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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,	ADMINISTRATIVE ACTION
Petitioner,	FINAL DECISION AND ORDER
v.	OAL DKT NO.: ECE 13655-23
OCEAN GROVE CAMP MEETING ASSOCIATION,	AGENCY DKT. NO. PEA230002, 1334-01-1002.5
Respondent.	

This Final Decision addresses the appeal of an Administrative Order (AO) issued on October 12, 2023, by the New Jersey Department of Environmental Protection, Division of Land Resource Protection (Department) to the Ocean Grove Camp Meeting Association (OGCMA), alleging violation of OGCMA's August 16, 2022, Coastal Area Facility Review Act (CAFRA) Permit, Number 1334-01-1002.5, LUP 220001. OGCMA's permit, like all CAFRA permits for beach and dune maintenance issued by the Department, prohibits interference with the public's right to access and use the dry sand beach area covered by the permit. Upon finding that OGCMA failed to comply with this condition in the summer of 2023 by using chain and pad lock barriers to prevent public access to the beach between the hours of 9:00 a.m. and 12:00 noon on Sundays from May through September, the Department directed OGCMA to cease such conduct. OGCMA refused, prompting the Department to enforce OGCMA's public access obligations via the AO, which OGCMA appealed.

On June 26, 2025, Administrative Law Judge Tricia M. Caliguire (ALJ) issued an Initial Decision finding that, despite these beach closures, OGCMA had complied with its public access obligations as a private property owner. The Initial Decision dismissed the AO and ordered that the Department revise the permit to allow OGCMA "to restrict public access to the dry sand beach area covered by the Permit between the hours of 9:00 a.m. and noon on Sundays between Memorial Day weekend and Labor Day."

I disagree with the Initial Decision. For centuries, the public trust doctrine has ensured the right of New Jerseyans to freely access tidal waters, which unquestionably includes the right to freely access the dry sand beach of adjacent shorelines. These rights, which stemmed from historic Roman jurisprudence and extended to English law, became common to all upon New Jersey's colonization by Britain in 1664, were later vested in the people of the State of New Jersey in 1787 following the American Revolution, further recognized by the New Jersey courts in 1821, abided by since, and most recently, were expanded by the New Jersey Legislature in 2019 under the Public Access Law. In short, State law requires that Department permittees, including OGCMA, provide public access to privately-owned beaches, and the Department is duty-bound to protect public access at every juncture. Furthermore, OGCMA has for decades accepted and enjoyed the benefit of substantial State investment in the nourishment of its privately-owned beach, which publicly funded projects are explicitly conditioned on the provision of public access.

In view of these rights and obligations, OGCMA's summer Sunday morning beach closures are an unjustifiable violation of the public's right to access. Accordingly, and for the additional reasons set forth herein, I REVERSE the Initial Decision and UPHOLD the Administrative Order.

BACKGROUND

Factual and Procedural History

OGCMA is a private, not-for-profit corporation that has owned the entire Atlantic Ocean beachfront in Neptune Township, Monmouth County (Block 101, Lots 5, 7, 8 and 12) for over 150 years. Purchased pursuant to Acts of the New Jersey State Legislature in 1870 and 1887, the beach runs north to south along the Atlantic Ocean for 3,221 feet (0.61 miles). P-7, at 970. It adjoins and is part of the unincorporated community of Ocean Grove, which property OGCMA also owns. OGCMA's mission is "[t]o provide opportunities for spiritual birth, growth and renewal through worship, education, culture and recreation in a Christian seaside setting." Testimony of Nancy Ann Gillian, February 4, 2025, 26:3-5. To that end, OGCMA provides year-round religious and recreational programming in Ocean Grove, which includes church services, bible study, and musical performances. See generally Testimony of Nancy Ann Gillian, February 4, 2025, 94; Testimony of Richard E. Deetz, February 5, 2025, 19-22; Testimony of Gina Vintalore, February 5, 2025, 103-104.

Although privately owned, the Ocean Grove beach operates very similarly to a public beach. It uses a badge system which enables the public to access the beach during daytime hours in the summer months, and badge fees cover the costs of amenities such as lifeguards and restrooms. The beach has also benefitted from numerous public works projects over the years, including public funding for beach nourishment, beach replenishment following Superstorm Sandy, construction of the town's boardwalk and pier, and restoration of stormwater management basins. NJDEP's Exceptions to Initial Decision, 5, citing testimony of Colleen Keller; P-4; P-5; P-9; P-10; P-11. However, OGCMA has, for the entirety of its ownership, closed the Ocean Grove

beach on Sundays—most recently, from 9:00 a.m. to 12:00 noon on Sundays from May to September (Summer Sundays)—as part of its long-standing observation of the Christian Sabbath.[1]

In 2022, OGCMA applied for, and received, CAFRA Individual Permit Number 1334-01-102.5, LUP22001 authorizing beach and dune maintenance activities, as well as the temporary placement of lifeguard storage boxes. As part of the permitting process, applicants are required to disclose existing and proposed access to lands and waters subject to public trust rights. OGCMA's permit, like all beach and dune maintenance permits issued by the Department under CAFRA, contains a condition which prohibits interference with the public's right to access and use the dry sand beach area. Specifically, it states that, "[t]he Permittee cannot limit vertical or horizontal public access to any dry sand beach area covered under this permit nor interfere with the public's right to free use of the dry sand for intermittent recreational purposes connected with the ocean and wet sand." P-8, at 980. Although the permit application required OGCMA to address public access, OGCMA did not disclose its practice of closing the beach on Summer Sundays and, instead, represented that "[t]he entire beach along the shoreline of Ocean Grove is . . . open to the public, with beach badges, during daytime hours through the summer months." P-6, at 781.

In the summer of 2023, the Department began to receive complaints alleging that the Ocean Grove beach was closed on Sunday mornings. On August 7, August 27, and September 3, 2023,

[1] For many years, OGCMA closed the beach and all roads in Ocean Grove all day on Sundays. Initial Decision, 5, citing R-16 and testimony of Nancy Ann Gillian. This practice began to change around 1980, following the decision in State v. Celmer, 80 N.J. 405 (1979). In Celmer, which addressed a drunk driving conviction, the New Jersey Supreme Court held that the legislation through which the State granted various municipal powers to OGCMA violated the First and Fourteenth Amendments of the United States Constitution and Article I, paragraph 4 of the New Jersey Constitution by ceding governmental powers to a religious organization. Celmer did not specifically address OGCMA's management of the beach, but the language the Court used was broad: "Methodist ministers and laymen have been granted responsibility for the construction and maintenance of public streets, walks, parks, and sewers." Id. at 416 (emphasis in original). "In effect, the Legislature has decreed that in Ocean Grove the Church shall be the State and the State shall be the Church." Id. at 417. "The Ocean Grove Camp Meeting Association of The United Methodist Church can be delegated neither the power to manage public highways or other public property . . . ." Id. Thereafter, the municipal functions of OGCMA were transferred to Neptune Township.

the Department conducted compliance inspections, which revealed "the use of chain and pad lock barriers to deter public access to the beach during daylight hours." P-21, at 1. The Department found that these actions violated OGCMA's CAFRA permit, which prohibits interfering with the public's right of access to the dry sand beach area.[2] Following a warning letter dated August 10, 2023 (P-21), and a Notice of Violation dated September 14, 2023 (P-12), the Department issued an AO on October 12, 2023, which is the subject of this appeal. The AO requires OGCMA to immediately comply with its CAFRA permit, and "cease the use of chain and pad lock barriers which prevents public access to the site's beach and refrain in the future from reinstalling such barriers or taking other actions in conflict with Special Condition #13." P-15, at 3. OGCMA argues that, as a private property owner, it is not required to provide unrestricted access to its beach, and that the Summer Sunday closures are protected under its First Amendment right of free religious expression. It also claims that the Department is selectively enforcing Special Condition #13 in this instance.

On November 14, 2023, OGCMA timely requested an administrative hearing to challenge the AO. R-6. The Department granted the request on November 17, 2023, and transmitted the matter to the Office of Administrative Law (OAL), where it was filed on December 5, 2023. On April 12, 2024, OGCMA filed an application for emergency relief, which I denied on May 21, 2024. The denial was upheld by the Appellate Division on June 13, 2024.

