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PUBLIC MEETING

before

BEACH ACCESS TASK FORCE  
OF THE  
ASSEMBLY SELECT COMMITTEE ON TOURISM

To Discuss  
Beach Admission Fees, Parking Facilities,  
and Beach Access Points

and

ASSEMBLY BILL 3152

(Fair Beaches Act)

August 21, 1987  
Franklin Avenue and  
the Boardwalk  
Seaside Heights, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Anthony M. Villane, Jr, Acting Chairman  
Assemblyman Joseph A. Palaia, Vice Chairman  
Assemblyman John Paul Doyle  
Assemblyman Jeffrey Moran  
Assemblyman Robert W. Singer

New Jersey State Library

ALSO PRESENT:

Frank J. Parisi  
Office of Legislative Services  
Aide, Assembly Select Committee on Tourism

\* \* \* \* \*

Meeting Recorded and Transcribed by  
Office of Legislative Services  
Public Information Office  
Hearing Unit  
State House Annex  
CN 068  
Trenton, New Jersey 08625



F. MUZIANI  
irperson  
PH A. PALAIA  
Chairperson  
S F. KOSCO  
REY W. MORAN  
ERT W. SINGER  
PAUL DOYLE  
IONY S. MARSELLA

**New Jersey State Legislature**  
**ASSEMBLY SELECT COMMITTEE ON TOURISM**  
STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625  
TELEPHONE: (609) 292-9106

**MEMORANDUM**

August 12, 1987

**TO:** Members of Assembly Select Committee on Tourism  
Advisory Committee Members

**FROM:** Assemblyman Anthony M. Villane, Jr.  
Chairman

**SUBJECT:** MEETING NOTICE

(Address comments and questions to Frank J. Parisi,  
Office of Legislative Services at 609-292-9106)

The Assembly Select Committee on Tourism will hold a public meeting on Friday, August 21, 1987 at 1:00 p.m. in Seaside Heights, at Franklin Avenue and the Boardwalk. In the event of rain a new date for the meeting will be established.

During the meeting the committee will hear testimony on and discuss beach admission fees, parking facilities and beach access points. Assembly Bill No. 3152, the "Fair Beaches Act," will also be discussed.

CORRECTED COPY  
ASSEMBLY, No. 3152

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 15, 1986

By Assemblymen VILLANE, PALAIA, Littell, Assemblywomen Muhler, Smith, Assemblymen Azzolina, Charles, McEnroe, Watson, Smith, Schwartz, Assemblywoman Garvin, Assemblymen Deverin, Hudak, Girgenti, Kavanaugh, Penn, Rafferty, Zangari, Dario, Arango, Gargiulo, Assemblywoman Donovan, Assemblyman Schuber, Assemblywomen Ogden, Crecco, Assemblymen Shinn, Baer, Colburn, Martin, Genova, DiGaetano, Catrillo, Miller, Frelinghuysen, Shusted, Loveys, Collins, Assemblywoman Cooper, Assemblymen Zecker, Kosco, Chinnici, Muziani, Felice, Assemblywoman Randall, Assemblymen Haytaian, Zimmer, Otlowski, Marsella, Kline, Franks and Bennett

AN ACT concerning public access to the beaches of New Jersey and the amounts which may be charged therefor, providing for the preparation of beach management practices plans, amending P. L. 1955, c. 49, supplementing Title 13 and Title 40 of the Revised Statutes, and making an appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. (New section) This act shall be known and may be cited as  
2 the "Fair Beaches Act."

1 2. (New section) The Legislature finds that the longstanding  
2 public trust doctrine provides that ownership, dominion, and  
3 sovereignty over land flowed by tidal waters which extend inland  
4 to the mean high water mark is vested in the State in trust for  
5 the use by the people for the purposes of navigation, fishing, and  
6 commerce; that the New Jersey Supreme Court has asserted that  
7 the public trust doctrine also protects recreational uses; that this

Matter printed in italics *thus* is new matter.

19 use of, a beach area at any time during one calendar day, or so  
20 much thereof as the beach area is open to the public and for  
21 which a beach admission fee is charged;

22 "Department" means the Department of Environmental Pro-  
23 tection;

24 "Director" means the Director of the Division of Coastal Re-  
25 sources in the Department of Environmental Protection;

26 "Public beach" means a beach which forms part of a place of  
27 public resort under the management and control of a municipality  
28 or political subdivision of this State pursuant to P. L. 1955, c. 49  
29 (C. 40:61-22.20 et seq.) or any other law empowering the munici-  
30 pality to maintain, improve, manage, and control beaches and  
31 bathing grounds and facilities, or the State or federal government.

32 "Public trust lands" means tide-flowed land lying between the  
33 mean high and low water marks and the ocean covered land sea-  
34 ward thereof to the State's boundary.

1 4. (New section). a. Schedules for all categories of beach ad-  
2 mission fees shall be calculated so as to permit the municipality  
3 to collect revenues sufficient to recover the municipality's expenses  
4 in providing services for the beach area. The allowable expenses  
5 shall include additional costs incurred by a municipality directly  
6 attributable to its beach operations, but need not be limited to  
7 shore protection costs incurred by the municipality, cost of in-  
8 surance, solid waste and sewage waste disposal costs, fresh water  
9 costs, maintenance and personnel costs including those for life-  
10 guards, police, first aid, and ticket collectors and any other costs  
11 clearly associated with managing the beach area. Beach munici-  
12 palities may recover expenses incurred outside the beach area,  
13 but associated with providing services at the beach area, by sub-  
14 mitting a separate accounting thereof to the division for approval.  
15 To account for seasonal revenue losses attributable to inclement  
16 weather or other factors which reduce attendance, a beach munici-  
17 pality may calculate fees on a three-year average cost basis. The  
18 fee schedule shall be submitted to the department pursuant to  
19 subsection b. of section 6 of this amendatory and supplementary  
20 act. The fees established pursuant to this section shall take effect  
21 in the 1988 beach season.

22 b. A beach municipality may charge and collect a separate fee  
23 for facilities not routinely provided with beach access, such as  
24 lockers, cabanas, umbrellas, and swimming pools, but may not  
25 charge and collect any fee or rental for the use of any structure,  
26 facility, or equipment the use of which is mandatory under any

30 c. The department shall, by rule or regulation, adopt standards  
31 for evaluating the access and fee plans required pursuant to sub-  
32 section a. and b. respectively of this section, and shall review  
33 the plans in sufficient time for the municipality to implement any  
34 recommendations prior to the forthcoming beach season.

1 7. (New section) A beach municipality may apply for and re-  
2 ceive from the department a grant to offset the costs of prepar-  
3 ing the beach management practices plan required pursuant to  
4 section 6 of this amendatory and supplementary act.

1 8. (New section) The department is authorized to issue grants,  
2 within the limits of funds appropriated pursuant to section 21  
3 of this act or otherwise made available therefor by the Legisla-  
4 ture, to beach municipalities for the cost of preparing the beach  
5 management practices plan required pursuant to section 6 of this  
6 amendatory and supplementary act.

1 9. (New section) A beach municipality shall ensure that no  
2 physical barriers or local ordinances unreasonably interfere with  
3 access to, along, or across a publicly funded shore protection  
4 structure.

1 10. (New section) A beach municipality may not vacate an  
2 oceanfront street or street end without the approval of the division.

1 11. (New section) The department shall not grant any permit  
2 or other approval the effect of which would be to reduce, limit,  
3 or eliminate any existing beach or public access way unless the  
4 department finds and expressly conditions the permit or approval  
5 on the applicant's providing for replacement beach area or alter-  
6 native public access to the beach functionally equivalent to that  
7 which will be eliminated or reduced, and protecting such replace-  
8 ment beach area or substitute public access way in perpetuity by  
9 dedication, easement, or similar guarantee.

1 12. (New section) The department shall not approve an appli-  
2 cation from a beach municipality for State funds for shore pro-  
3 tection, conservation, or recreational projects if the department  
4 finds that the beach municipality is in violation of this act unless  
5 the failure to fund the project would result in danger to life or  
6 irreversible harm to the natural resources of the State.

1 13. (New section) All State and federally operated beaches  
2 shall comply with all provisions of the State Sanitary Code gov-  
3 erning public recreational bathing.

1 14. (New section) The department, with the cooperation of  
2 the Department of Transportation, shall, to the maximum extent  
3 practicable and feasible, provide and promote the use of public  
4 transportation between State and federally operated beaches and

5 proximate parking facilities and public transportation terminal  
6 points.

1 15. (New section) a. A person or public entity which is an owner,  
2 lessee, or occupant of a beach area owes no duty to keep public  
3 trust lands adjacent to the beach area safe for entry or use by  
4 others, or to give warning of any hazardous condition on the  
5 public trust lands.

6 b. A person or public entity which is an owner, lessee, or occu-  
7 pant of a beach area who grants permission to another to enter  
8 upon the beach area only for granting access to public trust  
9 lands or for the essential and reasonably necessary use of the  
10 beach area in order to enjoy the public trust lands does not  
11 thereby: (1) extend any assurance that the beach area or public  
12 trust lands are safe for those purposes; or (2) constitute the  
13 person to whom permission is granted an invitee to whom a duty  
14 of care is owed; or (3) assume responsibility, or incur liability,  
15 for any injury to person or property caused by any act of persons  
16 to whom the permission is granted.

17 c. This section does not limit the liability which would other-  
18 wise exist for willful or reckless failure to guard, or warn against,  
19 a dangerous condition, use, structure or activity or for grossly  
20 negligent supervision where supervision is provided.

21 d. This section shall apply only to causes of action which accrue  
22 after the effective date of this amendatory and supplementary act.

1 16. (New section) a. The Commissioner of the Department of  
2 Environmental Protection, or the Public Advocate at his own  
3 discretion or on behalf of any aggrieved party, is authorized to  
4 maintain an action in a summary proceeding in Superior Court  
5 to secure injunctive, declaratory, or other suitable relief to estab-  
6 lish or protect the public right of access to beach areas as herein  
7 prescribed.

