

DAVID SAMSON, Attorney General of
the State of New Jersey,

Plaintiff,

CITIZENS' RIGHT TO ACCESS BEACHES,
AMERICAN LITTORAL SOCIETY, and NEW
YORK/NEW JERSEY BAYKEEPER,

Plaintiffs-Intervenors,

-versus-

BAYHEAD POINT HOMEOWNERS
ASSOCIATION, INC., et al.,

Defendants.

) SUPERIOR COURT OF NEW JERSEY
) CHANCERY DIVISION -
) OCEAN COUNTY
)

) Civil Action

) Docket No. OCN-C-225-02
)

) STIPULATION OF SETTLEMENT
) AND CONSENT ORDER OF
) JUDGMENT FILED

FEB 16 2005

EDWARD M. OLES, J.S.C.

THIS MATTER having been opened to the Court jointly by Jason T. Stypinski, Esq., Deputy Attorney General, attorney for the State of New Jersey, Ben A. Montenegro, Esq., attorney for the Defendants, Bay Head Point Homeowners Association, Inc. and Nick Colavita as President of Bay Head Homeowners Association, and Carter H. Strickland, Jr., Esq., attorney for Citizens' Right to Access Beaches, American Littoral Society and New York/New Jersey Baykeeper, for a Consent Order of Judgment; and

WHEREAS, the Defendant, Bay Head Point Homeowner's Association, Inc. ("BHPHA") is the title owner of Block 179.03, Lot 9, better known as the BHPHA beach property;

WHEREAS, Dr. Richard Colavita (improperly pled as "Nick Colavita") is the current President of BHPHA;

WHEREAS, Plaintiff State of New Jersey, and Plaintiff-Intervenors, Citizens Right to Access Beaches, the American Littoral Society and New York/New Jersey Baykeeper (hereinafter "Environmental Intervenors"), filed this action to assert and define rights pursuant to the Public Trust Doctrine;

WHEREAS, this Stipulation of Settlement and Consent Order of Judgment is not intended to define, expand or diminish public trust rights that may be applicable to properties other than the BHPHA property; and

THEREFORE, the parties having consented and stipulated to the following terms and good cause having been shown,

IT IS ON THIS 16 day of Feb, 2005 ORDERED that:

1. Non-Interference with Use of the Ocean. Defendant BHPHA agrees not to interfere in any way with the use of the ocean adjacent to the BHPHA property by members of the public.
2. Non-Interference with Public Access Area. Defendant BHPHA will further agree not to interfere in any way with the use of the beach area by members of the public, eastward of a line parallel to the west property line, which shall be located nine (9) feet eastward of the westernmost portion of the existing outfall structure as more specifically identified on the survey attached hereto as Exhibit A (the "Public Access Area"). In the event water flows westward beyond the Public Access Area, the public shall be allowed to cross BHPHA's property in a north to south or south to north direction and to ingress/egress from the ocean. The public shall be allowed at all times to traverse around the rear of the outfall structure for the purpose of crossing BHPHA's beach property in a north to south or south to north direction. No other portion(s) of the private BHPHA beach property shall be burdened by the public access area.
3. Public Access Area Signs. BHPHA shall place and reasonably maintain at all times two posts without footings, one at the northern and one at the southern property line, to denote the boundary of the public access area. Each post must have a New Jersey Department of Environmental Protection ("NJDEP") public access sign that reflects the terms of the paragraph above, the language of which shall be agreed to by the parties. It is understood by the parties that the signs meet the permit by rule provision in N.J.A.C. 7:7-7.2(a)(4), so that no CAFRA individual permit application is required and no fee is necessary. The parties agree to split equally any fees and costs necessary for a survey to mark the location of the posts. The posts shall be erected on or before May 15, 2005.
4. Relinquishment of Perpendicular Access Claims with Limited Reopener. Plaintiff State and Environmental Intervenors will relinquish any claim to perpendicular, east to west access across the BHPHA's or its members' upland property and dunes to the beach, subject to continued availability of access points in the central and southern portions of Point Pleasant Beach, including Washington Avenue (Bradshaw's Beach), Elizabeth Avenue, Carter Avenue, the access point located at the northern border of the Bay Pointe Dunes property, and the Maryland Avenue street end.
5. Necessary Prerequisite Actions to Exercise Limited Reopener. Plaintiff State in the first instance, or in the alternative Environmental Intervenors, are required to assert and litigate to conclusion (including exercise of appellate rights) any claim for public access to the beach and ocean through the above-mentioned alternative

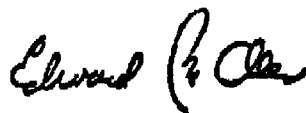
access points pursuant to the Public Trust Doctrine, as a prerequisite to voiding this agreement. Following any unsuccessful litigation seeking to keep those alternative access points open, the State or Environmental Intervenors must file any subsequent complaint against BHPHA in a court of competent jurisdiction within six (6) months of the final judicial order allowing closure of one of the alternative access points. Failure to so file an action against BHPHA within the prescribed time period shall act as a waiver of the State's or Environmental Intervenors' rights under this Paragraph and Stipulation of Settlement and will preclude any further judicial action to obtain east-west or perpendicular access to the beach across BHPHA's upland or dune property to assert rights under the Public Trust Doctrine. If the State or Environmental Intervenors file an action against BHPHA, this Stipulation and Consent Order shall be voided in full as of the date of filing, and BHPHA's position on public trust applicability shall govern until judicial resolution, in accord with Matthews v. Bay Head Imp. Auth., 95 N.J. 306 (1984).

