NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3240-20

JOHN ROBERT SCADUTO
and DEBRA LYNN SCADUTO,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION,

Defendant-Respondent.

ROBERT J. HARKINS,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION,

Defendant-Respondent.

MARK CURCIO and BARBARA
CURCIO,

Plaintiffs-Appellants,

APPROVED FOR PUBLICATION

January 12, 2023

APPELLATE DIVISION

v.

STATE OF NEW JERSEY,
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION,

Defendant-Respondent.

SANDBOX PROPERTIES, LLC,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION,

Defendant-Respondent.

ANTHONY D'AURIA and
DEBORAH D. D'AURIA,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION,

Defendant-Respondent.

STEPHEN ROMA and
MARY L. ROMA,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION,

Defendant-Respondent.

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RICHARD COLAVITA and
ANNE S. COLAVITA,

Plaintiffs-Appellants,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION,

Defendant-Respondent.

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Argued November 10, 2022 – Decided January 12, 2023

Before Judges Accurso, Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Docket Nos. L-2301-20, L-2302-20, L-2305-20, L-2307-20, L-2308-20, L-2311-20 and L-2314-20.

John J. Reilly argued the cause for appellants (Bathgate, Wegener & Wolf, PC, attorneys; John J. Reilly, on the briefs).

Brian W. Keatts argued the cause for respondent (Rutter & Roy, LLP, attorneys; Brian W. Keatts, on the brief).

The opinion of the court was delivered by

ACCURSO, P.J.A.D.

Plaintiffs in these seven inverse condemnation actions, consolidated in the trial court, appeal from Judge Lynch Ford's dismissal of their complaints against the Department of Environmental Protection under the entire controversy doctrine. The dismissal order leaves plaintiffs to their remedies in the DEP's condemnation action against their homeowners association — in which plaintiffs, as well as the Association and the DEP, have appealed from the report of the condemnation commissioners, entitling them to a jury trial already scheduled for February 2023. Because we agree plaintiffs' rights to separate awards for just compensation for the loss of value to their homes, if any, resulting from the DEP's exercise of eminent domain as to the beach lot owned by their Association are fully protected through their participation in the earlier filed condemnation action, we affirm.

Plaintiffs are seven of the twenty-two members of the Bayhead Point Homeowners Association, Inc., which owns an unbuildable, two-and-a-half-acre beach lot along the Atlantic Ocean in Point Pleasant Beach near its border

with Bay Head.[1] According to the Association's Declaration of Covenants and Restrictions, each of the plaintiffs, as owners of one of the twenty-two "Lots and their assigns, . . . successors, . . . grantees, . . . shall have a perpetual, non-exclusive easement for recreational purposes in, upon and across the Beach." The Declaration also provides plaintiffs a non-exclusive free and unobstructed right of ingress and egress to the beach lot via the six-foot-wide beach access easement walkway between Lots 9.03 and 9.04.

The DEP filed its condemnation action against the Association in December 2015 to acquire a perpetual storm damage reduction easement in the beach lot as part of the Department's collaboration with the Army Corps of Engineers in the Manasquan Inlet to Barnegat Inlet Storm Damage Reduction Project, a dune and berm system in northern Ocean County stretching from Berkeley Township to Point Pleasant Beach begun after Superstorm Sandy. See State v. N. Beach 1003, LLC, 451 N.J. Super. 214, 223-25 (App. Div.

[1] The Association's members are the owners of the twenty-two residential lots within the Association. Plaintiffs Curcio, Harkins, Sandbox Properties, LLC, Roma, D'Auria and Scaduto all own residential lots in Block 179.03 on Beacon Lane. Mark and Barbara Curcio own Lot 9.03; Robert Harkins owns Lot 9.04; Sandbox Properties owns Lot 9.05; Stephen and Mary Roma own Lot 9.06; Anthony and Deborah D'Auria own Lot 9.07; and John and Debra Scaduto own Lot 9.04. Plaintiffs Richard and Anne Colavita own Lot 4.04 in Block 11.01. Six are oceanfront homes on the east side of Beacon Lane adjacent to the beach lot, and one is located across the street on the west side. The beach lot is Lot 9 in Block 179.03.

2017) (describing the project). In its complaint, the DEP acknowledged plaintiffs' access easement provided in the recorded Declaration of Covenants, but noted it was "taking the storm damage reduction easement subject to the rights held by these oceanfront lot owners to cross the dune in a manner allowed by local and state law."