[2] I note that the issue in this case is limited only to public access to the dry sand beach in Ocean Grove, and OGCMA's violation of Special Condition #13 of its CAFRA permit requiring same, in accordance with the public trust doctrine and the Public Access Law. OGCMA argued, and the ALJ agreed, that OGCMA did not restrict public access to the wet sand below the mean high water line because the beach was accessible at all times from adjoining beaches in Asbury Park and Bradley Beach, and that "access is never blocked to fishermen or people using surf or body boards, as they are headed to the water and beach beyond the mean high water line." Initial Decision, 6. None of these facts are relevant to consideration of how OGCMA manages the dry sand beach in Ocean Grove. And while it may be true that fishers and persons seeking to use the water were always allowed past OGCMA's Summer Sunday barriers, it should be noted that the CAFRA regulations prohibit activities that even have "the effect of discouraging . . . the exercise of public trust rights." N.J.A.C. 7:7-16.9(s). The use of chain and pad lock barriers would certainly fall into this category.

Partial Summary Decision and Initial Decision

On October 30, 2024, the Department moved for Summary Decision, which the ALJ granted in part on January 17, 2025. Specifically, the ALJ found that OGCMA could not challenge Special Condition #13 of the permit, as it had failed to timely appeal following the permit's issuance on August 16, 2022. The ALJ thus reinforced that the instant appeal is solely of the AO. On January 27, 2025, the Department requested interlocutory review, which I denied on January 31, 2025.

On June 26, 2025, following a four-day hearing in February 2025, the ALJ issued an Initial Decision in favor of OGCMA. In the Initial Decision, the ALJ made findings of fact regarding OGCMA's Summer Sunday closures, the AO, public demand for use of the Ocean Grove beach, and OGCMA's religious beliefs. She found that the Department had not met its burden of "proving by a preponderance of the credible evidence that OGCMA violated CAFRA and the Public Access Statue, and the associated regulations, and that its practice of closing the beach for three hours on Summer Sundays is unreasonable under the public trust doctrine." Applying the test set forth in Matthews v. Bay Head Improvement Association, 95 N.J. 306 (1984), the ALJ found that the access provided by OGCMA to its beach was reasonable, ordered the AO to be rescinded, and that OGCMA's CAFRA permit be amended to specifically allow the Summer Sunday closures. Having ruled in favor of OGCMA on the basis of Matthews, the Initial Decision did not address OGCMA's Free Exercise claims or claims of selective enforcement by the Department.

Exceptions

On July 18, 2025, the Department filed Exceptions to the Initial Decision, setting forth six objections to the ALJ's factual and legal conclusions. Specifically, the Department took issue with the Initial Decision's apparent premise that the Department should have been aware of the Summer

Sunday closures in Ocean Grove at the time it issued OGCMA's CAFRA permit, such that the Department should have considered the opening of the Ocean Grove beach on Summer Sundays as "additional" access under the Public Access Law. The Department also objected to the ALJ's determination that the public access provided by OGCMA was reasonable and asserted that the right to exclude the public in violation of the public trust doctrine is not a right inherent in beach or beachfront property ownership. The Department further argued that public demand for access to the Ocean Grove beach need not be demonstrated with the specificity suggested by the ALJ; that OGCMA violates the public trust doctrine by providing access to the beach for fishing, surfing, and body boarding while denying it for swimming, boating, and recreational beach use; and that the Initial Decision was conclusory and placed too much weight on OGCMA's private interests.

In response, OGCMA defended the findings that its Summer Sunday closures were "open and notorious" and that it had provided reasonable public access as that concept is construed under Matthews. OGCMA further argued that the "Public Trust Doctrine contains important protections for private property owners of beachfront property," and that the Public Access Law should be interpreted to avoid any departure from the Matthews test.

DISCUSSION

The Initial Decision's Findings of Fact

In rendering a Final Decision, "[t]he agency head may reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony, but shall clearly state the reasons for so doing." N.J.A.C. 1:1-18.6(b). "The order or final decision rejecting or modifying the initial decision shall state in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence at hearing and interpretation of law upon which it is based and precise changes in result or disposition caused

by the rejection or modification." Ibid. "An order or final decision rejecting or modifying the findings of fact in an initial decision shall be based upon substantial evidence in the record and shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent and credible evidence in the record." N.J.A.C. 1:1-18.6(d); see also N.J.S.A. 52:14B-10(c). Furthermore, "[t]he agency head may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record." N.J.A.C. 1:1-18.6(c); see also N.J.S.A. 52:14B-10(c).

In this case, the Initial Decision found that "[t]he witnesses for both parties gave credible testimony and raised no material disputes as to the facts . . . ." Initial Decision, 16. I agree. Despite this, the Initial Decision included some findings of fact that must be corrected. These are addressed below.

First:

> The OGCMA's mission to operate a seasonal Christian resort and the attendant Sunday beach closings (which began in 1869) was open and notorious and the record includes no explanation as to why previous NJDEP personnel were not aware of and/or did not take enforcement action against the Summer Sunday closings given the numerous times that the NJDEP was involved with permits related to the Ocean Grove beach. The NJDEP permitting staff did not address or raise compliance issues with public access requirements when reviewing the OGCMA's permit applications in 2011, 2017, and again in 2021–2022.
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> [Initial Decision, 20.]

I MODIFY this finding of fact to the extent that it is based on the premise, which is not supported by the record, that the Department was or should have been aware of OGCMA's Summer Sunday closures. As an initial matter, labeling the Summer Sunday closures "open and notorious" imports

a legal concept from the property law doctrine of adverse possession, under which conduct of the possessor that puts the rightful owner on notice of their presence in the ordinary course of events can defeat an earlier (and otherwise superior) claim of ownership. But that adverse possession concept is inapplicable under the separate public trust doctrine, which is intended to vindicate a State interest—on behalf of the public at large—that cannot be extinguished by a competing private use.

Nonetheless, the record does not support the ALJ's underlying finding of fact. While OGCMA was not concealing its long-standing conduct from the public (see, e.g. OGCMA's Reply to Petitioner's Exceptions to Initial Decision, 6), the record indicates that OGCMA did not disclose the Summer Sunday closures to the Department in its permit application materials. Rather, OGCMA explicitly stated in documents accompanying its permit application that "[t]he entire beach along the shoreline of Ocean Grove is open to the public when it is off beach season and also open to the public, with beach badges, during daytime hours through the summer months." P-6, at 781. In the normal course of such CAFRA permit requests, the Department does not seek to independently verify an applicant's affirmative representations, nor does the Department routinely investigate an applicant's compliance with its representations on the Department's own initiative absent complaints from the public. See Initial Decision, 20; NJDEP's Exceptions to Initial Decision, 3. OGCMA certified that its permit application was "true, accurate, and complete." But it was not.[3] By OGCMA's own admission, its practice of closing the beach for three hours on Summer Sundays was "long-standing." Even if some members of the public were aware of OGCMA's long-standing beach closures, the Department was not made aware of OGCMA's conduct until it received complaints in 2023.

[3] Although not charged in this case, I note that an omission in a CAFRA permit application could constitute major misconduct under N.J.A.C. 7:7-29.6.

Accordingly, I MODIFY this finding of fact to state that the Summer Sunday closures were not known to the Department until the agency received public complaints beginning in 2023.

Second:

> For a practical reason—the absence of lifeguards on the Ocean Grove beach—more people were documented on the beaches in Asbury Park and Bradley Beach than in Ocean Grove on Summer Sunday mornings.
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> [Initial Decision, 22.]

