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## Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc., 879 A.2d 112 (N.J. 2005)

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**NEW JERSEY**

**Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc., 879 A.2d 112 (N.J. 2005)** (holding the public trust doctrine requires the Atlantis beachfront property to be open to the general public at a reasonable fee for services provided by the owner and approved by the Department of Environmental Protection).

Atlantis Beach Club, Inc. ("Atlantis"), owner of private beachfront property in Lower Township, New Jersey, filed suit against certain individuals and entities, including New Jersey, seeking to enjoin non-members from using Atlantis's beachfront property. Furthermore, Atlantis sought a declaration that it was not required to provide the public with access to, or use of, any portion of its property or the adjacent ocean. Raleigh Avenue Beach Association ("Association") subsequently filed an action against Atlantis and other entities claiming violation of the public trust doctrine and seeking free public access through the Atlantis property to the beach for beach related activities. The court consolidated the two actions.

The Department of Environmental Protection ("DEP"), the state entity with regulatory responsibility in the matter, alleged that Atlantis engaged in prohibited conduct related to development of the beachfront property. The DEP sought a ruling from the trial court to resolve the question of whether the beach along the Atlantic Ocean in the Diamond Beach area was subject to the "public trust doctrine" such that the public had free access to its use. The "public trust doctrine" is derived from the English common law principle that the sovereign holds all coastal land in trust for the people's use.

The trial court held that the public was entitled to a right of horizontal access to the ocean through a three-foot wide strip of dry sand that the public may utilize at no charge for the purpose of entering and exiting the area immediately adjacent to the ocean. The court also held that the public was entitled to limited vertical access to the ocean. However, the public trust doctrine does not apply to allow the DEP to regulate the use of the beach area. Finally, the court prohibited Atlantis from charging a fee or otherwise restricting the public's right to horizontal or vertical ocean access. However, Atlantis could charge a "commercially reasonable fee" to members of the public who use horizontal access to swim in the ocean and benefit from such services as lifeguards, equipment, or other facilities provided by Atlantis, contingent upon DEP approval. New Jersey and the Association appealed. Atlantis moved for clarification.

The New Jersey Superior Court, Appellate Division affirmed the lower court's order, clarifying the uses available to the public and the fees Atlantis was entitled to charge for services provided, conditioned upon DEP approval. However, the Appellate Division held that the

public may access all the dry sand area, not just the three-foot wide area as prescribed by the trial court. To this point, Atlantis petitioned for certification to the Supreme Court of New Jersey.

The court reviewed the history of the public trust doctrine, from its origins in Roman jurisprudence to its application in *Matthews v. Bay Head Improvement Ass'n*. In *Matthews*, the court articulated the implied concept from case law that reasonable access to the sea is integral to the public trust doctrine. *Matthews* further held that the public trust doctrine extends to the right to enjoy the dry sand area immediately adjacent to the sea. *Matthews* established the framework for application of the public trust doctrine to privately owned upland sand beaches. The *Matthews* approach begins with the general principle that public use of the upland sands is subject to accommodation of the interests of the owner. Additionally, the case sets forth the criteria used when considering the appropriate level of accommodation including: (1) location of the dry sand area in relation to the foreshore, (2) extent and availability of publicly owned upland sand area, (3) nature and extent of the public demand, and (4) usage of the upland sand land by the owner.

After applying the *Matthews* factors to the case at hand, the court affirmed the Appellate Division ruling.

*Roger J. Lucas*

***In re Adoption of N.J.A.C. 7:26E-1.13, 871 A.2d 711 (N.J. Super. Ct. App. Div. 2005)*** (deferring to the expertise of the New Jersey Department of Environmental Protection and upholding regulation N.J.A.C. 7:26E-1.13, making groundwater quality standards the remediation standards for cleanup of contaminated property).

Federal Pacific Electric Company ("FPEC") and the New Jersey State Chamber of Commerce ("NJCC") challenged the validity of regulation N.J.A.C. 7:26E-1.13 adopted by the New Jersey Department of Environmental Protection ("DEP") in February 2003. FPEC and NJCC appealed the adoption of the regulation to the Superior Court of New Jersey, Appellate Division. DEP adopted the regulation under the Brownfield and Contaminated Site Remediation Act ("Brownfield Act"). The regulation set minimum groundwater and surface water remediation standards for the cleanup of contaminated property under New Jersey environmental remediation laws. DEP used existing Ground Water Quality Standards ("GWQS") for the groundwater remediation standards. FPEC and NJCC challenged the DEP's use of GWQS, arguing the Brownfield Act required the DEP to promulgate new, less strict, site-specific standards.

To determine whether the DEP's regulation conformed to the Brownfield Act, the court looked to statutory language and legislative history. The Brownfield Act requires standards that minimized poten-