On August 26, 2016, the court signed and entered a consent order between the DEP and the Association resolving the Association's objections to the DEP's failure to join the members of the Association as necessary parties in the condemnation action. The order provided that any member of the Association would be entitled to present evidence relating to claims for severance damages allegedly caused to the member's property by the DEP's partial taking of the Association's beach lot before the condemnation commissioners to be appointed by the court.[2] Any member appearing at the commissioners' hearing and filing a timely notice of appeal from the commissioners' report pursuant to Rule 4:73-6 would likewise have the right to make claims for severance damages, if any, at the trial de novo.

The consent order also provided the failure of a member to appear at the commissioners' hearing, either personally or through counsel, would preclude

[2] "Severance damages may be defined as damages or diminution in the value of the remainder resulting from the taking of a portion of a tract of land." 8A Nichols on Eminent Domain § G16.02 (Matthew Bender, 3d ed. 2013).

that member's appeal from the commissioners' report. Finally, it provided a copy of the order "shall be served by counsel for the Association upon all members of the Association within seven days of its receipt." The court incorporated the terms of the consent order in its separate order of the same date declaring the DEP had the authority to condemn the Association's property to take a perpetual easement for the purpose of protecting the State's shoreline, a legal conclusion we subsequently endorsed in North Beach 1003, 451 N.J. Super. at 223.

A few weeks later, the court entered final judgment for the DEP in the condemnation action and appointed commissioners to establish the value of the taking. The DEP recorded its declaration of taking two months later. The commissioners' hearing, however, was not held until October 2019, by which time the Army Corps had completed the dune restoration project, dredging and pumping more than eleven million cubic yards of sand onto the beaches between the Manasquan and Barnegat inlets. The project resulted in a newly constructed dune and elevated beach area on 2.15 acres, or eighty-five percent, of the beach lot. Although recreation on the beach dune was prohibited by State law both before and after completion of the project, the work increased the usable portion of the Association's beach lot from 69,000 to 95,000 square feet.

Plaintiffs claim they did not receive the 2016 consent order until March of 2019. Their retained counsel, however, appeared on their behalf at the commissioners' hearing seven months later, which was conducted at his office. Following the commissioners' issuance of their report, which is not a part of this record, the DEP filed a notice of appeal from the award and a jury demand.

Both the Association and plaintiffs filed cross-appeals, with plaintiffs framing the issue to be tried as the just compensation for the taking of the beach lot, "as well as the separate just compensation due to each of the respective [plaintiffs] by reason of the taking . . . of property of each . . . and any damages to their respective residential lots." In their notice of appeal, plaintiffs advised that "in order to fully protect their rights to just compensation," each would also be filing a separate inverse condemnation action alleging the State had effected a partial taking of each plaintiff's separate property "without due process and without just compensation, including the impairment of the use and enjoyment of each owner's residential lot." The judge signed plaintiffs' form of order in the condemnation action, ensuring that among the issues to be tried in that action will be "the separate just compensation due to each of the respective [plaintiffs] by reason of the

taking . . . of property of each . . . and any damages to their respective residential lots."

Nine months later, plaintiffs filed their seven separate actions, which Judge Lynch Ford consolidated and dismissed on the State's motion in an opinion from the bench, agreeing plaintiffs' claims are barred by the entire controversy doctrine. See Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019) (explaining the administration of justice concerns underlying the doctrine). The judge reasoned she had already permitted, "in effect," plaintiffs' intervention in the DEP's condemnation action "for the purpose of fully asserting" whatever claims they might have for damages to their easement rights — and plaintiffs were pursuing their claims in that action. Because plaintiffs suffered no unfairness in having their claims adjudicated in the condemnation action and doing so promoted a single disposition of all claims arising out of the DEP's taking of the easement in the beach lot, avoiding both "piecemeal decisions" and the inefficiency and delay that would be occasioned by a separate action — or seven — the judge found the entire controversy doctrine mandated dismissal.