I MODIFY this finding of fact to the extent that it is not supported by the record. More people were documented on the beaches in Asbury Park and Bradley Beach than in Ocean Grove between 8:16 and 9:18 AM on Sunday, August 27, 2023, and between 8:50 and 9:13 AM on Sunday, September 3, 2023, during the Summer Sunday closures. Testimony of Michael Lutz, February 3, 2025, 153:13-156:16, 159:5-160:15; P-16; P-17. That the reason for this was the absence of lifeguards on the Ocean Grove beach is speculation offered by a single witness. While there is no direct evidence of the reason or reasons large numbers of people chose to be on the Asbury Park and Bradley Beach beaches but not Ocean Grove at these times, it cannot be ignored that all public access points to the beach from the Ocean Grove boardwalk were physically closed at these times. See Testimony of Nancy Ann Gillian, February 4, 2025, 82:8-13 ("I'm not going to answer that because I can't verify it. . . . If they've paid to get onto Asbury Beach or to Bradley Beach and it's a guarded beach, so, there's no reason for them to come to unguarded beach."). Accordingly, I MODIFY this finding of fact to limit it to the documented fact, supported by photographic evidence, that more people were on the beaches in Asbury Park and Bradley Beach than in Ocean Grove on two Sunday mornings during the Summer Sunday closures.

Third:

> The characteristic that distinguishes Ocean Grove from all other New Jersey beach towns is that the beach in Ocean Grove is closed on Summer Sunday mornings because of the sincere belief of the members of the OGCMA that the Sabbath is to be kept sacred.
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> [Initial Decision, 23.]

I MODIFY this finding of fact because it overlooks numerous reasons supported by the record why Ocean Grove is different from other beach towns. To name just a few: Ocean Grove has been closely associated with OGCMA since its founding. Its residents lease, rather than own, property. The entirety of Ocean Grove is listed on the National Historic Register. Ocean Grove has more Victorian houses than any other community in America. The massive Great Auditorium is over a century old and is separately listed on the National Historic Register. The boardwalk lacks commercial businesses or amusements. Ocean Grove is less accessible by automobiles than other New Jersey beach towns insofar as Ocean Avenue, a public road that runs parallel to the Atlantic Ocean and contiguously through several towns north and south of Ocean Grove, is disrupted by dead ends at the northern and southern ends of Ocean Grove, meaning that visitors must make a special effort to come to Ocean Grove. There are crosses on the beach. Religious programing fills the day, including a no-fee youth program, bible studies, retreats, concerts, and conferences, including off-season conferences that fill local bed and breakfasts. See generally Testimony of Nancy Ann Gillian, February 4, 2025, 94; Testimony of Richard E. Deetz, February 5, 2025, 19-22; Testimony of Gina Vintalore, February 5, 2025, 103-104.

That OGCMA restricts public access to the beach on Summer Sunday mornings is just one of many distinctive characteristics of Ocean Grove. Accordingly, I MODIFY this finding of fact to state that Ocean Grove is distinct from other New Jersey beach towns for many reasons.

Fourth:

> By certification, the NJDEP concedes that it will permit private beach owners, including for-profit entities, to close their beaches to the general public during the summer for short periods on weekends, and that such closings are not addressed in the regulations. Certification of Colleen Keller in Support of NJDEP's Summation (April 22, 2025), at 6.
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> [Initial Decision, 23.]

I MODIFY this finding of fact because it mischaracterizes information in the record and incorrectly implies that the Department allows the appropriation of beaches for private use. The record does not reflect that the Department necessarily "permits" any beach owner to close their beach(es). The Keller Certification clearly states: "The CZM rules do not address temporary, limited beach closures for weddings at beachfront hotels." Certification of Colleen Keller in Support of NJDEP's Summation (April 22, 2025), at 6, paragraph 28. Further:

> NJDEP does not require unfettered public access across public/private beachfront and can allow some temporary closures on a case by case/temporary basis if reasonable. For example, if a public safety issue is present, the Department may allow for a temporary closure, assuming it is reasonable under the Public Trust Doctrine and limited in time and scope. Examples of a public safety issue can include such things as heavy erosion that has created a cliffed beach or an area that is unsafe for access, necessary municipal police security, public safety or homeland security issue and a partial closure on a beach in order to protect [threatened and endangered] species and their habitat. The Department of Environmental Protection may restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species. However, we request a limited closure area to the issue at hand and limited timeframe of the closure to address the issue and then reopen.
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> [Certification of Colleen Keller in Support of NJDEP's Summation (April 22, 2025), at 6, paragraph 26.]

Thus, where closures are allowed to protect public safety and threatened and endangered species, both are short-term and serve a public purpose that is consistent with public trust rights. Specifically, the record reflects that the Department seeks to limit such closures in time and scope to the minimum necessary for public safety or resource protection purposes. With respect to private events, the Department does not regulate or otherwise "allow" such closures; however, particular closures for this purpose would vary in their timing, location, and duration. The Summer Sunday closures, by contrast, consistently prohibit public access to the entire beach in Neptune Township, span thousands of feet of beach, go on for hours at a time, and recur regularly every week, amounting in the aggregate to a long-term closure that serves only the private interests of one specific private party, OGCMA. It is wholly incomparable to the temporary closures for private events described in the Keller certification. Accordingly, I MODIFY this finding of fact to state that the Department may allow limited closures for reasons of public safety or species protection, and does not regulate ad hoc closures for private events.

Legal Analysis

Public Access

In New Jersey, "[t]he public has longstanding and inviolable rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines for navigation, commerce, and recreational uses, including, but not limited to, bathing, swimming, fishing, and other shore-related activities." N.J.S.A. 13:1D-150(a). Stemming from Roman jurisprudence, maintained through English common law, and then vested in the States, the public trust doctrine is a public property right that the State has held since New Jersey's inception. Ibid.; Arnold v. Mundy, 6 N.J.L. 1, 84 (1821). Initially encompassing "the land flowed by tidal water, which extends to the mean high water mark," New Jersey courts have "molded and extended" this doctrine to

encompass public access to dry sand areas, on both public and privately-owned beaches. Matthews, 95 N.J. at 316-24. Most recently, the New Jersey Legislature passed the Public Access Law, N.J.S.A. 13:1D-150 to -156, which requires the Department to "make all tidal waters and their adjacent shorelines available to the public to the greatest extent practicable," and to consider the expansion of public access as a condition to the approval of certain CAFRA permits, including the underlying permit at issue in this case. N.J.S.A. 13:1D-150(e), -153(a).

In this case, the Initial Decision found that, despite its closures of the Ocean Grove beach on Summer Sundays, "OGCMA has complied with its obligations as a private landowner." Relying heavily on Matthews, which 1984 case involved the public access required of a private beach owner before enactment of the 2019 Public Access Law, the ALJ considered the "[l]ocation of the dry sand area in relation to the foreshore, extent and availability of publicly-owned upland sand area, nature and extent of the public demand, and usage of the upland sand by the owner" (Matthews, 95 N.J. at 326) and found that the public access provided by OGCMA was reasonable. However, I find that the Initial Decision's sole reliance on Matthews is incorrect, and that proper application of the public trust doctrine, as codified by the Public Access Law, requires that the Ocean Grove beach be open to the public on Summer Sunday mornings.

The Public Trust Doctrine

The public trust doctrine is a common law doctrine with roots in Roman jurisprudence and English common law, which provides that a state holds "in trust for the people" ownership, dominion, and sovereignty over certain natural resources including tidally flowed lands extending to the mean high water mark. Susko v. Borough of Belmar, 458 N.J. Super. 583, 590 (App. Div. 2019); Matthews, 95 N.J. at 316. Courts and the Legislature alike have recognized that the public trust doctrine "is not fixed or static" but instead is "molded and extended to meet changing

conditions and the needs of the public it was created to benefit." N.J.S.A. 13:1D-150(c); Matthews, 95 N.J. at 326. In New Jersey, it has long been recognized that this right encompasses public use of the dry sand beach above the mean high water line.

