

**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.

**SUPPLEMENTAL BRIEF OF RESPONDENT
P.T. JIBSAIL FAMILY LIMITED PARTNERSHIP**

CULLEN AND DYKMAN, LLP
Amie C. Kalac, Esq.
Attorney ID No. 026451998
Neil Yoskin, Esq.
Attorney ID No. 002091982
229 Nassau Street
Princeton, NJ 08542
609-279-0900
akalac@cullenllp.com
nyoskin@cullenllp.com
Attorneys for Respondent,
P.T. Jibsail Family Limited
Partnership

Of Counsel and on the Brief:
Amie C. Kalac, Esq.
Neil Yoskin, Esq.

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PRELIMINARY STATEMENT

This case involves a challenge to the October 6, 2022 modification of a tidelands license approved by the New Jersey Department Environmental Protection ("NJDEP") and Tidelands Resource Council ("TRC") for a dock compliant with the NJDEP's Coastal Zone Management Rules, N.J.A.C. 7:7-1, et seq. Appellant-Petitioner Janine Morris Trust (hereinafter, "JMT") appealed the license modification incorporating a de minimis 1.7 foot change in the angle of the constructed dock. JMT did not file an appeal of the underlying tidelands license being modified wherein the TRC first established the outshore extent or exterior line of the licensed tidelands area at the end of the dock of Respondent P.T. Jibsail Family Limited Partnership ("Jibsail"). The length of the dock, and extension into Barnegat Bay, was the subject of Jibsail's December 12, 2017 initial license and not the 2022 license modification. Nevertheless, on appeal, the Appellate Division analyzed Jibsail's initial tidelands license and modification under the ultra vires, and "arbitrary, capricious, or unreasonable" standards, respectively, and affirmed the TRC's decisions. The Appellate Division properly held that the TRC acted in accordance with the Tidelands Act, N.J.S.A. 12:3-1, et seq., and the TRC's established administrative procedures.

The question now before this Court is whether the TRC has statutory authority to fix and modify pierhead lines through the issuance of individual licenses. JMT

and Amicus Curiae Save Barnegat Bay (“SBB”) have presented no legal grounds to support the proposition that the TRC is prohibited from doing so or which would upend the TRC’s established practice. More particularly, with regard to Jibsail’s individual licenses that are the subject of this case, the record clearly reflects that in light of the comprehensive review by the NJDEP, the U.S. Army Corps of Engineers (“ACOE”) and the TRC, the exterior extent of the tidelands area licensed to Jibsail fixed in the approved licensed professional survey was proper and not *ad hoc*. Therefore, Jibsail’s initial tidelands license and modification should be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

Jibsail will rely on the Statement of Facts and Procedural History set forth at length in Jibsail’s Appellate Brief and opposition to JMT’s Petition for Certification. Additional facts and history relevant to the within brief are also included below.

On June 11, 2024, JMT filed a Notice of Petition for Certification of the Appellate Division’s May 8, 2024 decision affirming the TRC’s October 6, 2022 decision approving Jibsail’s tidelands license modification (“2022 Modified License”). (Aa546-Aa555)². The Petition for Certification was filed on June 21,

¹ For the sake of brevity, the Statement of Facts and Procedural History 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.

2024. On August 5, 2024, the NJDEP and Jibsail filed briefs in opposition to JMT's Petition.

On August 22, 2024, JMT filed a reply brief. On that same date, SBB filed a motion for leave to appear as amicus curiae.

On February 14, 2025, the Court granted JMT's Petition for Certification. On that same date, the Court granted SBB's motion for leave to appear as amicus curiae. In response, the NJDEP, Jibsail and JMT filed motions for leave to file supplemental briefs. On April 15, 2025, the Court granted the motions requiring the supplemental briefs to be filed on or before May 15, 2025.

LEGAL ARGUMENT

POINT I

THE TIDELANDS ACT CLEARLY GRANTS STATUTORY AUTHORITY TO THE TRC TO ISSUE TIDELANDS LICENSES TO INDIVIDUAL RIPARIAN PROPERTY OWNERS AND TO FIX THE EXTERIOR LINES OR, PIERHEAD LINES, OF THE TIDELANDS CLAIMS AREA SUBJECT TO SUCH TIDELANDS LICENSES.

The State of New Jersey's ownership of all tidelands and its right to regulate their use through the TRC is not in dispute here. LeCompte v. State, 65 N.J. 447 (1974); Panetta v. Equity One Inc., 190 N.J. 307, 318 (2007). Further, the TRC's authority pursuant to the Tidelands Act to issue or modify tidelands licenses, to establish exterior lines beyond which no development can occur, or to modify

exterior lines, is not at issue. N.J.S.A. 12:3-10, 12.1, 13 and 20; see also In re Tideland's License 96-0114-T, 326 N.J. Super. 209 (App. Div. 1999).