Plaintiffs moved for reconsideration, arguing the entire controversy doctrine did not apply because there had never been an adjudication of the

taking of their easement rights; State v. Orenstein, 124 N.J. Super. 295 (App. Div. 1973), required a separate action; and the court had wrongly conflated plaintiffs' easements to cross the dune, which the State's easement did not impair, and their recreational easement in the beach lot, which plaintiffs characterized as "a discrete separate easement of recreational use in the private beach." Judge Lynch Ford denied the motion. The judge reiterated that "plaintiffs have a forum within which to determine the loss of value, if any, to their properties resulting from the takings related to the project" as the court "established a mechanism" in the condemnation action for consideration of those claims with the claims of the Association to which they are obviously related.

Plaintiffs appeal, reprising their arguments to the trial court. Our review of a decision on summary judgment is de novo, Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021), without deference to interpretive conclusions of statutes or the common law we believe mistaken, Nicholas v. Mynster, 213 N.J. 463, 478 (2013). As the parties agreed on the material facts for purposes of the motion, our task is limited to determining whether the trial court's ruling on the law was correct. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). We conclude it was.

Taking the claims in inverse order, we disagree the judge conflated plaintiffs' easement right to cross the dune with "their separate easement right to use the private beach for recreation." There is no question but that the Association's recorded Declaration of Covenants and Restrictions provides plaintiffs with two distinct easements: the right of ingress and egress to the beach via the walkway between Lots 9.03 and 9.04 and "a perpetual, non-exclusive easement for recreational purposes in, upon and across the Beach." The judge clearly understood that, and the DEP does not dispute it. And because the State's storm damage reduction easement was expressly made subject to plaintiffs' access easement, all agree only the recreation easement is at issue here.[3]

And, while plaintiffs contend no court has ever entered judgment that the DEP has exercised its power of eminent domain as to plaintiffs' recreation easements, the DEP does not dispute its judgment of eminent domain as to the beach lot entitles plaintiffs to just compensation to the extent they can establish severance damages, as expressly provided in the court's August 2016 orders.

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[3] The DEP acknowledges "plaintiffs' passing reference" in their brief to the State having removed a portion of certain of their walkways crossing the existing dune. Besides noting the storm reduction easement "expressly permits the construction of a dune overwalk structure," the DEP states unequivocally that plaintiffs are "free to raise this issue" in the condemnation action.

The DEP also does not dispute that each plaintiff shall be entitled to a separate award of just compensation to the extent each can prove severance damages, measured as the difference in the value of their home with the recreation easement before the State's partial taking of the beach lot and the value of their home with the recreation easement after the State's partial taking. See Orenstein, 124 N.J. Super. at 302 (explaining in the context of the complete destruction of an alleged easement that "[t]he owner of the dominant estate must be compensated for the value of the easement taken from him and the measure of damage is the difference in the market value of the dominant estate with the easement and its value without the easement" (quoting Alfred D. Jahr, Eminent Domain, Valuation and Procedure § 160, at 251 (1953))).

Accordingly, the concern we expressed in Orenstein — that a landowner claiming the condemning authority had taken an irrevocable easement appurtenant for the benefit of adjacent property, in addition to the land described in the complaint, must present that claim to the court before entry of the order appointing commissioners — is not implicated here. Id. at 298. While it may have been better practice for the DEP to have amended its complaint when the consent order was entered, plaintiffs' claims as to the taking of their easements were presented to the court before the appointment of commissioners, with the court ordering that members of the Association could

present claims for severance damages to the members' properties by the DEP's partial taking of the beach lot. Each will be entitled to a separate award on proof of severance damages.

To ensure in accordance with Orenstein that the only issue presented to the jury is the measure of plaintiffs' severance damages, the one disputed issue we must address is whether the trial judge was correct as to the extent of plaintiffs' recreation easements, see Rosen v. Keeler, 411 N.J. Super. 439, 451 (App. Div. 2010) (explaining "[q]uestions concerning the extent of the rights conveyed by an easement require a determination of the intent of the parties as expressed through the instrument creating the easement, read as a whole and in light of the surrounding circumstances").

As already noted, plaintiffs contend their recreational easement is "a discrete separate easement of recreational use in the private beach." Thus, they argue to us that what the State has taken from them is their "separate recreational easement right to exclude members of the public from the [Association's] private beach," meaning their loss is "the right to recreation on a private beach restricted to members of the Association." The DEP acknowledges it has included public access and use in its perpetual storm damage reduction easements, as we found N.J.S.A. 12:3-64 permitted it to do in North Beach 1003, 451 N.J. Super. at 239, but contends plaintiffs have

overstated their alleged loss as they "never had the right to exclude anyone" from the Association's beach. The DEP argues the Association "always maintained the right to offer access to the beach lot to the general public" and the public "always had a right to access a portion of the beach lot" through the public trust doctrine. Judge Lynch Ford agreed with the DEP. So do we.