The public trust doctrine can be traced back to the sixth century Code of Justinian, which declares that: "By the law of nature these things are common to mankind—the air, running water, the sea, and consequently the shores of the sea." The Institutes of Justinian, Lib. II, Tit. I, § 1, at 90 (Thomas Collett Sandars trans., Longmans, Green and Co., 15th ed. 1922). "No one therefore is forbidden to approach the seashore, provided that he respects habitations, monuments, and buildings, which are not, like the sea, subject only to the law of nations." Ibid. This broad principle—that certain territorial areas are common by virtue of natural law—then, as today, presented the question of how to balance the public right against any private proprietary rights that may arise through individual investment or initiative. "[A]ny person is at liberty to place on [the sea shore] a cottage, to which he may retreat, or to dry his nets there, and haul them from the sea; for the shore may be said to be the property of no man, but are subject to the same law as the sea itself, and the ground or sand beneath it." Id. at Lib. II, Tit. I, § 15, at 93. The core principle of the public trust doctrine is that natural law places certain areas in the realm of common property, subject to certain permanent public rights, including the right of access, that cannot be infringed by any proprietary rights of individuals except in limited circumstances.

The Code of Justinian influenced both the civil law and English common law, and while in practice the boundaries between public and proprietary rights fluctuated over time, the public right remained superior due to its fundamental basis in natural law and natural right. This was acknowledged in 1215 by the Magna Carta, which articulated and restored to the people rights that

they had always possessed under common law. See Arnold, 6 N.J.L. at 85.[4] In New Jersey, the seminal case of Arnold v. Mundy established the public trust doctrine as State common law in 1821 and confirmed the natural right of all people to use common property held in trust by the sovereign. Id. at 72-73. Arnold makes the key distinction, found in the Code of Justinian and civil law, between private or public property and common property "destined for the common use and immediate enjoyment of every individual citizen, according to his necessity, being the immediate gift of nature to all men" where "title, strictly speaking, is in the sovereign, yet the use is common to all the people." Id. at 71-72. This common property includes "the air, the sea, the fish, and the wild beasts." Ibid. (citing Vattel lib. i, 20.2). The foundation of this broad and far-reaching right was equally broad and far reaching as the Court found it in "the law of nature, which is the only true foundation of all the social rights," as well as "the civil law, which formerly governed almost the whole civilized world, and which is still the foundation of the polity of almost every nation in Europe" and the "common law of England, of which our ancestors boasted." Id. at 76.

In Arnold, the Court declared that the sovereign power "cannot, consistently with the principles of the law of nature and the constitution of a well ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right," but that the legislature as "rightful representative" may exercise the power of "disposition and regulation" that may make improvements at public expense "for the common benefit of every individual citizen" or "may authorize others to do it by their own labour, and at their own expense, giving

[4] The superiority of the public right is also clearly stated in Spanish law, which although a civil law jurisdiction consistently maintained the "great distinction of things in this world" between common property that "do[es] not belong to any one and cannot be included in his possessions" and individual ownership. Las Siete Partidas Part. III, Tit. XXVIII, Law II at 820 (Samuel Parsons Scott trans., University of Pennsylvania Press, 2001). It was recognized in accord with the Code of Justinian that "every man can use the sea and its shore for fishing or for navigation, and for doing everything there which he thinks may be to his advantage." Id. at Law III. This makes clear that the universal public claim to the shore was viewed as inherent in natural law creating a right for all people.

them reasonable tolls, rents, profits, or exclusive and temporary enjoyments." Id. at 78. Thus, the Court established the fundamental principle of common property with a common right of use that could not be divested, but the Court did not further explicate the interaction between private and public rights or the circumstances under which "exclusive and temporary enjoyments" might be granted to a private individual without infringing on the public right.

Arnold and the public trust doctrine were later confirmed by the U.S. Supreme Court, which also found that public trust rights "follow[] necessarily from the public character of [] property, being held by the whole people for purposes in which the whole people are interested." Ill. C. R. Co. v. Ill., 146 U.S. 387, 456 (1892). The Court analogized any abdication of the public right as similar to an abdication of police powers, which "may for a limited period be delegated to a municipality or other body, but there always remains with the State the right to revoke those powers and exercise them in a more direct manner, and one more conformable to its wishes" and this applies as well to "property of a special character" invested with the public interest. Id. at 453-54. From this it is clear that even the legislative power, while representative of the people in a democracy, does not possess the ability to divest certain parts of the State's territory of the people's common right, such as the public trust right to beach access. See ibid. To the extent the natural right to these areas is infringed upon by an incompatible private right, any such grant would be void or revocable. Id. at 455 ("Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time").[5]

While Arnold was primarily concerned with the right to oysters in a riverbed, after Arnold there began a fundamental shift in the use of the coasts that established a new common custom of recreation. "Whereas the coast was 'synonymous with dangerous wilderness' in the seventeenth

[5] The Supreme Court recognized only very limited exceptions, in the form of the private development of commercial infrastructure and cases where there was no public interest in the land affected. Ill. C. R. Co. v. Ill., 146 U.S. at 455.

and eighteenth centuries, Europeans and Americans began to view the beach as a salutary escape from industrial urban centers during the mid-to-late-nineteenth century" and this consequently led to "the modern notion of a recreational beach." Koons v. Att'y Gen. N.J., 156 F.4th 210, 256 (3d Cir. 2025). Even when this was not yet an established custom, but a new "fashion," common law commentators argued that "[t]he right of bathing would seem to be nothing more than a right of way down to the shore, along the shore, and into the sea," which is not meaningfully different than the "general Common law right of fishing on the shore" that already does not allow "exclusive appropriation of the soil of the shore." Robert Gream Hall, Hall's Essay on the Rights of the Crown and the Privileges of the Subject in the Sea Shores of the Realms, 181-82 (Stevens & Haynes, 2nd ed. 1875). Though public access for recreation had not been explicitly declared an aspect of the common right in the 19th century, this did not mean it was a new invention of the 20th century. Arnold already declared the coast common property held in trust and the growth of oceanfront recreation fit neatly into the existing, recognized public right.

Accordingly, when faced with the issue, New Jersey courts readily found that the public right naturally extended to recreational enjoyment of dry sand beaches in the summer season. In Borough of Neptune City v. Borough of Avon-By-The-Sea, the New Jersey Supreme Court had "no difficulty finding that, in this latter half of the twentieth century, the public rights in tidal lands are not limited to the ancient prerogatives of navigation and fishing, but extend as well to recreational uses, including bathing, swimming and other shore activities" because "[t]he public trust doctrine, like all common law principles, should not be considered fixed or static, but should be molded and extended to meet changing conditions and needs of the public it was created to benefit." 61 N.J. 296, 309 (1972). Indeed, the fact that this explication appeared a hundred years after the appearance of the seaside resort might be attributed to the fact that the New Jersey shore

had been "free to all comers," but the volume of beachgoers had increased with the "advent of automobile traffic and the ever-increasing number of vacationers" leading to conflict and litigation. Id. at 300. Further, the Court opined that any prior conveyances of common property that did not adequately maintain the public right could "at least [be] impliedly impressed with certain obligations on the grantee to use the conveyed lands only consistently with the public rights therein." Id. at 308. Because Avon arose in the context of a public municipal beach, the Court did not reach the question of public trust rights for recreation on privately-owned beaches. However, the Court set the stage for cases to come when it observed that "the conveyance of tide-flowed lands bordered by an ocean dry sand area in private ownership to the owner thereof may well be subject to the right of the public to use the ocean waters." Ibid.

In Van Ness v. Borough of Deal, the Court next considered whether a property owner could limit public access to the dry sand area to only what is required to reach the wet sands. The Court's answer was no. Since the beach "is subject to the Public Trust Doctrine . . . all have the right to use and enjoy it" and the owner cannot "allocate to the public on a limited basis, rights which, under the doctrine, the public inherently has in full." Van Ness, 78 N.J. 174, 180 (1978). Nor did the Court view past improvement by the municipal owner as grounds to limit access because "natural, or man-made, the beach is an adjunct to ocean swimming and bathing and is subject to the Public Trust Doctrine." Ibid. The ruling did "not create a public right where none existed previously" but "merely g[a]ve[] recognition to the existence of such a right." Id. at 180-81. For this reason, the Court also expressed skepticism that requiring public access to the dry sands could reasonably be argued to constitute a taking. Ibid. While Avon and Van Ness are landmark cases in their own right, they simply continued the straightforward application of the common law right of public access that Arnold recognized had always existed in New Jersey.