6. States' Best Efforts to Maintain Access through Municipal Actions. The State of New Jersey will use its best efforts to require the Borough of Point Pleasant Beach to maintain and enhance the existing level of public access to the beach, including the municipally-owned Maryland Avenue Beach and the Pedestrian Access Easement between Ocean Ventures and Bay Pointe Dunes Inc. and the Borough, under which the Borough is obligated to provide public liability insurance for the easement.
7. State's Best Efforts to Improve Access at the Municipal Beach. The State will use its best efforts to require the Borough of Point Pleasant Beach to develop additional public access to the beaches throughout the borough, including development of an ADA-approved ramp or other access on the flag-shaped lot, improved parking near the municipal beach and throughout the Borough, the placement of an aesthetically appropriate bathroom facility on the flag-shaped lot or end of Maryland Avenue, and the placement of a New Jersey Department of Transportation ("NJDOT")-approved pedestrian crosswalk across Route 35 at Maryland Avenue. Such best efforts will include, at a minimum, (i) holding meetings among the Attorney General's office, the NJDEP Office of Coastal Programs, the NJDEP Green Acres/Blue Acres program, other State agencies, the Borough and Environmental Intervenors to explore methods of improving access and the public acquisition of access points in the Borough, (ii) exploring the possibility of public acquisition of access points in the Borough, (iii) taking enforcement action to open access to the fullest extent permitted by law, and (iv) coordinating any State permits needed for such actions.
8. No Opposition to Municipal Beach Improvements. Defendant BHPHA will not, as an entity, provide any opposition to the State's efforts to improve conditions at the Maryland Avenue Beach, including but not limited to development of an ADA-approved ramp or other access on the flag-shaped lot, improved parking along Beacon Lane, the placement of an aesthetically appropriate bathroom facility, and the placement of a NJDOT-approved pedestrian crosswalk across Route 35 at

Maryland Avenue. However, BHPHA members shall not relinquish any individual rights they hold as citizens of the State of New Jersey and taxpayers of the Borough of Point Pleasant.

9. Renewal of Other Access Agreements. The State will use its best efforts to renew and enhance agreements with neighboring associations for public access to both the dry sand and wet sand areas of the beach. This Settlement Agreement shall not be contingent upon the attainment of any such renewed access agreements.
10. State Access Signs. The State will post NJDEP public access signs or their equivalent at appropriate locations along Ocean Ave, Beacon Lane, and Route 35 that identify all access points in the Borough and are visible from the road, and will use its best efforts to ensure that those signs remain visible.
11. Future Use. This Agreement shall not preclude BHPHA's right to operate its property commercially (in accord with the applicable state of the then current law, statutes and regulations) and to limit access to the property upon the payment of a reasonable fee that shall not be so onerous as to constitute an unreasonable interference with public trust rights, provided that any such badge fee include the use of east-west access across BHPHA's property so that patrons do not have to pay for access elsewhere and a separate BHPHA fee.
12. Dismissal with Prejudice. All parties hereby stipulate to dismissal of all claims with prejudice, and the parties hereby release, acquit and forever discharge each and every other party herein, their heirs, successors, agents, assigns, parent corporations, subsidiaries, affiliates, insurers and all other persons, partnerships, firms, entities, distributors or corporations, whether or not herein named, from any and all actions, causes of actions, claims, demands, damages, costs, attorney's fees, penalties, punitive damages, expenses and compensation with respect to any and all claims arising out of Samson v. Bayhead Point Homeowners, et al., Docket No. OCN-C-225-02, subject to the right to void as discussed in Paragraphs 4 and 5. Nothing in this Agreement shall be construed as a waiver of the State's obligations as Trustee pursuant to the Public Trust Doctrine.

SO ORDERED:



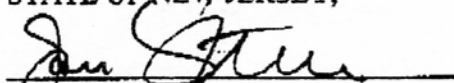
Hon. Edward M. Oles, J.S.C.

The undersigned, on behalf of and with the full understanding and agreement of their respective clients, consent to the form and the entry of this Stipulation of Settlement and Consent Order of Judgment.

STATE OF NEW JERSEY,

Dated: December 15, 2004

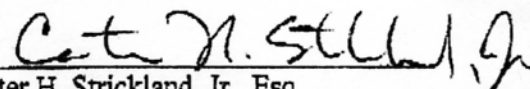
by:


Jason T. Stypinski, Esq., D.A.G.
Department of Law and Public Safety
R.J. Hughes Justice Complex
25 W. Market Street
Trenton, NJ 08625
(609) 633-2308

CITIZENS' RIGHT TO ACCESS
BEACHES, AMERICAN LITTORAL
SOCIETY AND NEW YORK/NEW
JERSEY BAYKEEPER,

Dated: December 31, 2004

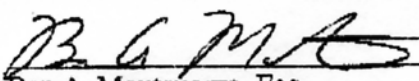
by:


Carter H. Strickland, Jr., Esq.
Rutgers Environmental Law Clinic
Newark, NJ 07102
(973) 353-5695

BAY HEAD POINT HOMEOWNERS
ASSOCIATION, INC. and NICK
COTTELLA as President of the Bay Head
Point Homeowners Association,

Dated: December 17, 2004

by:


Ben A. Montenegro, Esq.
Wilbert, Montenegro & Thompson
531 Burnt Tavern Road
Brick, NJ
(732) 295-4500