alia*, the establishment of maps and surveys that are to be filed with the Secretary of State that set the pierhead line beyond which no permanent structures can be maintained. Id. The term “establish” connotes certainty, uniformity and predictability as intended by the legislature. Since the pierhead line was already established, the TRC can only change the pierhead line from time to time by obtaining approval of the Commissioner of the NJDEP in consultation with the Army Corps of Engineers and filing a survey and by map in the Office of the Secretary of State. N.J.S.A. 12:3-19.

In sum, the critical distinction is the holdings Schultz and Bailey concerned the jurisdictional limits of the TRC and the ability to establish that

⁵ “Aa” refers to the pages in JMT’s Appellate Appendix.

jurisdictional exterior limit by individual conveyances pursuant to a now repealed statutory provision. The instant matter simply deals with the TRC's statutory authority to set an exterior limit, the pierhead line, beyond which no permanent structures can be maintained.

JMT is not arguing that the bulkhead and pier lines cannot ever be amended. Clearly, the statutes allow the TRC to amend these lines from time to time pursuant to certain statutory conditions. N.J.S.A. 12:3-13; N.J.S.A. 12:3-19. However, the pillars of statutory interpretation clearly do not support an interpretation that the TRC can simply amend the lines ad hoc through individual conveyances.

Acts which are utterly beyond the jurisdiction of a governmental entity are *ultra vires* in the primary sense and *void ab initio*. Summer Cottagers' Assoc. v. Cape May, 19 N.J. 493, 504 (1955); Heyert v. Taddese, 431 N.J. Super. 388, 429 (App. Div. 2013); see also City Council of City of Orange Tp. v. Edwards, 455 N.J. Super. 261, 274 (App. Div. 2018) (holding that a void act results from where a public officer has no authority to act at all).

For the reasons set forth in JMT's briefs, the TRC does not have the statutory authority to establish bulkhead and pierhead lines through individual conveyances.

III. N.J.S.A. 12:3-23 FURTHER SUPPORTS THE IMPORTANCE OF THE UNIFORM ESTABLISHMENT OF THE BULKHEAD AND PIERHEAD LINES.

Pursuant to N.J.S.A. 12:3-23, the TRC

may lease or grant the lands of the State below mean high-water mark and immediately adjoining the shore, to any applicant or applicants therefor other than the riparian or shore-owner or owners, provided the riparian or shore-owner or owners shall have received six-months' previous notice of the intention to take said lease or grant...

[N.J.S.A. 12:3-23]

In the Bailey case, the Court was reviewing the outward limitations of the TRC's power to issue leases and grants. Referencing the terms "in front of his lands" in N.J.S.A. 12:3-10 and "immediately adjoining the shore" in N.J.S.A. 12:3-23, this Court agreed that the legislature intended for some outward extent of tidelands grants, and held that the outward extent to be defined as the area "to be confined within bulkhead and pier lines, either established or to be established throughout the state." Bailey, 19 N.J. at 371. A "riparian owner" refers to the owner of uplands adjoining the tidelands. Housing Auth. of Atlantic City v. State, 188 N.J. Super. 145, 149 (Ch. Div. 1983).

The provision of N.J.S.A. 12:3-23 further supports the interpretation that the legislature intended a uniform establishment of bulkhead and pierhead lines. If the TRC was permitted to amend the pierhead lines through individual

conveyances, then it would be unclear if any notice would ever have to be provided to a riparian owner. Each individual conveyance could be years apart, creating widely varying pier lines running throughout area. This would then create a situation where it is unclear when six-month prior notice would have to be provided since the application may be beyond the pier line of the upland owner.

The current matter shows exactly this issue. If the property lines were extended waterward to identify the area “immediately adjoining” the shore of “the riparian or shore-owner or owners,” Jibsail’s dock that was constructed extends within JMT’s area. [Aa545.] Pursuant to N.J.S.A. 12:3-23, Jibsail had to provide six-months prior notice to JMT so that it could have the opportunity to make an application for the same relief.

In response, Jibsail argued that this preemptive right only extended to the bulkhead line. However, this interpretation would lead to an absurd result as it would mean an applicant could just design a dock to curtail an upland owner’s access to navigable waters past the bulkhead line. While it may be the current practice of the TRC to only provide grants to formerly flowed tidelands at this time, the statutes permit the TRC to provide grants and leases for both current and formerly flowed lands, which goes beyond the bulkhead line. The language

of the statutes simply does not support a limitation of this notice requirement to only within the bulkhead line.

For the reasons set forth in JMT's briefs, the TRC does not have the statutory authority to establish bulkhead and pierhead lines through individual conveyances.

IV. THE PRIOR ISSUED WATERFRONT DEVELOPMENT PERMIT AND THE SUBMERGED VEGETATION HABITAT RULE DO NOT FORCE THE TRC TO ISSUE A TIDELANDS INSTRUMENT.

The Submerged Vegetation Habitat rule permits the construction of a single non-commercial dock or pier only if a minimum water depth of four feet at mean low water is present. N.J.A.C. 7:7-9.6(b)(6). This is alleged to be the reason that Jibsail had to install such an extended dock in the current matter. However, the issuance of the waterfront development permit is a completely different scope of review than the TRC. Department approval of a waterfront development permit and a requirement to meet the Submerged Vegetation Habitat rule does not mean that the TRC can automatically approve a tidelands instrument. To hold otherwise would defeat the entire purpose of having the TRC. If obtaining a waterfront development permit was sufficient to obtain a tidelands instrument, then there would be no reason to have a separate arm of the Department to review the application.

The fact that the waterfront development permit may require the dock to go beyond the established pier line, does not mean that the TRC can now amend the pierhead line on an ad hoc basis through an individual conveyance. The appropriate solution is that the TRC should remap the bulkhead and pierhead lines in the area to avoid the submerged aquatic vegetation. This would place all upland owners in the same position and set expectations regarding any tidelands applications, avoiding the very conflict that is before the Court today.

As such, the submerged vegetation habitat rule has no bearing on the extent or limitations of the TRC's authority to issue tidelands instruments.

CONCLUSION

In conclusion, for the reasons set forth in the JMT's briefs, JMT respectfully requests that this Court reverse the decision of the Appellate Division and hold that the TRC does not have the statutory authority to establish bulkhead and pierhead lines through individual conveyances. In relation to the current matter, JMT respectfully requests that this Court vacate and reverse the TRC's decision and revoke Jibsail's December 17, 2017 and October 6, 2022 Tidelands Modified Licenses as *void ab initio*.

Respectfully submitted,
LIEBERMAN BLECHER & SINKEVICH, P.C.
Attorneys for Appellant-Petitioner

Dated: June 16, 2025

/s/ Michael G. Sinkevich
Michael G. Sinkevich, Jr., Esq.