As Avon predicted, the courts were eventually called upon to extend enforcement of the public trust doctrine to quasi-public and private beach property in Matthews v. Bay Head Improvement Association. And the Court saw "no reason why the rights under the public trust doctrine to use of the upland dry sand area should be limited to municipally owned property," which included the right to both pass over property to access the ocean waters and to use the beach for "intermittent periods of rest and relaxation." Matthews, 95 N.J. at 325. However, because the Court did not view the right to the upland dry sand area as "identical" to a municipal beach, it reasoned that the determination of use for privately-owned upland "will depend on the circumstances" bearing on what is "reasonably necessary." Id. at 325-36. The judicial test that Matthews created essentially analyzed supply and demand for a particular area as the "answer to a modern social problem" of scarce recreational resources. Ibid.

Ultimately, Matthews applied the public right to non-municipal beaches, reaffirmed that this public right included both passage to the sea as well as the use of the dry sands, and also gave judges a means to make determinations related to beach scarcity consistent with safeguarding the common law right. The Court recognized its own past role in establishing "a statewide policy of encouraging . . . greater access to ocean beaches for recreational purposes" through the common law, but this was in tandem with statutes and Department regulations responding to the social problem of beach scarcity as well. Lusardi v. Curtis Point Property Owners Asso., 86 N.J. 217, 227-228 (1981). The Court later made use of the Matthews test for a private beach club, noting that "Matthews clearly articulates the concept already implicit in our case law that reasonable access to the sea is integral to the public trust doctrine" and that "dry sand ancillary to use of the ocean for recreational purposes is also implicit in the rights that belong to the public under the

doctrine." Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc., 185 N.J. 40, 53 (2005); see also Bubis v. Kassin, 404 N.J. Super. 105 (App. Div. 2008).

Thus, the public trust doctrine unquestionably applies to privately-owned beaches, such as the beach at issue in this case, and includes the use of the dry sand area. However, it is also important to discuss public funding. As Arnold explains, proprietary grants that include a right to exclusive use can be justified consistent with the public trust doctrine if private funding and labor are used to improve the common property in lieu of public money. Arnold, 6 N.J.L. at 13. These grants are interpreted strictly, where "the right, liberty, privilege and franchise . . . to appropriate the lands to [] exclusive private uses" was "only for the purposes of [the specific improved area]" and does not attach to the general grant area unless specifically stated. Polhemus v. Bateman, 60 N.J.L. 163, 167-168 (Ct. Err. & App. 1897). However, in the mid-20th century, when public funding went to combat the problem of beach erosion and a proprietary grantee from the 19th century accepted this public funding, the Court found that the State and the grantee became partners in a joint enterprise, owing to each other the benefits of that partnership. State v. Atlantic City, 23 N.J. 337, 339-340 (1957).

The situation in Ocean Grove is much the same. OGCMA has routinely accepted the benefit of substantial public funding to maintain and improve its beach, and the people of New Jersey and of the United States have invested significant public resources in the beach, including by supplying funding for beach nourishment, beach replenishment following Superstorm Sandy, construction of the town's boardwalk and pier, and restoration of stormwater management basins. NJDEP's Exceptions to Initial Decision, 5, citing testimony of Colleen Keller; P-4; P-5; P-9; P-10; P-11. Not only do these expenditures of public funds undermine any historic justification for excluding the public from the Ocean Grove beach, but further, the various agreements by which

OGCMA accepted the benefit of this funding make public access an explicit requirement. Pursuant to those state aid agreements, the entire beach is subject to easements that provide the right of public access. And more specifically, OGCMA granted perpetual easements to the Department that include "the right of public use and access" to the entire beach and oceanfront. P-11, at 67; see also P-9, at 2, 10, 24, and 38; and P-10, at 40, 41, and 49. The state aid agreements and easements point to the same conclusion as the common law itself: OGCMA has no special proprietary right as a private beach owner to infringe on the fundamental public right of access to the dry sand area in Ocean Grove during the summer beach season.

The Public Access Law

In 2019, the New Jersey Legislature enacted the Public Access Law, N.J.S.A. 13:1D-150 to -156, creating an independent basis for public access requirements distinct from the common law. The Law codifies a general statewide policy of requiring greater public access to tidal waters and adjacent shorelines, by applying existing common law principles which already established that the public right of access extends to upland beach areas used for recreation. It enshrines the common law principles that "[t]he public has longstanding and inviolable rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines for . . . recreational uses, including, but not limited to, bathing, swimming, fishing, and other shore-related activities"; that "[i]n 1821, the seminal court case of Arnold v. Mundy was decided, outlining the history of the public trust doctrine and applying it to tidally flowed lands in New Jersey"; and that "courts have also recognized that the public trust doctrine is not fixed or static; rather, it is to be molded and extended to meet changing conditions and the needs of the public it was created to benefit." N.J.S.A. 13:1D-150.

The Public Access Law also establishes within the Department "the authority and the duty to protect the public's right of access . . . to the greatest extent practicable . . . [and] ensure that the expenditure of public moneys by the department maximizes public use and access where public investment is made." Id. The statute also requires that "any public funding issued by the department . . . is consistent with the public trust doctrine" and that, as a component of certain permitting decisions, the Department review existing public access and, after considering public demand, "require as a condition of the permit or other approval that additional public access to the tidal waters and adjacent shorelines consistent with the public trust doctrine be provided." N.J.S.A. 13:1D-151, -153.

The language of the Public Access Law is unambiguous and should not be read to incorporate the Matthews test. See Moran v. N.J. Dep't of Env't Prot., 2025 N.J. Super. Unpub. LEXIS 1579, *8 (App. Div. 2025) ("The legislature's choice to create specific criteria for public access determinations, coupled with its silence regarding Matthews, demonstrates its clear legislative intent that Matthews does not control public access determinations under the Public Access Law."). Not only did the Legislature decline to codify the Matthews requirements, but it also explicitly relied upon Arnold in setting forth the requirements of the public trust doctrine, as they have been recognized since at least 1821. Thus, to graft the Matthews standards, which are a particular judicial application of public trust principles in the context of fact-specific litigation, onto broader legislation—whose clear intent is to ensure public access as an overarching State policy in accord with Arnold—would interfere with and be incompatible with the legislative directive to ensure public access to the "greatest extent practicable."

While, similar to Matthews, the Public Access Law directs the Department to consider public demand, it is in the specific context of determining *additional* access requirements.

Additional access may not be necessary where public access was represented as already provided to the greatest extent practicable, as was the case here, or where there is no public demand for that particular area.

For example, not all tidelands and upland beach areas are useable for recreational purposes, located on attractive Atlantic coastline, or found in highly populated areas. See N.J.S.A. 13:1D-153(a). The consideration of public demand, if read consistently with the clear statutory mandate to ensure public access to the greatest extent practicable, does not require an evaluation of whether the area is subject to "high and specific" public demand as the Initial Decision suggests. The Initial Decision was incorrect to weigh, as equal considerations, a private proprietary interest in excluding the public from a privately-owned beach against the public right of access to the beach as founded in natural law and incorporated into New Jersey common law since 1821. As explained above, the public right at issue here has precedence over the private proprietary right. The unambiguous language of the Public Access Law says as much by incorporating the principle found in Arnold and the Code of Justinian—which is that no member of the public can be denied access under the public trust doctrine. It is not uncommon that private ownership finds itself required to accommodate public rights. See, e.g., State v. Shack, 58 N.J. 297 (1971) (holding that a landowner could not exclude government service workers from its property where they entered to aid migrant farmworkers employed and housed there).

Instead of recognizing the unambiguous requirements of the Public Access Law and the preeminence of the public right to the use of common property, which is supported by over 200 years of New Jersey caselaw, the ALJ adopted a version of the Matthews test that was in fact narrower than Matthews itself, as will be explained below. OGCMA cannot, consistent with the public trust doctrine, invoke a private proprietary right to exclude beachgoers from a recreational

beach, because there is no right to exclude based merely on private ownership when it infringes upon the public right.