In the instant case, JMT and SBB assert that the Appellate Division improperly confirmed the TRC has the authority to fix an individual riparian owner's exterior line without first filing a map with the Secretary of State in advance which incorporates that line. (SCa80-SCa82). Simply, JMT and SBB do not challenge the TRC's ability to establish a line, only when and how it is done. The focus of their objection is the Appellate Division's interpretation of N.J.S.A. 12:3-19 and Schultz v. Wilson, 44 N.J. Super. 591 (App. Div. 1957), certif. denied, 24 N.J. 546 (1957).

N.J.S.A. 12:3-19 provides that the TRC,

“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 . . .”

N.J.S.A. 12:3-19. The plain language of N.J.S.A. 12:3-19 is not ambiguous, and the Appellate Division properly found that the language supported the TRC's actions to review and approve individual conveyances such as, Jibsail's. (SCa80-SCa82).

The use of the phrase “from time to time” in N.J.S.A. 12:3-19 contemplates that the TRC, in consultation with the NJDEP and the ACOE, has the legal authority to fix and establish exterior lines occasionally or sometimes. N.J.S.A. 12:3-19 does

not prohibit the TRC from modifying or fixing lines “from time to time” in an individual riparian owner’s tidelands instrument. N.J.S.A. 12:3-19; see also N.J.S.A. 12:3-42 (the 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).

Prior to Schultz v. Wilson, this Court reviewed the extent of the TRC’s authority in Bailey v. Driscoll, 19 N.J. 363, 374 (1955). Both cases concern riparian grants and not tidelands licenses similar to the instruments at issue in this case. As the Appellate Division properly held, the difference in the type of conveyances is key and present separate considerations. (SCa78-SCa79).

In Bailey v. Driscoll, this Court recognized that even where a riparian grant is issued conveying the State’s property interest to a riparian property owner, bulkhead and pier lines are “either established or to be established” and may be changed provided they consider “reasonable access to riparian owners to deep water beyond bulkhead and pierhead lines”. Bailey v. Driscoll, 19 N.J. 363, 374 (1955). An exterior line is not required to be established before the making of a particular instrument. Id. To that end, if an exterior line or pier line is established and an upland owner goes beyond that line into State-owned tidelands, a permit must first

be obtained and a lease/license entered into with the State. That is exactly what occurred in this case. The TRC found that the “established pierhead line is the outshore extent of an individual riparian owner’s riparian rights to erect a dock or pier” and applied the same to Jibsail. (Aa552). Jibsail sought to use only, but not purchase, State-owned tidelands and obtained the required approvals to do so.

In Schultz v. Wilson, the Appellate Division analyzed the State’s title to the lands under tidal waters in this State and the authority to establish and fix an exterior line in an individual instrument. Schultz v. Wilson, 44 N.J. Super. 591 (App. Div. 1957), certif. denied, 24 N.J. 546 (1957). The Court affirmed the validity of the riparian grant where the exterior line was set by the grant instrument itself. Schultz v. Wilson, 44 N.J. Super. at 606. In addition to N.J.S.A. 12:3-19, the Appellate Division relied on Schultz v. Wilson, to support the finding that the TRC can establish exterior lines through individual conveyances. (SCa81-SCa82). The position of JMT and SBB that the Appellate Division’s reliance on that case is flawed is misplaced.

In Schultz v. Wilson, the Appellate Division affirmed the TRC’s “established practice” in fixing exterior lines in individual conveyances without solely relying on N.J.S.A. 12:3-17. Id. Moreover, the Court did not interpret Bailey v. Driscoll as requiring that the pierhead and bulkhead line be established in advance of making of an individual conveyance. Id. Rather, the Appellate Division in Schultz v. Wilson

held that “the exterior line may be established concomitantly with or even subsequent to the making of a grant”. Id.

The repeal of N.J.S.A. 12:3-17 subsequent to Schultz v. Wilson did not overturn the entirety of the Court’s analysis of the TRC’s authority to fix or amend exterior lines through individual conveyances in that case. N.J.S.A. 12:3-17 provided, as follows:

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 merely permitted owners of shorefront property to request that surveys and maps be prepared and filed by the TRC showing the exterior lines that have been fixed rather than the applicants making the applications having to prepare such surveys themselves. The repeal of N.J.S.A. 12:3-17 effectively removed the requirement that the TRC prepare and file maps at a shore owner’s request. This is exactly what JMT and SBB are requesting this Court to now order the TRC to do here. Not only is there no legal basis to require that filing of a map to occur under the circumstances where a grant conveys State-owned tidelands to a party, there is even less support where the subject of the conveyance is only a revocable license.

In light of the foregoing, the TRC clearly had the legal authority to convey the Initial License and the 2022 Modified License to Jibsail, and the Appellate Division's decision to that effect must be affirmed.

POINT II

THE COURT SHOULD REJECT THE POSITION THAT THE TRC IS REQUIRED TO ESTABLISH AND MAP ALL EXTERIOR OR PIERHEAD LINES ALONG TIDAL WATERS PRIOR TO ISSUING INDIVIDUAL TIDELANDS LICENSES.