8 b. In an action brought pursuant to this section the court may,  
9 in appropriate cases, award to the prevailing party reasonable  
10 counsel and expert witness fees.

1 17. (New section) The department, within 20 days of the  
2 effective date of this act and pursuant to the "Administrative  
3 Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) shall  
4 adopt rules and regulations necessary to carry out the purposes  
5 of this act.

1 18. (New section) The department shall, from time to time,  
2 as appropriate, submit to the Legislature any recommendations  
3 for legislative or administrative action to improve the mechanisms  
4 through which the purposes of this act are carried out.

1 19. (New section) Nothing in this amendatory and supple-  
 2 mentary act is intended to infringe upon or restrict in any manner  
 3 lawful use of private property, nor to convey any rights for a  
 4 person to trespass on private property for any reason.

1 20. Section 1 of P. L. 1955, c. 49 (C. 40:61-22.20) is amended  
 2 to read as follows:

3 1. The governing body of any municipality bordering on the  
 4 Atlantic ocean, tidal water bays or rivers which owns or shall  
 5 acquire, by any deed of dedication or otherwise, lands bordering  
 6 on the ocean, tidal water bays or rivers, or easement rights therein,  
 7 for a place of resort for public health and recreation and for  
 8 other public purposes shall have, *except as may be provided by*  
 9 *law*, the exclusive control, government and care thereof and of  
 10 any boardwalk, bathing and recreational facilities, safeguards  
 11 and equipment, now or hereafter constructed or provided thereon,  
 12 and may, by ordinance, make and enforce rules and regulations  
 13 for the government and policing of such lands, boardwalk, bathing  
 14 facilities, safeguards and equipment; provided, that such power  
 15 of control, government, care and policing shall not be construed  
 16 in any manner to exclude or interfere with the operation of any  
 17 State law or authority with respect to such lands, property and  
 18 facilities. Any such municipality; *except for any municipality*  
 19 *bordering on the Atlantic ocean which are under the purview of*  
 20 *the "Fair Beaches Act" P. L. , c. (C. ) (now*  
 21 *before the Legislature as this bill)*, may, in order to provide funds  
 22 to improve, maintain and police the same and to protect the same  
 23 from erosion, encroachment and damage by sea or otherwise, and  
 24 to provide facilities and safeguards for public bathing and recrea-  
 25 tion, including the employment of lifeguards, by ordinance, make  
 26 and enforce rules and regulations for the government, use, main-  
 27 tenance and policing thereof and provide for the charging and  
 28 collecting of reasonable fees for the registration of persons using  
 29 said lands and bathing facilities, for access to the beach and  
 30 bathing and recreational grounds so provided and for the use  
 31 of the bathing and recreational facilities, but no such fees shall  
 32 be charged or collected from children under the age of 12 years.

1 21. (New section) There is appropriated from the General Fund  
 2 to the Department of Environmental Protection the sum of  
 3 \$250,000.00, not less than \$200,000.00 of which shall be dedicated  
 4 to issuing grants to beach municipalities pursuant to section 8  
 5 of this amendatory and supplementary act, and the balance to  
 6 defray the cost of reviewing beach management plans submitted  
 7 pursuant to section 6 of this amendatory and supplementary act.

1 22. This act shall take effect immediately.



## STATEMENT

The purpose of this bill is to improve public access to the beaches of the State. The bill codifies certain principles enunciated by the State's courts in applying the public trust doctrine to public's right of access to, and use of, this State's coastal beaches and waters, and sets forth the rights of individual beach users and private property owners, and the responsibilities of municipalities and the State to improve access.

As provided in the bill, beach admission fees shall be calculated so as to permit the municipality to collect revenues sufficient to recover the municipality's expenses associated with operating the beach, but would exempt persons under 12 and over 65 years of age from admission charges. The bill would require that beach revenues and expenses be reported to the Department of Community Affairs.

The bill would further require beach municipalities to submit plans addressing beach access, admission fees and parking for approval by the Department of Environmental Protection. The bill would provide \$200,000.00 to be distributed as grants to assist in the preparation of these plans. In addition, the bill would prescribe certain measures to be taken by local governments to ensure the public's right under the public trust doctrine.

The bill would also limit the liability of owners, occupants or lessees of a beach area to persons using public trust lands.

Finally, the bill would require the State to, with respect to State and federally operated beaches, assure compliance with the State Sanitary Code governing public bathing, and to improve access by maximizing the accessibility by public transportation from proximate parking facilities and public transportation terminal points.

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BEACHES AND SHORES

The "Fair Beaches Act."

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ASSEMBLYMAN ANTHONY M. VILLANE, JR. (Acting Chairman): I'd like to ask whoever would like to, to come up on this platform and have a seat. Anyone who would like to testify in the official record of this Committee, we'd like for you to fill out a form up here to tell us who you are and where you are from, and possibly a little bit of the subject matter that you would like to speak about.

This Committee has had two meetings. This is the third meeting along the Jersey shore. Basically, we're getting information from people who use the Jersey shore concerning: 1) beach access, beach fees, litter; we're hearing a lot of talk about pollution, about floating debris, and about septic waste. Really this Committee has garnered a tremendous amount of information -- of background material -- in an attempt to include it in a piece of legislation of which most of the members of this Committee are co-sponsors. The legislation is Assembly Bill 3152 that talks about fair beach access, parking, and availability of the ocean front to the public of both the State of New Jersey and our surrounding sister states.

The Committee -- I'd just like to say on their behalf -- have taken a number of days out to address this issue when most legislators don't have to. The first one I'd like to recognize is a member of this Committee, who has done a tremendous job with me and with the State Legislature in the area of the environment and in the area of tourism -- Assemblyman Singer, who represents this municipality in this part of the State of New Jersey. Assemblyman Singer.

ASSEMBLYMAN SINGER: Thank you, Doc. I appreciate it. I certainly want to thank Mayor Tompkins and Tom Kennedy for helping us today. We appreciate it, Mayor. You've been very supportive of us. I wish to indulge you a little bit. And I know that the main reason that we are here today is beach access, but unfortunately, due to the situation in the last few weeks down the shore here, I think the major concern people are

talking about, the main concern that we have to focus our interest on, is certainly ocean pollution. Without a clean ocean, without a viable ocean, we're wasting our time talking about beach access.

I would ask the Committee -- and I've been a member of the Select Committee on Tourism since I've been in the Assembly -- to focus on supporting the bill that both Assemblyman Moran, myself, Senator Connors, and Senator Russo have sponsored right now, and that is presently in the Legislature that will stop all ocean dumping. That is the answer. That is the key answer. The key answer that we have to realize is -- and we've brought some charts down to show you -- is number one, that 53% of all the sludge dumped off our shore is dumped by New Jersey. Before we can point the finger and start to talk about how we're going to stop ocean dumping and clean up the ocean, and for the State of New York to get their act cleaned up, we've got to clean up our act.

By the way, this chart gives an idea of the one million pounds of sludge that we dump daily off our own shores from our own counties. One million pounds. It's got to stop. We've got to be the forerunner in this; we've got to be the forerunner in this. We've got to show the rest of the country that we mean business and we've got to stop dumping on our own.

So, the breakdown as you can see here that Assemblyman Moran is holding, tells you from each county what they dump daily. This is not monthly, this is not weekly, this is every day. And I think when you see that million pounds in the bottom, that's something you realize we have got to stop and is something we want to stop.

And the answer to it is the bill that Assemblyman Moran, myself, Senator Connors, and Senator Russo -- in the Senate it's S-3488, in the Assembly it's A-4345-- It's going to be a five-year program with a 20% cutback each year. We're going to lead the country, we're going stop ocean dumping,

we're going to do land application, we're going to build the kind of plant we're building here in Ocean County to make fertilizer out of sludge, and we're going to take the lead in this. This is one of the keys we're asking for. And I'm asking the Select Committee today to indulge us by asking the General Assembly and Senate to take this as a priority. I'm also asking the Chairman to also come along with us. I'm asking Assemblyman Bennett, who is the Chairman of the Environmental Quality Committee of the State Assembly, that next week we have a hearing immediately as to what's being done and to find out about the pollution source down here and look at all bills in the Assembly and in the Senate that will help us to clean up our ocean now.

The people of the State of New Jersey and the residents of Ocean County in my district have come to me and said, "You've got to end it now. You've got to take the lead, and the time is upon us." And Doc Villane, Chairman of this, I know you've been a leader in the environment -- you've been the one that's concerned about the environment all these years -- and I know that surely you are behind these efforts to take the lead in this and put Ocean County and the State of New Jersey up-front, saying we are taking the lead, we are stopping ocean dumping, and we are stopping ocean pollution now.

ASSEMBLYMAN MORAN: I just want to make a brief comment as to Assemblyman Bob Singer's presentation. It's interesting to know that the authorities listed here are far from Ocean County and Monmouth County. It's also interesting to know that Ocean County Utility Authority which services parts of Monmouth County as well, has taken the leadership role in the State of New Jersey by taking all of its sludge and turning it into fertilizer. The Ocean County Utilities Authority in the past year has awarded contracts in excess of \$44 million to do just that. We are the leaders in the State of New Jersey and we take a great deal of pride in that.

With the help of Doc Villane, Chairman of this Committee, and Joe Palaia, who has taken a very active role, and Bob Singer, maybe we can push Assemblyman John Bennett, the Chairman of the Environmental Committee, and Senator Dalton, the Chairman of the Senate Committee to move these two bills immediately so that we can be assured that our oceans will be clean, and our bays and our rivers will be twice as clean as they are now. If you look out into the ocean now, it looks clean.

Assemblyman Bob Singer and I had the opportunity to take an aerial shot of the whole coastline in the 9th and the 10th District yesterday. Believe me ladies and gentlemen, it's fairly clean, but it's not clean enough. The ocean dumping that's taken place has not just taken place by the State of New York. We are part of the problem. We've got to have every authority in the State of New Jersey that is dumping sludge, stop it as soon as possible. With the plan put out in this particular bill by Senator Connors and Senator Russo and myself and Assemblyman Bob Singer, that is possible. Thank you. Thank you, Doc.