"Additional" Public Access Under the Public Access Law

To the extent that the Department's enforcement action in this case could be interpreted as requiring "additional" public access, as OGCMA argues, the case would fall within the ambit of N.J.S.A. 13:ID-153(a). That section provides that in issuing permits for beach and dune maintenance, the Public Access Law applies, and the Department is to consider whether additional access can be provided. Contrary to OGCMA's argument, this condition does not first require a change in the beach and dune maintenance being performed. See OGCMA's Brief in Opposition to Motion for Summary Decision, 43. Quite simply, the Department is required to consider public access as a component of every such permit.

OGCMA correctly points out that there is no evidence in the record that the Department applied N.J.S.A. 13:1D-153(a) in this case, and that the Department did not explicitly require OGCMA to open the beach on Summer Sundays as a requirement of its CAFRA permit. However, it is difficult to understand why the Department would have to require additional public access to a beach that OGCMA affirmatively represented was unrestricted. As reflected in the record, OGCMA did not disclose its Summer Sunday closures in its CAFRA application and, as the Department argues, OGCMA was already required to provide public access to its beach.

Along these lines, OGCMA further argues that the Department failed to consider the factors listed in Section 153(a) to determine the public access required at its property. Specifically, these factors are "the scale of the changes to the footprint or use, the demand for public access, and any department-approved municipal public access plan or public access element of a municipal master plan." N.J.S.A. 13:ID-153(a). While such an analysis would be unnecessary where, as here,

OGCMA affirmatively represented to the Department that it provides unrestricted public access, the Department's "Environmental Report" does state that "[p]ublic access to the beach will not be affected by the proposed beach/dune maintenance activities or the temporary seasonal structures." R-26, at 991. Regardless of whether the public access at issue is new or additional, the question to be answered is whether the Public Access Law provides a legal basis for the Department to require that access. I conclude that it does.

When OGCMA applied to the Department for a CAFRA individual permit for beach and dune maintenance, it unambiguously indicated that it provided public access to its beach, with badges, during daytime hours in the summer months. The Department relied upon OGCMA's representation. The Department does not have a general practice of independently verifying the factual representations made by applicants in such permit applications. The Department is entitled to require that OGCMA comply with what is, effectively, a material term upon which its permit was issued. And I can find no prejudice where OGCMA received the exact permit it requested, as it requested, and based on the terms of public access it agreed to and represented it would provide.

OGCMA's violation of these terms and its own sworn statement by closing its beach on Summer Sundays triggers enforcement not because the Department seeks "unlimited" public access as OGCMA contends, but because the nature of the closure at issue in this case is not aligned with the public's right of access. As discussed above, "[t]he Public Trust Doctrine has always been recognized in New Jersey." Van Ness, 78 N.J. at 178. Thus, when OGCMA took title to the Ocean Grove beach, it did so subject to the public's right of access consistent with the public trust doctrine; a right which unequivocally includes public access for recreational purposes, as well as access to dry sand areas on both public and privately-owned beaches. Matthews, 95 N.J. at 316-24. That OGCMA is a private property owner, or that OGCMA has maintained a longstanding

practice of violating the public trust doctrine on Summer Sundays, are both inapposite. That the Ocean Grove beach functions as a fully accessible public beach at all other times of the year only further demonstrates the unreasonableness of OGCMA's Summer Sunday closures; OGCMA has identified no property right or property interest that would justify such routine interference with the public's right of access to the dry sand area. Had OGCMA been forthright about its intentions to foreclose public access on Summer Sundays in the course of its permit application, OGCMA would have found that the Department would not permit routine closures of such a magnitude, and especially not during such obvious periods of peak public demand and expectation of access.

The Matthews Test

In Matthews, the New Jersey Supreme Court outlined a balancing test, whereby "[l]ocation of the dry sand area in relation to the foreshore, extent and availability of publicly-owned upland sand area, nature and extent of the public demand, and usage of the upland sand land by the owner are all factors to be weighed and considered in fixing the contours of the usage of the upper sand" of privately-owned beaches. Matthews, 95 N.J. at 325-26. As noted earlier, the appropriate analytical framework in this matter is not derived from Matthews, but from the Public Access Law, which provides independent statutory authority for Special Condition #13 and the Department's enforcement action. However, a correct application of Matthews would also compel OGCMA to cease its Summer Sunday closures.

The Ocean Grove beach, like the beach in Matthews, functions as a public beach despite its private ownership by OGCMA, which makes the beach available to the public at all times of the year (except Summer Sundays). It is the only beach in Neptune Township and OGCMA provides services such as lifeguards, beach cleaning, and maintenance, and in exchange charges the public a fee for use of the beach. It "makes available to the [] public access to the common

tidal property for swimming and bathing and to the upland dry sand area for use incidental thereto, preserving the residents' interests[.]" Matthews, 95 N.J. at 330. As in Matthews, it follows that OGCMA is bound by the public trust doctrine to no less a degree than the State itself, for "[a] nonprofit association that is authorized and endeavors to carry out a purpose serving the general welfare of the community and is a quasi-public institution holds in trust its powers of exclusive control in the areas of vital public concern." Id. at 328. In addition, OGCMA possesses a CAFRA permit that requires public access to its beach.[6] Finally, as described above, OGCMA has benefitted from significant public investments in the beach, which are accompanied by easements explicitly recognizing "the right of public use and access" to the entire beach and oceanfront. P-11, at 67; see also P-9, at 2, 10, 24, and 38; and P-10, at 40, 41, and 49. In every respect, OGCMA's conduct in managing the beach compels the conclusion that, like the beach in Matthews, the Ocean Grove beach functions as a public beach.

The Supreme Court has consistently found that public demand for sandy ocean beaches along the Jersey Shore is self-evident, and I find nothing to warrant a different conclusion here. See Raleigh Ave., 185 N.J. at 56; Matthews, 95 N.J. at 323; Lusardi, 86 N.J. at 227-28. Nonetheless, the Department provided extensive and specific proofs of the public demand for the beach in Ocean Grove far beyond those articulated in any applicable precedent. These prods included hospitality industry, rental, and beach tag data showing demand for beaches state-wide as well as beach tag sales for Ocean Grove in particular. Testimony of Jeffrey Vasser, February 5, 2025, 64:14-80:20; Testimony of John Michael Gehr, February 4, 2025, 120:6-143:11. The complaints that triggered the AO at issue in this case and public protests concerning beach access in Ocean Grove also reflected demands for access. And, perhaps most telling, the actual public use

[6] In its application for that permit, OGCMA explicitly represented itself as a public, municipal entity. P-7, at 971, 974.

of the beach when left open by OGCMA pursuant to Department order on Summer Sunday mornings in 2024 further demonstrated the significant public demand for access to the Ocean Grove beach on Summer Sunday mornings specifically.

While the Initial Decision suggests that the Department must prove "high and specific" demand for the Ocean Grove beach on Summer Sunday mornings, the Initial Decision cites no support for such a requirement. As the Department observed in its exceptions, such a requirement would create a virtually impossible burden of proof (see NJDEP's Exceptions to Initial Decision, 8-9), one made more impossible by the fact that prior to 2024, the public did not patronize the Ocean Grove beach on Summer Sunday mornings *because it was closed*. To that end, in its conclusion regarding public demand, the Initial Decision departed from judicial precedent so far as to create an evidentiary requirement far more strict than was actually articulated in Matthews.

Further, while the Initial Decision recognized that OGCMA owns the entirety of the Atlantic Ocean beachfront in Neptune Township, the ALJ dismissed the importance of this fact because "many of the people who live in Neptune live as close to Bradley Beach, which is a public beach, as they do to Ocean Grove." Initial Decision, 28. This is a mistake. The presence or absence of another public beach *within* a single town is a common factor given decisive weight in New Jersey's public access jurisprudence. Raleigh Ave. is particularly instructive, for it dealt with a privately-owned beach in Lower Township that was only 480 feet long and immediately adjoined another private beach that allowed public access, beyond which was an adjoining public beach in the Borough of Wildwood Crest. Raleigh Ave., 185 N.J. at 44, 46. There, in a decision that too upheld the public's right to access a privatelyowned beach, the Court relied in part on the absence of a public beach in Lower Township. Such is the case here; the issue is whether OGCMA affords

public access to its beach consistent with the public trust doctrine, not whether Neptune Township residents prefer the beaches of Bradley Beach to those of Ocean Grove, or vice versa.