There is no dispute that plaintiffs are each an owner of a dominant tenement with an easement appurtenant in the beach lot. See Rosen, 411 N.J. Super. at 450 ("An easement appurtenant is created when the owner of one parcel of property (the servient estate) grants rights regarding that property to the owner of an adjacent property (the dominant estate)."). The Declaration of Covenants and Restrictions expressly provides "the Owners of the [twenty-two] Lots and their assigns, tenants, successors, employees, grantees, guests, invitees, servants and agents shall have a perpetual, non-exclusive easement for recreational purposes in, upon and across the Beach."[4]

[4] Plaintiffs contend the words following the portion we quoted, that "[n]othing herein contained is intended, nor shall it be construed, held or taken as a dedication hereof, or as creating any rights in or for the benefit of the general public," "assures the public is excluded." We disagree the language supports plaintiffs' position that their recreation easements are exclusive to them, and the Association is thus precluded from permitting non-members of the Association to use its beach lot. That the recreation easements do not create a right in the general public to beach access does not restrict the Association from granting the public access to its property.

Plaintiffs contend their easements restrict the Association from permitting anyone other than members of the Association to use the Association's "private beach." As our Supreme Court has explained, "[t]he problem of declaring the correlative rights and duties of the owners of the servient and dominant estates arising from an easement is one of construction," Hammett v. Rosensohn, 26 N.J. 415, 423 (1958), with the primary rule being "that the intent of the conveyor is normally determined by the language of the conveyance read as an entirety and in the light of the surrounding circumstances," ibid.

A review of the language of the easement makes plain that plaintiffs' easements in the beach lot are "non-exclusive." Plaintiffs read that language to mean their easements in the beach lot are exclusive in common with the owners of the other lots. But if that were the intent, the drafter could have written more directly that "the Owners of the Lots and their assigns, . . . successors, . . . grantees, . . . shall have a perpetual, ~~non-~~exclusive easement for recreational purposes in, upon and across the Beach." See, e.g., Levinson v. Costello, 74 N.J. Super. 539, 543 (App. Div. 1962) (interpreting a shared easement included in lot owners' deeds by words "together with right of reasonable use of the beach front by property owners and occupants only of the Marlin Beach development").

Because we accord the words of the Declaration of Covenants and Restrictions their ordinary meaning, Citizens Voices Ass'n v. Collings Lakes Civic Ass'n, 396 N.J. Super. 432, 443 (App. Div. 2007), we cannot agree with plaintiffs that use of the beach lot "was exclusive to the members of the Association" and their easements precluded the Association from permitting anyone other than the members of the Association to use the beach. See Hyland v. Fonda, 44 N.J. Super. 180, 189 (App. Div. 1957) (noting "the servient tenement will not be burdened to a greater extent than was contemplated or intended at the time of the creation of the easement and the use of the easement must not unreasonably interfere with the use and enjoyment of the servient estate" (quoting Lidgerwood Ests., Inc. v. Pub. Serv. Elec. & Gas Co., 113 N.J. Eq. 403, 407 (Ch. 1933))).

That conclusion, however, does not end the inquiry. In the context of an express easement, our courts recognize the "'universally accepted principle' . . . that 'the landowner may not, without the consent of the easement holder, unreasonably interfere with the latter's rights or change the character of the easement so as to make the use thereof significantly more difficult or burdensome.'" Kline v. Bernardsville Ass'n, Inc., 267 N.J. Super. 473, 478 (App. Div. 1993) (quoting Tide-Water Pipe Co. v. Blair Holding Co., 42 N.J. 591, 604 (1964)). The American Law Institute restates the principle positively

to say "[e]xcept as limited by the terms of the servitude . . . the holder of the servient estate is entitled to make any use of the servient estate that does not unreasonably interfere with enjoyment of the servitude." Restatement (Third) of Prop.: Servitudes § 4.9 (Am. Law Inst. 2000).

Thus, even though plaintiffs are incorrect that their easements made the beach lot "exclusive to the members of the Association," we must still consider whether allowing public access to the beach after completion of the Army Corps project unreasonably interfered with plaintiffs' rights or changed the character of plaintiffs' easements. See Kline, 267 N.J. Super. at 478. Illustration 10 to § 4.9 of the Restatement is instructive.