ASSEMBLYMAN SINGER: Just one last thing, Doc, and I won't delay the meeting. You know, we talk about our \$11 billion tourism industry and I know that Mayor Tompkins is here and many of the other people who are quite concerned about it-- Without that clean ocean, without the lifeblood of tourism of this State, we're in serious trouble. We have got to turn it around now. We've got to make sure that people understand that it's safe, it's enjoyable to come down to the Jersey shore and swim in our ocean. This obligation is an obligation of every one of us in the State to make sure this happens. If we don't -- and I know that I've spoken to Mayor Tompkins many times -- if we don't take the initiative and do these things, we are cutting our own throats and we'll end up seeing these beaches barren. We won't have to worry about

beach access. We won't have to worry about what it costs to go on the beach, because the people won't be here. We have the opportunity to do it now. It's not too late.

And I believe under the direction of people like Doc Villane, Joe Palaia, Jeff Moran, Assemblyman Bennett, who is in charge of Environmental Quality, Maureen Ogden, and Senator Dalton, we can do it. And I have to say that I give credit to one thing: the attention of the public has been focused-- Unfortunately I think it took the incident of the dolphins to bring people around, to make them understand what is happening, and how crucial this is for the lifeblood of the ocean. And I think with this and because this has happened, people are saying to us from all over the State, "We want to stop it. We're concerned about it. And the environment that we want to leave to our children is very important and we want it cleaned up now." So with that, certainly Doc, I thank you for your indulgence on this. Again, thank you.

ASSEMBLYMAN VILLANE: I want to repeat again that we'd like to hear from the public. We'd like you to come up and testify: to talk to us about beach access, about the problems of pollution or litter, or whatever you want to talk about. This Committee is putting a piece of legislation together on a bipartisan basis to help improve conditions on the Jersey shore.

This single last two weeks, has infuriated, I guess, every representative in the State of New Jersey on both sides of the political aisle. That's not to say that New Jersey has not been a leader in toxic waste cleanup, a leader in testing the waters for the first time ever in the last two years and reporting to the public what's really in the water, and what it's really about. This Committee was responsible for putting a million dollars in the budget to do a health study on water quality.

So, everybody here is frustrated. Everybody is going to talk about what we are going to do and we're really going to

do it, because we're sick and tired of being embarrassed. And we don't want the people who come to New Jersey to worry for a single minute about the quality of the water or the health of themselves or their children.

The other members of this Committee-- I would like to have them make an opening statement, and then I'd like to ask the Mayor if he'd like to say something. And then, really, I want to get to the public to hear what you've got to say. A colleague in the Legislature with me for many years is Assemblyman John Doyle. John?

ASSEMBLYMAN DOYLE: Thank you very much. As the senior legislator here, I made a judgment this morning; that is that the shore is to be enjoyed. Now you can't enjoy the shore if you have your top button buttoned, if you're wearing a tie, and if you have a suit jacket or a sports jacket on. So, I came dressed to enjoy.

ASSEMBLYMAN VILLANE: Unless you're a real clam digger like us.

ASSEMBLYMAN DOYLE: So, I came here to enjoy. Now to enjoy the shore, you not only have to be dressed right, it has to be clean and it has to be affordable. That's what we're going to talk about today.

I think Doc properly said the last two weeks have focused attention. We need not lecture you. You know all of the facts and the figures, I think, all too well. But all of those facts and figures don't mean as much, as we look out behind us. And if we see raw sewage, we see chemical pollution, we see something coming down from New York, we think, I think, in a single voice like the character in the movie "Network," "Hell no! We won't take no more!" I think that's what we're all saying.

A part of the package of bills that evidently will be going in, will be a bipartisan bill sponsored by all of the Ocean County legislators. For those of you in the media, you



have the release being given to you that would prohibit the dumping of chemical and industrial wastes. That is as my colleagues have said, only a portion of the problem, but it is a portion we should concentrate on.

Finally, we're here to listen to you. So, as I've learned before in my 14 years in the Legislature, you're not learning anything while you are talking, so you ought to shut up and listen for awhile. Hopeful we'll all do that and listen to the public. Thank you.

ASSEMBLYMAN PALAIA: My name is Assemblyman Joe Palaia. I'm from just north of here in Monmouth County, the 11th Legislative District with Doc Villane. Just briefly, all I want to say is I just hope that in three weeks when Labor Day comes around and everybody goes back home and we stay here, that we don't forget about the problem. I think too often we start to address a problem every June, July, or August, and all of a sudden here comes Labor Day, and we forget about the problem and we pick it up again.

I think this Committee, as been stated before, is not going to take that stand. We want to make sure that by next May that we will have things the way they should be at the Jersey shore. So, let's just keep apprised of what's going on. And we certainly will do all we can to pass the type of legislation that's needed to resolve this problem. Doc.

ASSEMBLYMAN VILLANE: Thank you very much, Assemblyman. Anyone out there who would like to come up and testify, please fill out this sheet of paper right up here. Come up here and do that, and we'll take them in the order we get them. Mayor, would you like to say a few words to the people as the host Mayor to this municipality and to this Committee? I'm sorry. I neglected to introduce the Assemblyman from the 9th Legislative District who is a member of this Committee. I know he spoke previously, but he has a few opening remarks. Assemblyman Jeff Moran. Assemblyman.

ASSEMBLYMAN MORAN: Thank you, Doc. I just want to welcome you to the 10th Legislative District, our very, very close and very good neighbor to the 9th. The issue of beach access is nothing new. I think at the two previous public hearings that we had we've had outstanding participation from the public, and I think it's time we hear some more testimony from people from the 9th and 10th Districts to find out exactly what the problems are here.

But as Assemblyman Bob Singer started out with, I think we've got to look at the issue as a total picture; not just access, but are we going to have something that's accessible and worth going to? I'm interested in hearing what everybody has to say.

Again, on behalf of all of us in the 9th District, I want to personally take this opportunity to thank the Mayor for the opportunity to be here and for a beautiful day. Also, Assemblyman Doc Villane, I know, is a very, very busy man. I know he's been in and out of Trenton for the last two weeks on other public hearings. And Assemblyman John Paul Doyle, I know is extremely busy; Joe Palaia, and, of course, my good friend and colleague, Assemblyman Bob Singer. Thank you, Doc.

Also it gives me a great pleasure to introduce to you, on behalf of the Committee, a mayor that is not just the mayor of a small community in Ocean County, but he's the Chairman of the Ocean County Mayors Association, and a spokesman on almost every issue when it comes to beach access, community involvement, or whatever it is. There isn't a week or a month that goes by when we're in session that I don't get a phone call the day before and the day after from the Mayor of Seaside. It gives me great pleasure to introduce the Mayor that makes it work in Ocean County. Mayor George Tompkins.

M A Y O R   G E O R G E   T O M P K I N S: Thank you very much. I certainly appreciate the Committee taking their time and affording us the opportunity here in Seaside Heights to

testify regarding beach access, beach fees, parking fees, and the pollution that we have encountered this summer.

While I feel that our beach fees at Seaside Heights are very reasonable, our taxpayers in Seaside Heights take the brunt for paying for the cleanup in the town when we take into account the various costs that are involved in maintaining a beach where you have some 5 million people coming to your town every year. It really is a very costly operation and the beach fees that we charge at Seaside Heights which is two dollars a day and three dollars on weekends, do not cover all of the costs of maintaining the beaches.

And I want to say that while I've heard testimony that beach fees are too high. I think that what the Public Advocate should really look for now is ways of helping the towns in Ocean County and Monmouth County and further south that have been hit with this problem. Here in Seaside Heights when we had the sludge that washed up on the Jersey beach back in June, we had very little sludge in Seaside. But the operation was very costly. We had to keep our lifeguards on. We had special police assigned to keep the people out of the water. We kept them out of the water for three days while our water was tested constantly by the Ocean County Health Department, who by the way, do daily testing of the waters and they do a tremendous job for the town, for the county, and for the visitors coming down to the shore. But in spite of the fact that the water was deemed perfectly safe, we kept it closed for three days until all the tests were in.

The cost of revenue that we have lost as a result of that -- people being afraid of going into the ocean -- as of last week, before the problem of the garbage appeared, we were close to \$94,000 behind on beach fees and close to \$34,000 behind the parking meter fees. Now with the latest episode that we've had, I'm sure that the rest of the season is going to be very damaging to us, because people are calling. We get

some hundred calls a day from people from North Jersey, Connecticut, and Pennsylvania asking us if our beach is open, because they've heard so many reports on television, radio, and the newspapers about the beaches being closed.

While I feel our beach has probably been the cleanest it's been in twenty years, the problem that we've encountered, has not been with anything from Ocean County, but it's been from the northern part of the State, New York City, and these problems are insurmountable. And I might say to the Advocate, "I think you better looking for ways of getting more money from the towns to offset the losses that they are going to have as a result of beach fees and as a result of parking meter fees and so forth."

Because next year, your problems are going to be in the towns when they make up the budget and have a double loss. Not only are they going to have to make up for the money that they've lost in revenue this year, but the anticipated revenue for next year -- they can't anticipate the revenue, because of the fact that they didn't make it this year. So, it's going to be a double figure next year.

Various towns along the shore are going to cut back drastically on services, on cleaning, on lifeguards, and so forth. And unless we get some help from the State, we're going to be in a bad pickle next year; and the fact that next year we might be hit too with people remembering what happened this year. I would say that I think we'd better stop worrying about beach fees, because I think beach fees in New Jersey are the cheapest around. People talk about beaches where they have no beach fees, and Atlantic City is one the people bring to mind. You go down and look at the beach in Atlantic City, there's very few people on the beach in Atlantic City. You talk about states that have no beach fees. Look at their beaches. How many people are on their beaches? They are so sparsely populated that it's unbelievable that there's no cost

involved. But when you have beaches where you run anywhere from 30, 40, 50,000 people a day like we have here in New Jersey, the cost of cleaning that beach, maintaining that beach, and providing safety for the people is insurmountable. So I think the Advocate has to look at those figures.