Finally, Matthews adopted a balancing test, the outcome of which "will depend on the circumstance." Consideration of the circumstances of this case, although they are unique, must be informed by precedent. A clear picture emerges. OGCMA owns the entire beach in Neptune Township and operates it as a public beach. OGCMA possesses a CAFRA permit that requires public access. OGCMA has benefitted significantly from public investment in its beach and voluntarily granted public access easements for its entire beach. Although the Ocean Grove beach is shorter than the beach in Matthews, it is far longer than the beach in Raleigh Ave. All of these factors weigh strongly in favor of public access. On the other hand, the Summer Sunday closures are limited in duration; the closures have a long history; and Ocean Grove is quieter than some beach towns. These factors weigh lightly in favor of OGCMA—to the extent balancing the interests would be required in the permitting context at all. That the Summer Sunday closures apply to all equally does not change the outcome, for a complete closure burdens the right of public access just the same as a closure that applies to all but a few.

Weighing all of the factors in this case, I CONCLUDE that the public trust doctrine prevents OGCMA from denying the public access to its dry sand beach on Summer Sundays, that the Public Access Law requires the Department to explicitly include this as part of OGCMA's CAFRA permit, and to the extent Matthews is applicable, the ALJ misapplied its test. Although it is not necessary to apply Matthews in this case, a proper application of Matthews leads to the same conclusion requiring public access to the Ocean Grove beach on Summer Sundays. Accordingly, I REVERSE the Initial Decision. Having done so, it is now necessary to consider the equitable and constitutional claims raised by OGCMA.

The Department Has Not Treated OGCMA Inequitably

OGCMA argues in various pleadings that the Department has failed to treat OGCMA equitably because its conduct "constitutes an act of selective enforcement of governmental power at the behest of those seeking to target OGCMA for its religious views and practices" (Attachment to Adjudicatory Hearing Request Checklist and Tracking Form, 13) or because "the action cannot be reconciled when one considers the numerous examples of how beach access is restricted in such larger ways across the State" (OGCMA's Brief in Opposition to Motion for Summary Decision, 45). The record does not support either of OGCMA's arguments.

First, with respect to the claim that the Department acted "at the behest" of OGCMA's critics, the ALJ properly concluded that the Department had no knowledge of the motivation behind the complaints it received that ultimately led to the AO. Initial Decision, 20. Second, with respect to the allegations about the pattern of beach closures, the heart of this objection is OGCMA's assertion that the Department treated eight other owners of dry sand beaches differently than it treated OGCMA. This claim is properly addressed by the Initial Decision, which concluded that each of the beach closure examples cited by OGCMA are differently situated. Initial Decision, 22. Further, notwithstanding OGCMA's failure to demonstrate why its Summer Sunday closures are equivalent to other cited closures, the Department has demonstrated that it has undertaken numerous other public access enforcement actions against beachfront owners under CAFRA, its regulations, and permits. See R-48, Certification of Colleen Keller in Support of NJDEP's Motion for Summary Decision Reply Brief, at 2-3 and 5-102.

Free Exercise

As noted above, because the Initial Decision concluded that OGCMA satisfied its public access obligations, the ALJ did not address OGCMA's claims under the Free Exercise Clause of

the First Amendment and Article I of the New Jersey State Constitution[7] because it was not necessary to consider them, relying on Jones v. Dep't of Cmty. Affs., Div. of Codes & Standards, Bureau of Rooming & Boarding House Standards, 395 N.J. Super. 632, 636–37 (App. Div. 2007). Having now determined that the Initial Decision erred as to the public trust doctrine, it is necessary to reach these issues now, and I hereby FIND that Special Condition #13 and the AO enforcing that condition do not violate OGCMA's free exercise rights. As explained below, Special Condition #13 is a neutral and generally applicable condition that is rationally related to the State's "legitimate governmental objective[s]" in ensuring public access to tidal waters and the dry sand beach of adjacent shorelines pursuant to the public trust doctrine and pursuant to the Public Access Law. Through the AO, the Department has enforced a condition of OGCMA's permit, the common law, and the Public Access Law that independently support it in a neutral and generally applicable manner.

"[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993) (citing Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U.S. 872 (1990)). A law or regulation that "does not target religiously motivated conduct either on its face or as applied in practice" is neutral. Blackhawk v. Pennsylvania, 381 F.3d 202, 209 (3d Cir. 2004) (citing Lukumi, 508 U.S. at 533-40). Outside the unique context of compulsory education, a neutral law of general applicability need only "be rationally related to a legitimate government objective" to be upheld.[8]

[7] Following Jersey Catholic Sch. Tchrs. Org. v. St. Teresa of the Infant Jesus Church Elementary Sch., 150 N.J. 575, 586 (N.J. 1997), because the analysis is the same, I "limit[]" "discussions of the Religion Clauses . . . to the federal provision[]" rather than the state constitutional provision.

[8] See Mahmoud v. Taylor, 606 U.S. 522, 564-65 (2025) (holding that the burden on free exercise recognized in Wisconsin v. Yoder, 406 U.S. 205, 220-21 (1972) by a state compulsory educational attendance policy was of a

Combs v. Homer-Center Sch. Dist., 540 F.3d 231, 242-43 (3d Cir. 2008) (quoting Tenafly Eruv Ass'n, Inc. v. Tenafly, 309 F.3d 144, 165 n.24 (3d Cir. 2002)); Petro v. Platkin, 472 N.J. Super. 536, 568 (App. Div. 2022) (quoting same).

Here, Special Condition #13 is a neutral and generally applicable condition of beach and dune maintenance permits issued by the Department under CAFRA. Special Condition #13 prohibits permittees from "limit[ing] vertical or horizontal public access to any dry sand beach area covered [by the] permit" or "interfer[ing] with the public's right to free use." P-8, at 980. The Department does not distinguish between secular and religious entities (indeed, it does not distinguish among permittees in *any* way) in distribution of permits or in enforcement: it requires *all* permittees to provide public access, without regard for the permittee's religious or secular character. See, e.g., Brown v. City of Pittsburgh, 586 F.3d 263, 284 (3d Cir. 2009) ("buffer" and "bubble zone" ordinance protecting health care facilities providing abortions did not violate Free Exercise Clause as its restrictions "apply irrespective of whether the beliefs underpinning the regulated expression are religious or secular"). Recent cases such as Carson v. Makin, 596 U.S. 767, 773 (2022), which held that a state's private school tuition assistance program was unconstitutional because it had an *explicit* "nonsectarian" requirement to receive state funds, do not change the analysis, because here, unlike in Carson, neither Special Condition #13 nor the underlying law makes any distinction based on religious or non-religious permittees or activities.

A facially neutral and generally applicable law is subject to scrutiny greater than rational basis review only if it contains particular attributes that are not present in Special Condition #13. For example, a law is not generally applicable if it "invite[s]" the government to consider the particular reasons for a person's conduct by providing "'a mechanism for individualized

"special character" and an exception to Free Exercise jurisprudence that required strict scrutiny "regardless of whether the law is neutral or generally applicable").

exemptions.'" Fulton v. City of Philadelphia, Pennsylvania, 593 U.S. 522, 533 (2021) (quoting Smith, 494 U.S. at 884). In Fulton, the city of Philadelphia infringed the First Amendment rights of a religious organization when it denied that organization's participation in a public adoption referral service. Id. at 526-28. The Supreme Court explained that the city relied on a rule that listed the limited reasons that a provider might reject a family from their adoption service and provided discretion to the Commissioner of the city's Department of Human Services to make any exception. Id. at 535. The Court determined that this qualitative list of reasons, coupled with the broad discretion afforded to the Commissioner, was a "mechanism for individualized exemptions," and thus the law was not generally applicable[9] because "it 'invite[s]' the government to decide which reasons for not complying with the policy are worthy of solicitude." Id. at 537 (quoting Smith, 494 U.S. at 884).

