

“New Jersey’s Beaches: The State as Trustee of Public Rights”

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Mr. Mulvaney provided an overview of the Public Trust Doctrine, which recognizes that the public maintains particular inalienable rights to certain natural resources. The presentation addressed the origins of the doctrine, starting with early Roman law and ultimately arising in America in an early New Jersey case, in which a dispute arose over oyster beds. The court found that New Jersey never conveyed those public trust rights to the sea and its beds, which had been reserved to the Crown. The State succeeded to the Crown’s rights in the oyster beds, and, when the Revolution took place, the people became themselves sovereign and held these rights to tidal waterways and their shores.

Mr. Mulvaney explained that, today, the Public Trust Doctrine has evolved to also protect fragile ecosystems and modern recreational activities, and its application has been extended to periodic navigation, artificial reservoirs, flooded lands, adjacent wetlands, and wildlife habitat. He explained that as “trustee,” the people of each state have an obligation to ensure that the state’s regulation and protection of these resources will safeguard them for future generations.

Mr. Mulvaney then reviewed two specific cases demonstrating the evolution of the doctrine. In Matthews v. Bay Head Improvement Association, 95 N.J. 306 (1984), New Jersey’s Supreme Court recognized public rights of access and use to a reasonable area of upland dry sand along tidal waterways on quasi-public beaches and identified four factors that can aid in determining the scope of this dry sand area (the location of dry sand in relation to the foreshore, the availability of nearby dry sand, the extent of public demand, and the prior usage of the upland by the property owners). In Raleigh Ave. Beach Ass’n v. Atlantis Beach Club, Inc., 185 N.J. 40 (2005), the court applied the Matthews factors to an exclusively private beach, and found that an entire beach must be open for public access and use and all beach fees must be commensurate with services provided and approved by the State. Mr. Mulvaney also identified several current legal issues in New Jersey surrounding the public trust, including viewshed cases, the right and duty of government to provide shore protection, and strengthened public access conditions of environmental permits.

Mr. Mulvaney closed by suggesting that sea level rise and the associated landward migration of today’s mean high water line will have significant impacts in the near future on development rights and water allocation.