We here in town have drawn up a resolution opposing all ocean dumping. We're not going to pick on any one individual. I think all ocean dumping should be stopped. It should be stopped immediately. I think that we have a great bunch of representatives here in Ocean and Monmouth County and these people are working hard. But unless they get support from the Senators and the Assemblymen in North Jersey, it's going to be to no avail.

I'm asking anyone from out of this area to write and call your Senators and Assemblymen and tell them we've got to clean up this mess. We've got to stop polluting our ocean. We've got to stop killing our natural resources. I think the only way we're going to accomplish this is through a concentrated effort on everyone's part.

I don't want to take any more time, because there's a lot of people who want to testify. I certainly thank the Committee for inviting me here and for coming here today. I thank everyone for turning out here. Enjoy your time in Seaside Heights. We've got the finest boardwalk, the finest beaches, and we always have sunshine in Seaside Heights. Thank you very much.

ASSEMBLYMAN VILLANE: Thank you very much, Mayor. We're going to have a number of people testify. They'll testify here at this particular table. We're going to start with Jay Delaney. Is Mr. Delaney here? He's a Councilman from Seaside Park.

C O U N C I L M A N J A Y D E L A N E Y: Thank you, Mr. Chairman. First of all, I'd like to thank the Committee for coming to Ocean County. One of the complaints that we here in

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Ocean County have had concerning the issue of beaches and coast, whether it's the question of pollution, shore protection, or public access to the beaches, has been that the concern here in Ocean County is different than the concern in Monmouth County. And it's certainly different than the concern in Trenton, and the cities of the State of New Jersey.

As a lifelong resident of Seaside Park, and currently a member of Seaside Borough Council, I'm here to talk primarily about beach access, which I feel is the reason that brought you here to begin with. In light of the past two weeks, I can't let an opportunity like this go by without stating how outraged we are in Seaside Park concerning the condition of our beaches.

And it's not the condition brought about by Ocean County. As has been previously stated today, in Ocean County we're paying the price. We're paying the price twice. First of all, we have some of the highest sewage rates in the State, because here in Ocean County we've taken the steps. We've taken the steps to eliminate the primary treatment of sludge and sewage waste and have it dumped into our ocean. Here in Ocean County we have one the finest facilities and most advanced facility for the treatment of waste. But of course, we're paying for it dearly.

Unfortunately, what we do in Ocean County does not stop in Ocean County. We're protecting our beaches. But we're also protecting the beaches to the north of us and to the south of us. We wish the same could be done in Monmouth County and in Atlantic, Burlington, and Cape May Counties. It's often this time of the year when we read about communities in Monmouth and Cape May that are still looking at primary waste treatment plants that have their beaches closed because of sewage waste. In Ocean County we don't have that problem except for what washes up on our beaches from other areas.

The pollution problem is many faceted. Certainly we have the problem concerning sludge that has been addressed by

Assemblyman Moran and Assemblyman Singer. Certainly New Jersey has to lead the way. Certainly, New York City is part of the problem. But before we can point our finger at New York City, we have to do something about what's being done in New Jersey. What we have to do in New Jersey is to stop dumping sludge into our ocean, whether it's 12-miles offshore or whether it's 106-miles offshore. Certainly the 106 is better than the 12, but it's not the solution. The ocean is not a cesspool. With the kind of development that we see taking place in the tristate area, the point of saturation has been reached as evidenced by what's washing up on our shore here in Ocean County, in Monmouth County, in Atlantic County, and even as far south as Cape May County.

The dying of dolphins along the east coast -- certainly it's something serious. It indicates that we've reached a point where we have to do something. The dolphins are one of the closest animals to the humans. They are mammals like us -- warmblooded, they need air to breath. If we allow dolphins to continue to die, we can't be far behind.

The other issue concerning pollution is garbage. Certainly, New York City is the prime offender of garbage waste in our seas and that should be addressed. I call on the residents of Ocean County and, in fact, the residents of the entire State of New Jersey to boycott New York City until we have a solution to our garbage problem. (audience cheers)

ASSEMBLYMAN MORAN: Okay, that was Mayor Koch cheering.

COUNCILMAN DELANEY: We all love the Mets and we love the Yankees, but until our oceans are clean, I say we go to Philadelphia and support the Phillies. Certainly we can pass all the regulations we want, but until the rules are enforced and the money is in place to provide for the enforcement, nothing will happen. That also has to be taken care of. Also while I'm on the subject of beaches and shore protection -- although it's not a primary concern of this Committee -- New



Jersey needs a stable funding source for shore protection measures. Shore protection is not something where you wake up on a Monday morning and say that we need to replenish a beach or we need to build a jetty. It's a long and involved process. It takes many years of planning. And in New Jersey, the money just hasn't been there to provide for that planning as well as the implementation of the measures that are needed to replenish our beaches.

Here in Ocean County we're fortunate. We have wide beaches, wide sandy clean beaches. But there are many municipalities, particularly in Monmouth County that don't have this luxury. I agree with what's been said. We can sit here and talk about shore protection, but ultimately it's got to be the first issue of clean water.

Concerning beach access, in Seaside Park and Seaside Heights, we have no problems with beach access. But I'm not here to become a representative to bash what's going on in Monmouth County. Certainly the Department of Environmental Protection and the Public Advocate have concerns about what other municipalities are doing. But I think those municipalities know what's best for them. The headlands of Monmouth County and the barrier islands of Ocean County are different. By their very nature, they were developed differently, the planning is different, just the sheer quantity of people is different. We can't try to apply a blanket idea for a beach access to every community in this State.

Take Seaside Park. We're a barrier island, no more than 600 feet wide, a mile and five-eighths long. We have a mile and five-eighths ocean beach and a mile and five-eighths bay beach. Where does the ocean beach start and where does the bay beach stop? Most of the people who come to our community use our beaches, whether it's the ocean or the bay. We have to be able to charge for our beaches so that we can provide the cleanup, the insurance, the police protection, and all the other costs the borough incurs to provide for our beaches.

Certainly our beaches are a God given asset. And certainly in the State of New Jersey there's a long history of public access, particularly to the areas between the water lines -- the high and low water lines. Other than that, the beaches are private property. In Seaside Park we have an obligation to provide for the protection of our beaches, but with that comes the responsibility to also provide for a source to clean the beaches and to protect them. That's all that we're asking for.

In Seaside Park we have strong reservations about any bill that puts a maximum cap on the amount of money to be charged. Granted, we at Seaside Park as well as Seaside Heights represents some of the lowest beach fees in the State. But just because ours are low doesn't mean that Belmar's are too high. Belmar has their own problems, and I'm sure they are going to address them. But if they say that they need eight dollars to run their beaches because of the amount of people that are there and the particular issues that face Belmar, then I think we have to listen to them.

We talk about beach access. The State of New Jersey is probably the worst violator of public access. To the south of Seaside Park we have Island Beach State Park; something that is minimally developed for recreational use. I'm not advocating that that recreational use be expanded, but you have to look at the situation. At Island Beach State Park when their parking lots are full, they close the gate. That is a luxury that we here at Seaside Park and Seaside Heights don't have. We can't put a gate on the bridge and say, "No more people can come in." We have the people come and we have to treat them. They are our visitors, they provide us with income in a certain amount of ways, but at the same time there are costs that are incurred to treat those visitors.

We can't allow public access of beaches to stop at State parks. If New Jersey is going to address the issue of

public access, start with the State parks first. That's all I have to say. Thank you.

ASSEMBLYMAN VILLANE: Thank you very much.

ASSEMBLYMAN DOYLE: Just one question. How much does Seaside charge to get on to the beaches?

COUNCILMAN DELANEY: Our rates vary. We have a structure that allows for daily beach fees. In Seaside Park our rate structure allows for usage of the beach on a daily basis, a weekly basis, and a seasonal basis. Our seasonal badge is \$22, our weekly badge is \$12 and our daily rate is two dollars during the week and three dollars on weekends.

ASSEMBLYMAN DOYLE: Do you feel that at those rates the beaches are self-supporting?

COUNCILMAN DELANEY: Our beaches are run at a loss. It's often difficult because of the budget laws in New Jersey to separate what are direct cost and indirect cost. We often have discussions with members of the State bureaucracy concerning our beach access fees and our costs. On paper, our direct cost is approximately \$200,000 which are the costs to pay for the lifeguards, the beach cleanup fees, as well as the miscellaneous expenditures of lifeguards and other protection measures. However, what those don't include is a liability insurance factor, the police factor for the parking problems and the litter problems on our streets and in our parking areas -- parking areas that are not primarily designated for the beaches, but that's what they are used for.

ASSEMBLYMAN DOYLE: If you were to try to run it on a self-sustaining basis, what do you think would happen to your fees? Obviously they will go up, but by what proportion?

COUNCILMAN DELANEY: It's hard to say. Obviously, fees are a difficult subject to deal with. Every time we raise our fees because we get to the point where our costs have exceeded what we're taking in, we see a drop-off in the level of unit sales. Of course being a weather dependent operation,

it's difficult to say that the loss in revenues or the loss in unit sales is attributed to the increase in fees or whether it's just the sunshine or the lack of it. ~~very much~~

ASSEMBLYMAN DOYLE: Just one thing. You know, we've heard this in other testimony. This is our third hearing that we've had. And the concern we have to have is that the local municipalities are able to recoup all expenses. As you said, direct expenses are the cleanup and the lifeguards. It's the indirect expenses that bother me -- the hidden costs that we all know about, the fact that you have to equip a larger police force that is only used for a part of the season, the problem of roads that are being more heavily traveled, and all the difficulties with parking and other monitoring of traffic control that have been thrown onto the municipality. Many of those hidden costs can never be shown or can never directly contributed to, but do affect the operation of the municipality.

And of course as you say, no one can predict what the weather is going to be like and what your fees are going to be. That's a major concern I have, and certainly I must say that your municipality, as well as most municipalities, want to see people come down, and do everything they can to do it. So, I think those are the things that we have to look at and certainly, I think your municipality does a fine job.

COUNCILMAN DELANEY: Thank you.