This matter is not comparable to Fulton. Here, New Jersey has a generally applicable Public Access Law and resulting CAFRA permit conditions that prohibit *all* permittees from limiting public access to tidal waters and their adjoining beaches. The applicable law does not allow the Department to make individualized exemptions. Further, even the Department itself may only restrict public access for limited reasons, including public safety or the protection of endangered species. Supra at 12-13; see also, e.g., N.J.S.A. 13:1D-155. Compare Dr. T. v. Alexander-Scott, 579 F. Supp. 3d 271, 281 (D.R.I. 2022) (holding that narrow medical exceptions to emergency COVID-19 vaccination requirements for healthcare workers did not impact requirements' neutrality or general applicability where exceptions were not discretionary and supported the requirements' purpose of protecting public health and safety).

[9] The Fulton Court drew on Sherbert v. Verner, 374 U.S. 398, 401 (1963), where the state denied an individual's unemployment application because she "failed, without good cause . . . to accept available suitable work" after she couldn't find a job that let her observe the Sabbath. Fulton, 593 U.S. at 533-34. That "good cause" measure allowed for individualized exemptions from a general rule and necessitated heightened scrutiny. Id.

There is no evidence that Special Condition #13 or the law giving rise to it is intended to, or actually does, "infringe upon or restrict practices because of their religious motivation." Lukumi, 508 U.S. at 533. Nor is there any evidence in the record that the Department's application of Special Condition #13 in this matter discriminated against OGCMA due to its religious status or treated comparable secular activity more favorably. Cases involving such discrimination are inapposite. See e.g., Espinoza v. Montana Dept. of Revenue, 591 U.S. 464, 476 (2020) (holding that application of the no-aid provision of Montana's constitution to prohibit scholarship funds to private religious schools, but not secular private schools, unconstitutionally "exclude[d] schools from government aid solely because of religious status"); Tandon v. Newsom, 593 U.S. 61, 63 (2021) (holding that state COVID-19 restrictions violated the Free Exercise Clause because they "treated some comparable secular activities more favorably than at-home religious exercise"). Here, the public access requirements embodied in Special Condition #13 apply equally to any and all entities who own or operate beaches, irrespective of their religious status or activities.

Under analogous circumstances involving neutral application of generally applicable laws, courts across the country have agreed that there is no violation of the Free Exercise Clause. For example, in Stormans, Inc. v. Wiesman, the Ninth Circuit rejected a free exercise challenge to state pharmacy regulations, holding that regulations requiring timely delivery of lawfully-prescribed drugs, regardless of the religious or moral objections of pharmacy owners, were rationally related to that state's "legitimate interest in ensuring that its citizens have safe and timely access to their lawful and lawfully prescribed medications." 794 F.3d 1064, 1130-31 (9th Cir. 2015). In Commack Self-Service Kosher Meats, Inc. v. Hooker, the Second Circuit held that a state statute requiring sellers and producers to properly label kosher products was rationally related to legitimate governmental interest in "provid[ing] clear and accurate information [to consumers]

about the food they are purchasing." 680 F.3d 194, 212 (2d Cir. 2012). And in Swartz v. Sylvester, the First Circuit determined that a policy requiring all firefighters to sit for photographs did not violate the free exercise rights of an objecting firefighter because the policy was rationally related to a legitimate governmental interest of publicizing the fire department and "promoting the integrity of government institutions." 53 F.4th 693, 702-03 (1st Cir. 2022). So too here.

Considering that New Jersey's Public Access Law on its face applies equally to all owners and operators of beachfront property irrespective of their religious status or activities, and given that the Department is decidedly neutral in its implementation and enforcement of the State's public access requirements, including by way of Special Condition #13 in the OGCMA permit at issue, the circumstances here are a far cry from those in Lukumi. In Lukumi, the challenged ordinances explicitly treated comparable activity differently based on the religious motivations behind that activity: the ordinances prohibited certain types of religious animal sacrifices, but did not regulate either the secular practices of hunters handling slain animals or the animal slaughtering practices of certain other religions. Lukumi, 508 U.S. at 544-45. Here, the parties—both State officials and OGCMA representatives—*agreed* that OGCMA's religious status played no part in the Department's enforcement action. Michael Badger, the former president of OGCMA, credibly testified that he did not believe the Department, or its employees, were acting with bias towards OGCMA's religious beliefs, see Testimony of Michael Badger, February 7, 2025, 98:17-22, and Michael Lutz, the Department employee who inspected the OGCMA closures, credibly testified that OGCMA's status as a religious organization "did not impact his inspections." Initial Decision, 12.

In this case, OGCMA violated a neutral and generally applicable requirement, imposed on all holders of CAFRA beach and dune maintenance permits, to refrain from limiting public access

to any dry sand beach area covered by their permit. OGCMA used "chain and pad lock barriers [to] prevent[] public access to the [Ocean Grove] beach" during Summer Sundays between 9 a.m. and 12 noon. P-15, at 3. When this violation came to its attention, the Department promptly and neutrally enforced the law. The Department's neutral enforcement of Special Condition #13 is rationally related to New Jersey's legitimate governmental objective in ensuring public access to the State's beaches under the public trust doctrine and the Public Access Law. Its actions therefore satisfy rational basis review. See Combs, 540 F.3d at 242-43 (holding that neutral and generally applicable laws are subject to rational basis review); Berger v. North Carolina State Conf. of the NAACP, 597 U.S. 179, 180 (2022) ("States possess '"a legitimate interest in the continued enforce[ment] of [their] own statutes"'") (internal citations omitted). Had it failed to enforce the condition against OGCMA because of OGCMA's religiously motivated use of the beach, that would have amounted to disparate treatment on the basis of religion.

Special Condition #13, its application to OGCMA, and its enforcement through the challenged AO are legal and consistent with the Free Exercise Clause of the First Amendment and Article I of the New Jersey State Constitution. Neither constitutional provision "obligate[s] the government to control or limit public access to public lands in order to facilitate religious practices." Wilson v. Block, 708 F.2d 735, 742 n.4 (D.C. Cir. 1983) (quoting Nw. Indian Cemetery Protective Ass'n v. Peterson, 552 F. Supp. 951, 954 (N.D. Cal. 1982)). Nor do they require the government to limit public access to public trust resources such as the beach in Ocean Grove. OGCMA remains free to practice its religion, but it must provide public access to the Ocean Grove beach as required by the law and its CAFRA permit.

OGCMA May Not Bring Its Takings Claim Before the OAL

Finally, OGCMA argues that the AO "constitutes an unconstitutional taking of private property under the Fifth Amendment to the United States Constitution as applicable here under the Fourteenth Amendment of the United States Constitution and under Article One of the New Jersey State Constitution." Attachment to Adjudicatory Hearing Request Checklist and Tracking Form, 12. This claim is effectively a facial constitutional challenge. Notably, the New Jersey Supreme Court itself has expressed skepticism regarding whether public access could constitute a taking. Van Ness, 78 N.J. at 180-81. Nonetheless, if the Department cannot regulate public access under CAFRA, the Public Access Law, and the public trust doctrine itself, that must be decided by the Appellate Division, not the OAL. OGCMA itself acknowledges this (see OGCMA's Brief in Opposition to Motion for Summary Decision, 47; OGCMA's Post-trial Brief, 85), and the ALJ rejected the claim in her Order Granting Partial Summary Decision (Order Granting Partial Summary Decision, 21-22). I agree. Accordingly, there is no need to consider the claim here.

CONCLUSION

For the reasons set forth above, I REVERSE the ALJ's Initial Decision and UPHOLD the Administrative Order. OGCMA must allow public access to the Ocean Grove beach between the hours of 9:00 a.m. and 12:00 noon on Summer Sundays in accordance with Special Condition #13 of its CAFRA permit.

IT IS SO ORDERED.

Dated: December 23, 2025

Shawn M. LaTourette, Commissioner
Department of Environmental Protection

NEW JERSEY DEPARTMENT OF ENVIROMENTAL PROTECTION,
BUREAU OF COASTAL AND LAND USE COMPLIANCE ENFORCEMENT,

v.

OCEAN GROVE CAMP MEETING ASSOCIATION

OAL DKT. NO.: ECE 13655-23

AGENCY DKT. NO.:PEA230002, 1334-01-1002.5

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