> O, the developer of a 10-lot subdivision near a lake, retained title to Blackacre, a lot fronting on the lake which included a beach. O granted an appurtenant easement for use of Blackacre for recreational purposes in the deeds conveying each of the 10 lots in the subdivision. Twenty years later, a successor in title to Blackacre granted an easement to the owner of Whiteacre, property outside the subdivision, for recreational purposes. Whiteacre is used as a campground and draws hundreds of visitors during the summer. In the absence of other facts or circumstances, the owner of Blackacre was not entitled to create the additional easement rights because the likely increased use will unreasonably interfere with enjoyment of the previously created easements.
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> [Restatement (Third) of Prop.: Servitudes § 4.9 cmt. e, illus. 10 (Am. Law Inst. 2000).]

The Reporter's Note indicates the facts in Illustration 10 were drawn from Leabo v. Leninski, 438 A.2d 1153 (Conn. 1981). The plaintiffs in Leabo were owners in a small subdivision consisting of six lots "and a small piece of rocky shore, known as the 'Second Piece' located" on a beach road running along Long Island Sound. Id. at 1154. The deeds to each of the lots contained an easement appurtenant permitting the owner "the right to use in common with others, for the purpose of bathing only, the beach located easterly of the Second Piece." Ibid. The beach east of the Second Piece was small, consisting of only 1,300 square feet, and not part of the subdivision, but instead a part of a two-and-a-quarter-acre parcel improved with four cottages located southeast of the development. Ibid. The deed to that parcel "referred to the beach as 'Second Piece' and included the following language: '[s]aid Second Piece is subject to rights of others of use, as of record in said Land Records will appear.'" Ibid.

When the defendant Leninski purchased the two-and-a-quarter-acre parcel sixteen years later, he obtained a permit to renovate one of the cottages. Ibid. After Leninski "had incurred much expense in improvements," id. at 1154-55, the local zoning authorities revoked his permit and ordered him "to restore the cottage to its original condition," id. at 1155. Leninski responded by painting "the cottage red, white and blue simulating the American flag and

posted large signs announcing the opening of the beach for public use." Ibid. After Leninski beat back an application by the zoning authorities for a temporary injunction closing the beach to the public, Zoning Comm'n of Sachem's Head Ass'n v. Leninski, 376 A.2d 771, 773 (Conn. C.P. 1976), he bought the private road separating his property from the plaintiffs' subdivision and took steps to widen it to accommodate parking for the 2,000 bikes and 200 cars he anticipated would be necessary for members of the public using the beach. Leabo, 438 A.2d at 1155-56.

Faced with those facts, the Connecticut Supreme Court had no hesitation in concluding that "[c]onsidering the limited size of the beach," Leninski's opening it to the public in the manner he did recklessly disregarded the plaintiffs' easement rights. Id. at 1156-57. Relying in part on our opinion in Levinson v. Costello, 74 N.J. Super. 539, the Connecticut Supreme Court reasoned "[a] beach easement is more than a mere right of access; it involves the more sensitive rights of recreational use, enjoyment and pleasure implied in the reasonable use of the easement." Leabo, 438 A.2d at 1156. Central to that court's holding that Leninski had violated the plaintiffs' rights was the history of the use of the easement, namely that prior to his acquisition of the servient tenement, "only the owners of the lots in the subdivision and their guests used the beach; that the beach was not open to the public, and that the

defendant's predecessors in title did not object to such limited use." Id. at 1155.

We agree with the Connecticut Supreme Court that a beach easement is more than a right of access and "involves the more sensitive rights of recreational use, enjoyment and pleasure implied in the reasonable use of the easement." Id. at 1156. We also agree that an understanding of the extent of such an easement requires consideration of the words of the grant, the condition of the servient tenement and the history of the use.[5] Id. at 1155. Assessment of those factors in this case distinguishes this matter from Leabo.