ASSEMBLYMAN VILLANE: Thank you. I would suggest that maybe we could keep the testimony a little shorter so that we could get to everybody if at all possible. Just for review, the bill that the Councilman just spoke of is a bill that would delineate specifically what is a reasonable cost to be included in the budget to be used for your beaches. Right now a lot of towns like his town subsidize the operation of the beaches through taxpayers -- realty taxes. Other municipalities claim probably far in excess as to what it really cost them. What the bill attempts to address is what is reasonable and what is

not reasonable to apply to the beach fee that you're charging the tourist that comes to your town. It's quite an extensive bill. I'd like to have one of the Assemblymen get copies of the bill to the councilmen and to the mayors. YOU KNOW, WE'VE

I'd like to hear from Ms. Gloria Jackson Wright from the Public Advocate's office who will present the point of view of the Public Advocate. Ms. Wright.

G L O R I A J A C K S O N W R I G H T: Thank you, Chairman Villane and members of the Assembly Select Committee. We have previously stated our position on beach access. We have spoken twice before on beach access. Today we're here just to reiterate the fact that we think that the beach should remain available for the use of the entire public. And we are here also to answer any questions, and to make available to you and to the public our statement and copies of our survey which we have previously released. Our statement has not changed.

We also have copies of the study if you would like those. So, actually I'm here if you have any questions or other points of the Public Advocate that we could address.

ASSEMBLYMAN VILLANE: Thank you very much Gloria. Copies of the Public Advocate's statement are available. Copies of the piece of legislation that we are talking about concerning access are available. I think everybody here on the Committee agrees that the beaches in the State of New Jersey belong to everybody. The public has the right to be on them. I think that that's a given, by the Committee members. We're talking about what's reasonable and what costs are involved. I'd like now, if I may to hear from Mr. George Christopher from Central Avenue. Mr. Christopher, would you just announce for the record, your name and your address and your permanent home.

G E O R G E C H R I S T O P H E R: Okay. My name is George Christopher. I live in Lakewood, New Jersey -- ten miles from the ocean. I'd like to know why in recent weeks we've had this announcement about bird droppings in the ocean off the pier in

Seaside Heights? I see again today that it's cordoned off. I guess they don't allow swimming. I think it's kind of insulting the intelligence of the public. I mean, birds have been pooping in that ocean since Adam and Eve, and there's got to be something out there more than bird poop. Maybe somebody can answer that question as to what's really out there? Why are they insulting our intelligence like this?

ASSEMBLYMAN VILLANE: We just want to hear your testimony.

ASSEMBLYMAN DOYLE: Who closed that beach? I think it was the municipality, I think.

MR. CHRISTOPHER: I don't know who closed it. But we're not allowed in it. I'm just being a witness to this. That's my testimony.

ASSEMBLYMAN VILLANE: Is that it?

MR. CHRISTOPHER: That's it.

ASSEMBLYMAN VILLANE: I can tell you a little bit. The County Board of Health, I understand, is the agency that closed it. But, I kind of laughed at bird dropping problems when they closed the beach in Long Branch for the longest time any beach has been closed in New Jersey. The pier that the birds perched on -- thousands of birds, pigeons, and gulls -- the pier burned down. The beach hasn't been closed since. I kind of thought it was not a reasonable suggestion that bird pollution could do that. But it appears the coli count generated from birds has an effect on the water quality.

MR. CHRISTOPHER: It's interested that all of a sudden it's a big problem when all these years birds have been around.

ASSEMBLYMAN VILLANE: Well, you ought to recognize number one that we never tested the waters until two years ago. People who said that they were swimming in clean water all their life really were not sure about it, because the Department of Environmental Protection and the Department of Health in the State of New Jersey and local municipalities and

counties never tested the water. So, now I think the State of New Jersey, the counties, and the municipalities are participating and guaranteeing a better water quality to the people that use it. Thank you.

MR. CHRISTOPHER: Okay. Thank you.

ASSEMBLYMAN VILLANE: Mr. Harry Staggs, Island Avenue Fishing Club, Island Avenue, Seaside Park, New Jersey. Mr. Staggs.

H A R R Y S T A G G: First of all I want to say how insulted I am about this ocean dumping. It happens at a time when we're getting reassessed values for our property. And this looks like our property value is going to take a nose dive. A lot of people are not interested in the shore any more. So our property values are going down. It just so happens that at this time we're getting reassessed and I think it's entirely unfair. How can you reassess property when we have the ocean pollution -- which is our main source of income?

Another thing I want to say is about our fishing club. We maintain a nice clubhouse and we have a good membership. Now if we don't have fish in the ocean, how are we going to maintain a clubhouse? Another hardship on our economy. One thing I want to say about the environmentalists-- The Department of Environmental Protection is putting out a lot of literature on not polluting. Well, how about putting some signs up on the beach facing out towards to the ocean telling them not to pollute. Never mind having the signs along the Jersey shore for the public to put litter in the baskets. How about putting some signs on the beaches pointing eastward?

All I have to say is that the people of Seaside Park are completely-- It's an insult to us to have this ocean dumping allowed. That's just the way we feel. We feel insulted. Thank you.



ASSEMBLYMAN VILLANE: Thank you very much, Mr. Stagg. The next person is Dr. Miranti from the Borough of Seaside Park, Ocean Avenue. Dr. Miranti.

D R. R. A. M I R A N T I: Gentlemen, ladies, this day speaks as eloquently as a day at the shore could possibly speak about why we're here. Over the backdrop if you can see the pristine crystal surf. No garbage floating ashore, people enjoying themselves, and safe water condition. This is what a day at the beach is all about. There should never be any reason to dump anything into the ocean. It is uncalled for. Certainly it is an unsound environmental economic policy.

The major comments that I'm in agreement with my colleague, Councilman Delaney who spoke just before in an very eloquent fashion. I certainly agree that Seaside Park does its utmost under the parameters of home rule to maintain that this beauty, this recreation, this God given benefit, is maintained for all of the citizens of the State of New Jersey as well as our neighboring states. We have never turned anyone away. We do have a minimal beach fee access. That money is used for the maintenance and the safety of the public and for their welfare and for their health as much as possible. Other than those remarks, I hope you gentlemen brought your bathing suits with you.

ASSEMBLYMAN VILLANE: I did. Thank you very much, Doctor. Before the next one testifies, I'd like to introduce someone who's been a very big help to this Committee, someone who has served on the Committee's advisory board. Mr. Michael Redpath. Michael, thank you very much for your help in the past. Your experience in tourism and recreation is very well taken by our Committee.

I'd like to introduce a man who testified before our Committee in Belmar. He's here with us again. Mr. Thomas Keating, Sr.

T H O M A S   K E A T I N G ,   S R . : Mr. Chairman and members of the Committee, I would like to thank you for giving me the opportunity to speak today. My name is Tom Keating and I reside at 222 Sullivan Way, West Trenton, New Jersey.

I'm against all beach fees. But the millions of dollars that the State of New Jersey and the Federal government poured into the Jersey beaches for years to fight beach erosion-- Two or three years ago, there was a referendum on the ballot for \$50 million for beach erosion, and that bill passed. I might say that I voted for that bill.

I'm 69 years old, and I've been coming to the Jersey shore for 62 years -- less four years out for service in World War II out in the Pacific. The New Jersey Supreme Court came out with an opinion that said all Jersey beaches must be open to the general public. Now I'm only referring to one municipality. There are others. There are plenty of them. But I just want to refer to Deal.

It seems that Deal has a fence up from the waters edge back to the top of the beach. The State of New Jersey came out and said, "Take the fence down or we'll take it down for you." I've never heard another thing about that since. I say to the Public Advocate of the State of New Jersey you should start impeachment proceedings against the Attorney General of the State of New Jersey. He took an oath to uphold the laws of the State of New Jersey, and he is not doing it.

I was down to Belmar Saturday, August 8. Belmar's fees are eight dollars on Saturdays, Sundays, and Holidays; and \$20 dollars per month for season passes. Just below the price sign was another sign in extra large letters that said, "Absolutely no refunds." So what they are telling the general public is, if you can't find a place to park, it's not our problem. And everyone here knows that Belmar has the biggest parking problem of the Jersey shore.

Now, I would like to say something about Ocean City. The Bureau of Tourism at the end of every beach season puts a list of all the municipalities that charge beach fees. And in 1985, Ocean City took in beach fees of \$998,000. The same year that the State of New Jersey gave them \$5 million for beach erosion.

Now, I'd like to say something about the beach fee law that was passed, I think, in 1955. The law says, "Beach municipalities may charge beach reasonable fees to anyone 12 years old and older." But the bottom line of this bill says, "All monies derived from beach fees can only be spent to pay lifeguards and other beach employees."

Here's an article that I cut out of the Trenton paper. I'm not going to read the whole article. I just want to read the last paragraph. "Seaside Heights: Seaside Heights Borough Clerk, Betsy Arnold said 'The lifeguards and other city employees received a 7.5% salaries raise this year.'" They're classing (sic) the lifeguards and other beach employees as city employees. And the beach bill says that no monies can be spent other than to pay lifeguards and other beach employees.

Now I think this bill, A-3152 is a good bill. The Fair Beach Act has three parts: access to the beaches, parking at the beaches, and reasonable beach fees. Reasonable beach fees hasn't got a chance to pass in this State, parking at the shore will pass, because the municipalities will get more parking spaces and they will get more people down here. Beach access -- forget it. Forget it. They won't even open the beaches when the New Jersey Supreme Court says they have to open the beaches.

I remember Senator Zane, about four years ago, he had a bill in on beach fees. It never came out of the committee.

ASSEMBLYMAN SINGER: He should never have. I'm just kidding you, Tom.

MR. KEATING: Besides the point, did he put it in? He put it. It never came out of committee. Assemblyman McEnroe had a bill in for three years. It was very similar to this beach bill that's in now. I went down to see him, he said, "Tom, it's going to pass. It's going to pass. No question about it." Asbury Park Press, Trentonian, Trenton Times, Newark Star-Ledger, they're all for this. It never got out of committee. And said to him that day, "I'll bet you two to one and bet \$200 that it doesn't pass if it comes out of committee."

ASSEMBLYMAN SINGER: Did he pay?