JMT and SBB take issue with the timing of the TRC's establishment of exterior lines, requesting that, this Court find that such lines must be established comprehensively at the same time for every tidal property before any individual tidelands license within the affected mapped area can be issued. However, JMT and SBB have not identified any statute, regulations or caselaw that require the TRC to follow that procedure. On the other hand, as further enumerated in Point I above, N.J.S.A. 12:3-19 broadly permits the TRC to fix exterior lines "from time to time" and does not require the TRC to fix and establish exterior lines in advance or, separate and apart from, individual license conveyances.

Even if this Court were to determine that the TRC is required to fix and establish exterior lines in advance of the issuance of an individual tidelands license, that is exactly what occurred with Jibsail. The TRC did not approve Jibsail's Initial License or 2022 Modified License unilaterally. As the record reflects, both arose out of a lengthy, comprehensive review by the NJDEP, the ACOE and the TRC

contemplated by N.J.S.A. 12:3-19 and 20 and based on an approved licensed professional survey that fixed the outshore extent of the tidelands area licensed to Jibsail for its dock. (JRa29; SCa1-SCa20). The exterior line beyond which Jibsail's dock could not go was approved by the NJDEP pursuant to a Waterfront Development Permit³ and the ACOE *before* the TRC granted a tidelands license in accordance with N.J.S.A. 12:3-19 and 20. (Aa159; Aa183-Aa195; Aa390-Aa397; JRa19-JRa29). Jibsail's dock is within that exterior line. (JRa49). The same procedure was followed for JMT and other neighboring properties. (Aa188-Aa189; Aa239-Aa243; JRa11-JRa14).

Contrary to the arguments of JMT and SBB, the record also clearly shows that safe navigation and recreation were analyzed by the NJDEP, the ACOE and the TRC. (Aa72; Aa473-Aa; JRa56-JRa68; and the thumb drive submitted to the Court with the videos served on the NJDEP and the TRC with JRa56-JRa68; SCa1-SCa20). The TRC's approval of Jibsail's Initial License and 2022 Modified License was lawful and not dangerous to Barnegat Bay or to navigation and recreation in Barnegat Bay. Jibsail followed every law, procedure and formality at every step and Jibsail's approvals are far from *ad hoc*. In setting Jibsail's exterior line, it is

³ In a May 13, 2025 unpublished opinion, the Appellate Division affirmed the NJDEP's issuance of the related Waterfront Development Permit Modification to Jibsail for its subject dock in 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-2570-22.

reasonable that the NJDEP and/or the TRC had in mind the approvals of similar docks that had already been approved adjacent to Jibsail's dock. (Aa16-Aa24; Aa122-Aa124; Aa197-Aa206; Aa291; Aa542; JRa30-JRa31; JRa49). As a result, the TRC acted in accordance with N.J.S.A. 12:3-19 and 20 and the Appellate Division properly affirmed the TRC's determination that Jibsail's individual riparian rights are confined to the tidelands licensed area designated on the NJDEP-approved survey. (JRa29).

The relief sought by JMT and SBB will lead to uncertainty that the Legislature clearly did not intend. A finding that a global map of all exterior lines must be established by a filed map prior to the issuance of any individual tidelands license, and not in the instrument itself, would upend the validity of potentially thousands of tidelands licenses approved pursuant to the current practice which, similar to Jibsail, involved a detailed review of the riparian rights relevant to each individual property subject to a tidelands application. Such a mapping requirement could also have a sweeping effect on all riparian rights, either by reducing or expanding the outshore extent of the tidelands claim areas owned by the State that are, or may be, granted or licensed. To review on a case by case basis is the only way for the NJDEP and the TRC to assure safety and planning specific to each individual property. Absurdly, blanket mapping could potentially grant rights to those who have not yet applied for a tidelands instrument and/or other applicable NJDEP approvals without

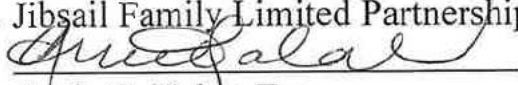
regard to the individual circumstances present outshore of each individual property. Additionally, obscure mapping may set the exterior line, but would fail to take into consideration to applicable NJDEP rules and regulations including, the Coastal Zone Management Rules, N.J.A.C. 7:7-1, et seq., in place to protect Submerged Vegetation and Shellfish Habitat.

In light of the forgoing, the Appellate Division's decision affirming the issuance of the tidelands approvals to Jibsail should be upheld. The TRC's decision fell squarely within the agency's authority and expertise. In re Stream Encroachment Permit No. 0200-04-0002.1 FHA, 402 N. J. Super. 587, 597 (App. Div. 2008). JMT and SBB have not established that the Appellant Division's decision was erroneous or that the TRC's decisions were ultra vires, or "arbitrary, capricious, or unreasonable".

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Jibsail's Appellate Brief and Brief in Opposition to the Petition for Certification, the Appellate Division's decision, Jibsail's Initial License and 2019 Modified License, should be affirmed.

Dated: May 15, 2025

Respectfully submitted,
CULLEN AND DYKMAN LLP
Attorneys for Respondent,
P.T. Jibsail Family Limited Partnership
By: 
Annie C. Kalac, Esq.