[5] The Leabo court, while acknowledging Connecticut's public trust doctrine, as well as "the broader implications of public access to beaches" and state policy encouraging "public access to the waters of Long Island Sound," determined the doctrine was not implicated because the case did "not involve public access to the wet sand area but to the privately owned dry sand area above the mean high water line." 438 A.2d at 1156. The Connecticut Supreme Court has since made clear that state's public trust doctrine "applies both to privately and publicly owned shorefront property," Leydon v. Town of Greenwich, 777 A.2d 552, 564 n.17 (Conn. 2001), but it does not appear to extend to "reasonable access to the sea" or use of the dry sand "reasonably necessary for enjoyment of the ocean" by the public, "subject to an accommodation of the interests of the owner" in the case of privately owned land as in New Jersey, Matthews v. Bay Head Improvement Ass'n, 95 N.J. 306, 324-25 (1984). Given the robust development of the public trust doctrine in our courts, id. at 316-25 (tracing the development of the State's public trust doctrine), and the important "statewide policy of encouraging . . . greater access to ocean beaches for recreational purposes," consonant with environmental concerns, reflected in both statute and regulation, see Lusardi v. Curtis Point Prop. Owners Ass'n, 86 N.J. 217, 227-28 (1981) (identifying

In addition to the words of the grant making clear the easement here is not exclusive to members of the Association, its history is different from the private use in Leabo. In 2002, the State, as well as intervenors Citizens' Right to Access Beaches, American Littoral Society and the New York/New Jersey Baykeeper, sued the Association contending it was preventing members of the public from accessing areas of the beach to which they had right of access under the public trust doctrine. The public trust plaintiffs and the Association settled that suit in 2005, with the Association agreeing it would not interfere with members of the public using the beach lot eastward of a line parallel to the west property line located nine feet seaward of the landward-most portion of a then-existing outfall structure, or with members of the public traversing around the rear of the outfall structure.[6] While the plaintiffs agreed no other portions of the beach lot would "be burdened by the public access area," the Association reserved in that settlement agreement its "right to operate its property commercially . . . and to limit access to the property upon the

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expressions of the policy), consideration of any beach easement in New Jersey must also be undertaken against that backdrop.

[6] The outfall structure, which included a concrete block pump station on the beach lot, was removed as part of the Army Corps project.

payment of a reasonable fee that shall not be so onerous as to constitute an unreasonable interference with public trust rights."[7]

Plaintiffs contend there's nothing in the record suggesting the Association ever sold beach badges to the public and even assuming it has such right and "chose to do so, such circumstances do not create any right in the public." We agree the Association's reservation in the public trust litigation of the right to open the beach to the public through the sale of beach badges did not create any right in the public to use the non-public-access portion of the Association's beach. But it obviously further erodes plaintiffs' claim that their "non-exclusive" recreation easements gave them "the right to exclude the public" from the Association's beach.

Not only did the Association settle litigation with the State and public trust plaintiffs by giving the public more access to the dry sand beach, which plaintiffs claim was restricted to the exclusive use of the twenty-two lot owners, see Matthews, 95 N.J. at 326 (holding members of the public must be allowed "use of privately-owned dry sand areas as reasonably necessary" to vindicate their rights under the public trust doctrine), it expressly asserted its reserved right to operate the beach commercially by selling beach badges to

[7] The settlement agreement was signed on behalf of the Association by one of the seven plaintiffs in this suit.

the public. Thus, this matter is different from the facts in Leabo because, in addition to the vastly larger size of the Association's beach, the terms of the grant of the non-exclusive easement and the history of the settlement of the public trust litigation establish plaintiffs' easement rights were already subject to the public's negotiated right of access pursuant to the public trust doctrine and the Association's reserved right to provide public access to the beach lot prior to the DEP's condemnation.[8]

Accordingly, we cannot find the State's partial taking, including public access and use in the expanded beach lot, changed the character of plaintiffs' non-exclusive recreation easements by depriving them of "the right to recreation on a private beach restricted to members of the Association." Plaintiffs' recreation easements did not provide them the right to a private beach. While plaintiffs are free to argue in the condemnation action that they are entitled to severance damages because the State's partial taking reduced the

[8] We acknowledge, of course, that the Association is controlled by its members and holds title to the beach lot for their benefit. See Trs. of Llewellyn Park v. W. Orange Twp., 224 N.J. Super. 342, 346 (App. Div. 1988). Thus, prior to the condemnation it could have elected, for example, not to allow public access, beyond that agreed in 2005, to its dry sand beach, by a vote of the members in accordance with its by-laws. But that fact does not change the Association's right to use of its property, the servient tenement, based on the terms of the recreation easement and its reservation of the right to operate the beach commercially in the 2005 settlement of the public trust litigation.

value of their homes by impairing their appurtenant easements in the Association's beach lot, they may not mislead the jury as to the extent of those easements prior to the taking.