MR. KEATING: He didn't bet. He didn't bet. Now they talk about the teachers' lobby in the State of New Jersey. The teachers' lobbying is suppose to be one of the biggest lobbies in the country. And it's a damned big lobby in the State of New Jersey. If you think that teachers' lobby is a big lobby, you'd better get wise to yourself. Those people that have those beaches that nobody gets on are the ones that are the lobbyists in this State. That's all I have to say, fellows. Thank you very much for letting me stay.

ASSEMBLYMAN VILLANE: Thank you very much, Tom. Be glad to have you visit with us again, Thomas. I'd like to now introduce Mr. Steve Sacco from 21 Clark Place, Bloomfield, New Jersey. Mr. Sacco.

S T E V E S A C C O: First of all I'd like to say is that all we're hearing here is talk. Talk, talk, talk about cleaning up the shore. Everyday you look on the news is talk, talk, talk. That's all you hear. You heard Governor Kean yesterday with Mayor Koch about dumping in New Jersey. What did Mayor Koch have to say? It sounded like a joke to him. Mayor Koch isn't that concerned with New Jersey when he turns over to Governor Kean and makes it like a joke and says that we'll put together a regional committee to clean up the shores.

But what are we doing? Nothing. A few months ago when they had the pollution here in Seaside Heights, Governor

Kean said that he was going to do something about it. What did we hear? Talk, talk, and talk. That's all we hear. But these people up here, I think are doing a lot more than the Governor is even doing; even though I like Governor Kean a lot. He's our best Governor, yet I still thinks he needs to do more. I really appreciate these people here on the platform, because they are doing a lot for New Jersey and for Seaside here.

Last week, last Thursday-- Not this past Thrusday, but I took my grandmother from England for a walk on the beach. We walked along the beach and we had to see telephone poles getting washed in. We saw everything. You name it and we saw it here in Seaside Heights. And then you look in the papers and they said that it came in Thursday night when actually it was Thursday morning. But we're sick and tired of hearing this talk that they are going to clean it up. What are they doing? They are handing out stickers that say, "Let's clean it up." Stickers don't mean anything. You've got to get out there and do the action. You can't just sit around.

It's nice that reporters come out and report this, but we also have to get a committee with residents and everything. We all have to get together and form a committee and do something about cleaning up this ocean. Because God made this ocean and here we are. We've got to take something like Mayor Koch, who's dumping all this junk from New York City in here? No way. We're fed up with this. Even though we know New Jersey dumps, but I'm sorry, we can't take New York City's junk, too. It has to stop here. We can't take it no more. We just have to call it limits.

We've got to speak to Mayor Koch about it. We should have him here today and he should be answering some of these questions, because after all it was some of his garbage that washed up on the shore, you know? What can we do about it? "We did all we can, now we've got to form a regional committee," he said in a laughing manner, if any of you

watched. He had a show and it sounded like he was all buddy-buddy with Governor Kean. And it's only baloney that he's saying this --- Mayor Koch. Afterward, they're going to go out to a nice restaurant and forget about the whole idea. Mayor Koch, we're just fed up with you and we've got to do something about it now.

Because, I know where I live, in Bloomfield, New Jersey, Mayor Crecco, if anyone knows John Crecco in Bloomfield, he's a great Mayor; and he had a problem with Newark coming over the line and Bloomfield Center was getting dirty, and he said, "No more of this." He soon cleaned it up, and Sharpe James of Newark got involved and he helped clean it up. Now the Mayor of Seaside Heights is going to have step in with Mayor Koch of New York City and clean this mess up as best he can, because we can't even go swimming out there.

You're stepping on needles, everything. I mean, there's no lifeguard over here on Dupont Avenue. We're paying two dollars for no lifeguard here? What is this? I mean, this is America. When someone from England has to come over and see this, we're in trouble here. You're stepping on needles. You don't know what kind of disease you're going to get. You've to stop this now. You can't make it keep going on. We're fed up with New York City. Like I said, New Jersey does dump here, but when you have to take it from out-of-State, we have to stop it. And if we don't stop it-- We can't even swim in lakes and rivers now. We won't even be able to swim in the ocean in the year 2000 if this keeps on continuing.

But all of these people have been doing a great job, because I've been reading The Ledger about that. If you keep it up, this should help. You know, you have to go after Mayor Koch. I don't hate Mayor Koch. I lot of people do hate him because he just sits back. I mean, the guy's sick now. Let's give him a break. But, I mean, wake up. In a couple of days, find out this stuff. I mean don't just sit back. Don't go to

restaurants. Come here. We invite you to Seaside Heights, Mayor Koch. Why don't you come out here? Come now Mayor Koch. We're waiting for you. We'll take your questions. I'm sure we can have more of these discussions. We can have more with Mayor Koch. Someday why don't we invite here? It'll be a good idea, huh?

ASSEMBLYMAN MORAN: Doc, if I may. John?

MR. SACCO: No, Steve.

ASSEMBLYMAN MORAN: Steve. First of all, I thank you for being here from Bloomfield. Three very, very short points. When you get home back in Bloomfield, you have three outstanding legislators: Senator Orechio, Assemblyman Kelly, and Crecco which is the Mayor.

MR. SACCO: And his wife is also an Assemblyman, Ms. Marion Crecco.

ASSEMBLYMAN MORAN: Right. Please call them on the phone personally and give them the little brief speech that you just gave us so that they will support us in our efforts.

MR. SACCO: Oh, they already do. Crecco and Marion are great people in Bloomfield.

ASSEMBLYMAN MORAN: Thank you.

ASSEMBLYMAN VILLANE: Thank you very much. Is there anybody else out there who would like to come to testify on the official record of this Committee? We'd like to hear you. I'd just like to tell you that many of us have been legislators for a long time. And in the last ten years, we've taken more stuff out of the ocean and stopped a tremendous amount of dumping. Right now, the only thing that is going in the ocean and we're quite concerned about it is the sludge dumping. That sludge dumping, even from a town like Bloomfield, contributes 50,000 pounds a day. So it is a regional problem, it's not a local municipal, but a regional problem. I think every one of us contributes in some degree to the pollution. So, we can all kind of pitch in and help out.



The State Legislature is really ready. We're working on a piece of legislation that would mandate that New York and New Jersey have a manifest program for hospital waste, just like we have manifesting program for toxic waste. We're working on a number of bills including monitoring of barges and ships. We were also working as late as this morning attempting to get the United States Senate to adopt the MARPOL agreement which is an international agreement that would prohibit ships entering the area of the United States from dumping their garbage overboard. Not only do tourist ships and cruise ships -- but actually United States military ships jettison their garbage before they come to dock in New Jersey and New York.

Just recently, Russia endorsed the MARPOL agreement and the international regulations, and the United State is yet to do that. I think it's something we really should be doing. With that, if there's anyone else who would like to testify, please come here now. If not, we're going to take a short break with the Committee.

(Chairman does not reopen meeting)

**(MEETING CONCLUDED)**

**APPENDIX**

New Jersey State Library

STATEMENT OF  
THE DEPARTMENT OF THE PUBLIC ADVOCATE  
BEFORE THE ASSEMBLY SELECT  
COMMITTEE ON TRAVEL AND TOURISM

JULY 27, 1987

MR. CHAIRMAN AND MEMBERS OF THE ASSEMBLY SELECT COMMITTEE ON TRAVEL AND TOURISM:

I appreciate the opportunity to appear before you today to discuss public access to our ocean beaches. It is an issue that affects all New Jersey citizens.

The Department of the Public Advocate has been investigating beach access issues since its inception in mid-1974. The genesis of our involvement with this issue was recognition of a fundamental factual and legal principle about New Jersey's ocean beaches--that these beaches are a unique and irreplaceable resource that belong to all the people of this State. Moreover, although the beaches may be geographically located adjacent to certain New Jersey municipalities, this circumstance does not, under well-established legal principles, make the beaches the exclusive domain of these communities nor does it permit these municipalities to exercise unbridled discretion over beach fees or other matters relating to beach access. Over the years, several New Jersey municipalities have imposed direct and indirect barriers to beach access that gravely impair the public's ability to enjoy the beaches and the ocean. These burdens on access have inordinately fallen on the shoulders of non-residents. It has been our strong belief that the residents of all New Jersey municipalities are entitled under the law to share in the enjoyment of these beaches.

In the past two years, we have received hundreds of complaints about various obstacles confronting New Jersey citizens in their efforts to enjoy our beaches. These complaints have cited lack of available parking, lack of restrooms and changing facilities, and the scarcity of beach access points. Many have noted that non-residents are systematically denied seasonal passes to the Bay Head beach. Others have focused on excessive restrictions on beach area activities, police harassment, excess beach fees and the need for reciprocal beach badges.

The most frequently reported complaint has been excessive beach fees, especially in certain Monmouth County shore towns. As some people have complained, the cost for a day at the beach for a family of four could exceed \$40.00. In response to these complaints, the Department of the Public Advocate conducted an exhaustive study of the beach fee system in New Jersey municipalities and throughout the rest of the country. On May 19, 1987, a 67-page report was issued detailing findings and recommendations on present barriers to beach access at the New Jersey shore. I would like to discuss briefly these findings and recommendations, because they provide a back-drop for our testimony today.

Initially, the Department reviewed the 1985 fees and expenditures of the five municipalities charging the highest daily fees--Avon, Bay Head, Belmar, Spring Lake and Sea Girt. We

found it very troubling that these municipalities had not developed a well-documented method of computing expenditures, but rather based their costs on subjective estimates. Furthermore, in a variety of instances, the costs were not properly attributable to beach front operations or were overstated. We found that daily users or "daytrippers," many of whom were nonresidents, were disproportionately subsidizing the largely resident monthly and seasonal beach users. We concluded that the expenditures of these municipalities were frequently inflated and the beach fees were excessive. These five communities are now targets of individual lawsuits.

The method of setting beach fees by the municipalities seems in many respects to be more a function of attitude than of accounting. If beach fees are treated, as they are in several municipalities--as fair game to offset every municipal expenditure related, either directly, indirectly or even peripherally, to the operation and maintenance of the beach or to the influx of summer visitors--then there will be no effective limit on appropriate costs or reasonable beach fees.

In contrast to the five municipalities, most other shore towns both in and out of New Jersey, hold a different philosophy in determining what expenses will be passed along to users in the form of beach fees. Their philosophy seems to be that beach fees be kept affordable so that the ocean beaches remain available for the general public. This approach, rather than a subjective

effort at developing estimates to justify excessive and restrictive beach fees, is more compatible with the Public Trust Doctrine and the statutory directives relating to beach fees.

Our survey expanded to include nine other New Jersey shore municipalities, all charging lower beach fees. Only three of the nine towns claimed that beach fee revenues pay for all beach expenses. Most of the others understood that beach fee revenues should pay for only direct beach operation costs, lifeguards, beach tag checkers, beach cleaning, and not for the myriad of indirect costs subsidized in the five communities we are suing.

Our Department also obtained fee information from every state along the Atlantic, Pacific and Gulf Coasts. This study unequivocally established that every coastal state in the country has lower fees than New Jersey. In most states, there are no fees charged for use of the ocean beaches. All but a few of the jurisdictions that do charge fees base them not on individuals but on carloads--generally \$2-\$3 per vehicle.

Based on our investigation of complaints of excessive beach fees and other obstacles to the public right of access to New Jersey's beaches, we formulated eight recommendations to address these problems. The touchstone of our recommendations is the vindication of the paramount statewide policy, crystallized in the Public Trust Doctrine, of encouraging broad public access to our ocean beaches.

I want to focus today on our recommendation that the Legislature should enact comprehensive legislation addressing beach fees and operations as well as public access rights. In our report, we recommend that such legislation, at the very least, should address several concerns relating to beach fees and beach access.

First, legislation should provide a uniform procedure for state review and certification of beach budgets. Second, the specific allowable costs should be legislatively articulated and restricted to a very limited range of necessary expenses that are not reimbursable from other state and federal programs. Third, we strongly favor ultimately making the beaches freely available to the public. However, in the interim, we think that, at the very least, the Legislature should establish a uniform cap on daily beach fees. In imposing this cap, the Legislature should give particular consideration to the establishment of a method of State subsidies for municipalities where legitimate beach expenditures exceed revenues from a legislatively capped beach fee. Since the ocean beaches belong to all the citizens of the State, we believe that the State should assume some financial responsibility for the imposition of a cap on daily beach fees to facilitate broad public access.

In addressing an analogous issue, the State currently provides "in lieu of tax payment aid," to municipalities in order to make up for lost tax revenues because of nontaxable State



property located within their borders. N.J.S.A. 54:4-2.2a et seq. There are compelling reasons for treating ocean beaches in a similar fashion. The Public Trust Doctrine establishes a statewide policy of maximizing public access to our beaches. In effect, the ocean beaches are State property held in trust for all of our citizens by the municipalities. If municipalities can demonstrate to appropriate State officials the unlikely circumstance that the benefits do not offset legitimate and necessary beach expenditures because of the cap on daily fees, the State should similarly consider providing subsidies to offset lost beach revenues in the affected municipalities. In this fashion, the municipalities would not be burdened with expenditures that should rightfully be shared by all taxpayers of the State.

Fourth, every beach municipality should be required to file a beach access plan to be approved by the Department of Environmental Protection (DEP). This plan should provide reasonable assurances of eliminating the barriers to beach access, which have been the source of frequent complaints to our Department. An effective beach access bill should include provisions to require necessary facilities, access points and adequate parking. Additionally, the plan should include the specific delineation of access rights of the public and the corresponding obligations of the municipalities and the owners of private dry sand beach areas to provide appropriate access to the

beaches. Fifth, in addition to providing for enforcement by the DEP and the Public Advocate, there should be a citizen suit provision authorizing private individuals to initiate litigation to vindicate their rights under the act. Such a provision, we believe, is a vital tool for preserving the public trust in ocean beaches.

A-3152 addresses many of these areas in a fashion consistent with our recommendations.

However, there are several issues identified by our study which are not addressed in this bill. First, we think that legislation should set forth the responsibility of private beach associations to make available a reasonable quantity of daily as well as seasonal badge memberships at reasonable fees to the nonresident public. In Matthews v. Bay Head Improvement Association, 95 N.J. 306 (1984), the New Jersey Supreme Court directed the Bay Head Improvement Association (B.H.I.A.) to make a reasonable quantity of daily and seasonal memberships available to nonresidents at reasonable fees. However, the Court stopped short of requiring all other private associations along the New Jersey coast to open their memberships to nonresidents.. Unfortunately, we are not aware of any private beach associations that have voluntarily responded to the spirit and language of the Court's decision by opening up their memberships to the nonresident public.

There are several important reasons for legislatively addressing the obligations of private beach associations. Such legislation would increase the supply of available public beaches. It would also establish a policy that does not merely apply to Bay Head but, as a matter of fairness, is applicable to all private beach associations. Moreover, it would ensure compliance with the dictates of the Matthews decision.

Second, we recommend that the Legislature require that municipalities to report their beach budgets to the Department of Community Affairs, and also require that these budgets be certified by the DCA prior to being implemented. This would provide State oversight of the beach fee setting process and ensure that beach expenditures are not inflated.

Third, we recommend that the legislation explicitly state that DEP possesses the authority to approve or reject proposed beach access plans that do not conform to the agency's regulatory standards. This would clarify the agency's ability to guarantee that municipalities establish and implement effective public access plans.

Fourth, after having carefully studied the vast disparities in beach fees among shore municipalities, we have concluded that a legislative cap on beach fees is the best way to ensure uniformity and to promote the Public Trust Doctrine. Because the ability of citizens to use the beach is dependent

upon the cost of access, there is a corresponding State obligation to establish an affordable beach fee.

Finally, we support the inclusion of the citizen suit provision to enable individual citizens to enforce the provisions of the Act. Often, state agencies do not have the resources to pursue every individual action designed to vindicate legislative policies. A citizen suit provision would allow persons to take appropriate action where the state agency is unwilling or unable to prosecute an individual claim.

In conclusion, I want to emphasize that the most striking conclusion of our year long investigation was the compelling need for legislative action to ensure that our precious ocean beaches can be shared equally by all citizens of New Jersey. There is simply no reason why a family of four in this State should be required to pay over \$40 for the opportunity to enjoy a resource that rightfully belongs to everyone. The Department of the Public Advocate urges the passage of comprehensive legislation to ensure uniformity among municipalities in formulating beach fees and in protecting the public's broad rights to access to ocean beaches.

Thank you for the opportunity to testify.



State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE  
DIVISION OF PUBLIC INTEREST ADVOCACY

CN 850

TRENTON, NEW JERSEY 08625

RICHARD E. SHAPIRO  
DIRECTOR  
TEL: (609) 292-1693

D A. SLOCUM  
ADVOCATE

MAY 19, 1987

BARRIERS TO BEACH ACCESS:

AN INVESTIGATION INTO EXCESSIVE

BEACH FEES AND RESTRICTIVE ACCESS PRACTICES

IN AVON, BAY HEAD, BELMAR, SEA GIRT AND SPRING LAKE

Prepared by:

Richard E. Shapiro  
Marsha Rudolph

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## INTRODUCTION

The Department of the Public Advocate has been investigating beach access issues for the past ten years. The genesis of the Public Advocate's involvement with this issue was the recognition of a fundamental factual and legal principle about New Jersey's ocean beaches - these beaches are a unique and irreplaceable resource that belong to all the people of this State. Moreover, although the beaches may be geographically located adjacent to certain New Jersey municipalities, this circumstance does not, under well-established legal principles, make the beaches the exclusive domain of these communities nor does it permit these towns to exercise unbridled discretion over beach fees or other factors affecting beach access. However, over the years, several New Jersey municipalities have imposed direct and indirect barriers to beach access that gravely impair the public's ability to share in this vital resource. These burdens on access have inordinately fallen on the shoulders of nonresidents of oceanfront municipalities. Yet, the residents of Trenton, Newark, Perth Amboy and Paterson are entitled under the law to share in the enjoyment of these beaches as much as the residents of Bay Head, Sea Girt, Avon, Belmar, or Spring Lake.

In light of the public interest in ensuring that access to ocean beaches for New Jersey citizens is not seriously impeded, the Public Advocate has in the past investigated a variety of barriers to beach access. Additionally, to ensure the

proper implementation of this important public policy, this Department has sought judicial, legislative and administrative determinations defining the contours of the public's right to use the ocean and beaches of the State. We also have investigated a wide range of complaints from New Jersey citizens relating to restrictions on beach access. For example, in the past two years we have received hundreds of complaints about various obstacles confronting New Jersey citizens in their efforts to enjoy our beaches. During this period, the most frequently reported complaint has been excessive beach fees, especially in certain Monmouth County shore towns. In response to these complaints, the Department of the Public Advocate has, over the past year, undertaken an exhaustive study of the beach fee system in New Jersey municipalities and throughout the rest of the country. This study included several components and required the careful review of extensive data, including municipal budgets, fee structures, and a mass of supporting documentation.

First, the Department reviewed the 1985 fees and expenditures of the five municipalities charging the highest daily fees - Avon, Bay Head, Belmar, Spring Lake and Sea Girt. By statute, N.J.S.A. 40:61-22.20, and court decision, these municipalities are authorized to charge reasonable beach fees to offset certain expenses for beach maintenance, operation and policing the beach and boardwalk area. However, they are not permitted to profit from beach fee revenues or to utilize these

revenues for the general operating expenses of the municipality. Our findings regarding the beach fee setting process in these towns will be discussed at length in this paper. In brief, we raise several questions about the assumptions underlying the computation of expenses by these towns. While these assumptions may, in part, be attributable to a degree of ambiguity in the statutory concept of "reasonable fees," our overall conclusion is that the beach fees and expenses in these towns are improperly inflated.