We are accordingly satisfied Judge Lynch Ford was correct to find plaintiffs' claims for severance damages flowing from the State's storm damage reduction easement are intertwined with the Association's just compensation claim for the same taking, that plaintiffs were already pursuing their claims in the DEP's condemnation action against the Association, and thus the entire controversy doctrine barred plaintiffs' separate inverse condemnation claims. See Dimitrakopoulos, 237 N.J. at 108 (noting "[t]he entire controversy doctrine 'embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court'" (quoting Cogdell ex rel. Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989))). In addition to plaintiffs' and the Association's claims being "aspects of a single larger controversy" based on their interrelated facts, id. at 109 (quoting DiTrolio v. Antiles, 142 N.J. 253, 271 (1995)), plaintiffs were provided the right to participate in the condemnation proceeding in 2016, they've actively participated in the case since October 2019, and they did not file their inverse condemnation claims until October 2020. Given those facts, we have no hesitation holding joinder is mandated. See DiTrolio, 142 N.J. at 271.

As to the extent of plaintiffs' recreation easements, we are also satisfied Judge Lynch Ford was correct to reject plaintiffs' claim that their recreational easements provided them the right to exclude non-Association members from the Association's beach lot. Neither the express wording of the recreation easement in the Association's Declaration of Covenants and Restrictions nor the settlement agreement in the public trust litigation supports that claim.

Accordingly, the jury in this case should be charged in accordance with Borough of Harvey Cedars v. Karan to determine just compensation to plaintiffs by calculating the fair market value of their properties with their non-exclusive recreation easements immediately before the taking and the fair market value of plaintiffs' properties with those same non-exclusive recreation easements after the Army Corps completed construction of the dune and elevated beach area on the Association's beach lot and the public was allowed access as provided in the State's storm damage reduction easement. 214 N.J. 384, 417-18 (2013) (explaining the "before and after rule"). Critically, the "before" values must take into account that plaintiffs' easement rights were already subject to the public's right of access pursuant to the public trust doctrine and the Association's right to operate its beach commercially by selling beach badges to the public.

The jury must be permitted to consider whether allowing public access to the Association's beach lot as part of the DEP's storm damage reduction easement affected the fair market value of plaintiffs' homes. In performing that task, the jury should consider any quantifiable benefits affecting value as well as quantifiable detriments, considering all relevant factors based on the evidence adduced at trial. See id. at 416-18. See also State v. 1 Howe St. Bay Head, 463 N.J. Super. 312, 345 (App. Div. 2020) (determining "it was reasonable for the appraisers to conclude the properties would be more valuable after the condemnation because the Project overall would enhance shore protection for the entire area"); State by Comm'r of Transp. v. Silver, 92 N.J. 507, 515 (1983) (explaining "in the case of a partial taking, the market value of property remaining after a taking should be ascertained by a wide factual inquiry into all material facts and circumstances — both past and prospective — that would influence a buyer or seller interested in consummating a sale of the property"). On the record the parties have presented on this appeal, such would include, but need not be limited to, the benefits of shore protection, the non-exclusive nature of plaintiffs' recreation easements, members of the public having been allowed after the taking to use portions of the beach lot not previously burdened by public access, the increased size of the usable area of the beach lot, the removal of the outfall

structure, and the Association's ability to manage the number of beachgoers by the sale of beach badges.

To sum up, we affirm the dismissal of plaintiffs' inverse condemnation complaints under the entire controversy doctrine, leaving plaintiffs to their remedies in the DEP's condemnation action against the Association. We affirm the trial court's ruling that plaintiffs are entitled to separate awards for just compensation for the loss of value to their homes, if any, resulting from the DEP's exercise of eminent domain as to the beach lot owned by the Association, and its holding that plaintiffs' non-exclusive recreation easements in the beach lot do not provide them the right to exclude the public from the Association's beach. Finally, we hold the jury must be permitted to consider whether allowing public access to the Association's beach lot as part of the DEP's storm damage reduction easement resulted in a reduction in the fair market value of their properties entitling them to just compensation, based on all relevant factors in accord with Karan, 214 N.J. at 416-18.

Affirmed.