Second, we conducted a study of nine other surrounding shore municipalities, all charging lower beach fees, in order to assess how they pay for beach expenses. Only three towns, out of the nine surveyed, claim that beach fee revenues pay for all beach expenses. Most of the other towns understand that beach fee revenues should pay for direct beach operation costs only, i.e., lifeguards, beach tag checkers, beach cleaning, and not for the myriad of indirect costs subsidized in the above four Monmouth County communities.

Third, the Department obtained information from every state along the Atlantic, Pacific and Gulf Coasts about the level of beach fees and their approach to beach expenses. This study unequivocally establishes that every coastal state in the country has lower fees than New Jersey, charging, on the average \$2-\$3 per vehicle. Indeed, we learned that, in many states, there are no fees charged for use of the ocean beaches.

Fourth, in response to large numbers of citizen complaints, the Department conducted a study of the Bay Head Improvement Association's (B.H.I.A.) beach badge lottery system in order to assess how the B.H.I.A. chose nonresident members and how it arrived at its beach badge quota. We also analyzed the fees and expenses of BHIA to determine whether the high beach fees charged by the Association were reasonable. The results of this study and our recommendations for methods to increase public access to the beaches operated by the B.H.I.A. are discussed in detail in this report.

Finally, we will set forth a series of recommendations for addressing several of the beach access and beach fee problems we have encountered over the past several years. Although some of these solutions may require additional study, we offer them as necessary and appropriate responses to a serious problem that calls for significant measures at all governmental levels. Through these suggestions, we hope to encourage an active public dialogue which focuses on the consideration of a wide range of approaches to a serious problem in the State.

We offer one final introductory note. The completion of this report has required an extensive amount of investigation, study and analysis. Besides meeting with officials in four Monmouth County municipalities and conducting a lengthy review of their budgets, we visited or talked with officials of numerous beach communities in New Jersey; we reviewed the municipal

budgets and fee schedules of various other municipalities both in New Jersey and the remainder of the country; and we interviewed a number of individuals who are familiar with these problems. Because of the need for data on a wide range of issues, we repeatedly had to seek new information and materials to conduct an informed study of this important issue.

Additionally, we thought that a legislative solution could be developed that would comprehensively address the beach fee/access issues or that municipalities would respond to our investigation by voluntarily reducing their fees to reasonable levels. However, when neither of these was forthcoming, we found it necessary to review our recommendations and consider additional solutions to this serious problem. As a result, the compilation and analysis of this complicated issue took considerably longer than we had originally anticipated.

In the following pages, we will set forth our findings and recommendations. Part I of this report will discuss the results of the Department's survey of beach fee practices in other coastal states. This survey provides a backdrop for our investigation of beach fees in New Jersey and demonstrates that New Jersey is charging the highest beach fees in the country. Part II will then explore the legal basis for beach fees and the results of our analysis of the beach fees in four Monmouth County municipalities: Avon, Belmar, Sea Girt and Spring Lake. Part III will then review and compare the beach fee policies in nine New

Jersey municipalities north and south of the above four communities. Part IV will provide our analysis of the beach badge practices of the Bay Head Improvement Association and the degree to which the B.H.I.A. is complying with the New Jersey Supreme Court's decision in Matthew v. Bay Head Imp. Ass'n., 95 N.J. 306 (1984). Finally, Part V contains recommendations that are designed to remedy the problems addressed in this report and, hopefully, to prevent their recurrence in the future.

## I. SURVEY OF BEACH FEES IN COASTAL STATES

In order to develop an appropriate context for our investigation of beach fees in New Jersey, the Department of the Public Advocate undertook a survey of beach fees in the 23 states bordering on the Atlantic, Pacific and Gulf coasts. We contacted coastal resources officials in all of these states, by telephone, to gather information about beach jurisdiction, fees and mechanisms used to finance beach expenses. As a result of this study, we found the following:

1. New Jersey has the highest beach fees in the nation.
2. All of the beaches in nine states - Alaska, Georgia, Hawaii, Maryland, Mississippi, North Carolina, South Carolina, Virginia and Washington - are free.
3. The majority of the beaches in six other states - California, Florida, Massachusetts, New Hampshire, Oregon and Texas - are free.
4. Most beaches in five coastal states -- Alabama, Delaware, Louisiana, Maine, New Jersey and Rhode Island - charge for beach use.
5. All beaches in two states - Connecticut and New York - charge a beach admission fee.

As the above findings make clear, the most striking result of our department's survey is that New Jersey has the highest beach fees in the nation. Furthermore, in contrast to New Jersey, most of the coastal states which impose charges for beach admission, charge by the carload instead of per person. In the states that charge, the average fee is \$2-\$3/carload, which is

significantly less than the daily per person fee presently charged in some New Jersey shore communities.

Additionally, many municipalities in other states do not charge any beach fees. These municipalities use a variety of mechanisms to fund beach maintenance and operation. These revenue-generating mechanisms include state subsidies, parking meter revenues, and a variety of taxes such as hotel taxes, local sales taxes, local property taxes, Tourist Development taxes, and gasoline taxes.

Therefore, it is striking that most beaches throughout the country, and for that matter in other parts of the world, are free to the public or available at a very low cost while many New Jersey oceanfront municipalities are still charging relatively exorbitant fees. Such an obvious disparity between the practices of other states, many of whose beaches provide excellent recreational opportunities, and New Jersey requires careful attention. From our investigation, we have not been provided with a persuasive reason why people should be able to swim and recreate without charge on beaches throughout this country, yet be frequently deprived of that opportunity in many communities on the New Jersey shore.

In the next several pages, we have provided a detailed breakdown of the results of our survey of beach fees in the remainder of the country.



STATE BY STATE BEACH DATA

Alabama

Number of State Beaches - 1 at 3 miles long  
Number of Local Beaches - 1 at 1/2 mile long  
Charge for State Beach - \$1/day/car for 2 people  
- \$2/day/car for more than 2 people  
- 1 section is free but has no facilities  
Charge for Local Beach - Free  
Financing of Beach Expenses at Free Beach - Local Taxes  
Contact Person - Clyde Chatman  
Alabama Department of Economic and Community Affairs  
State Planning Division  
3465 Norman Bridge Road  
Montgomery, Alabama 36105  
(205) 284-8774

Alaska

Number of State Beaches - 99% of Alaska's beaches  
Number of Local Beaches - 1% of Alaska's beaches  
Charge for Beach - All beaches are free  
Financing of Beach Expenses at Free Beaches - There are no lifeguards and practically no maintenance is required, so money does not need to be raised.  
Contact Person - Andrew Pekovich, State of Alaska  
Department of Natural Resources  
Land and Water Management Division

Southeast Regional Office  
400 Willoughby Avenue Suite 400  
Juneau, Alaska 99801 1724  
(907) 465-3400

California

Number of State Beaches - over 100  
Number of Local Beaches - approximately 20-25  
Charge for State Beaches - \$1-\$3/day/car for some  
most are free  
Charge for Local Beaches - Most are free  
Financing of Beach Expenses at Free Beaches - The state provides money to help localities pay for lifeguards and maintenance.  
Contact Person - Pat Stebens  
California Coastal Commission  
631 Howard Street  
San Francisco, California 94105  
(415) 543-8555

## Connecticut

Number of State Beaches - 17  
Number of Local Beaches - approximately 25  
Charge for State Beaches - weekends 13 charge \$2/car  
4 charge \$4/car  
weekdays 7 are free  
6 charge \$1/car  
4 charge \$2/car  
Charge for Local Beaches - Most are for residents only  
Contact Person - Robert Souza  
Department of Environmental  
Protection  
Office of State Parks & Recreation  
165 Capitol Avenue  
Hartford, Connecticut 06106  
(203) 566-2704

## Delaware

Number of State Beaches - 3 (90% of all beaches)  
Number of Local Beaches - 4 (5-6 miles of municipal beach)  
Charge for State Beaches - \$2/day/car - residents  
\$4/day/car - non-residents  
\$20/season/car - residents  
\$40/season/car - non-residents  
Charge for Local Beaches - Free

### Financing of Beach Expenses at Free Beaches

Parking meter revenues at  
\$.25/half hour, generate  
\$700,000 per season  
and pays for lifeguards and  
beach maintenance.  
Additionally, according to the  
Delaware Parks and Recreation  
Department, revenues generated  
from state park admission fees  
far outweigh beach expenditures.

Contact Person - Tom Murray  
Delaware Division of Parks and  
Recreation  
89 Kings Hwy., P.O. Box 1401  
Dover, Delaware 19903  
(302) 736-3420  
Delaware Beach Hotline - 1-800-441-1329

## Florida

Number of Federal Beaches - 28 (122 miles of beach)  
Number of State Beaches - 55 (124 miles of beach)  
Number of Local Beaches - 309 (105 miles of beach)  
Charge for State Beaches - \$1/car which includes the driver and \$.50 each additional person.  
Charge for Local Beaches - Most are free.  
Financing of Beach Expenses at Free Beaches - Revenue is raised through a variety of sources such as local taxes, parking meters and the Tourist Development Tax.  
Contact Person - Paden Woodruff  
Department of Natural Resources  
Division of Beaches and Shores  
3900 Commonwealth Blvd.  
Tallahassee, Florida 32303  
(904) 487-1262

## Georgia

Number of Federal Beaches - 1 (17 miles long)  
Number of State Beaches - 4 (27.5 miles total)  
Number of Local Beaches - 2 (6.5 miles total)  
Charge for Beaches - All are free except 1 which charges a \$1 toll and 1 which charges a 35 cents toll  
Financing of Beach Expenses at Free Beaches - Local and State Taxes

Contact Person - Dr. Fred Marland  
Georgia Department of Natural Resources Coastal Resources Division  
1200 Glynn Ave.  
Brunswick, Georgia 31523  
(912) 264-7365

## Hawaii

Number of State/County Beaches - 80-100  
Charge for Beaches - Free  
Financing of Beach Expenses at Free Beaches - Local Property Taxes.  
Additional Comments - The public has the right to use the sand area in front of all private property. There is an easement for the public.  
Contact Person - Doug Tom  
Department of Planning & Economic Development, Coastal Zone Management Program  
P.O. Box 2159  
Honolulu, Hawaii 96804  
(808) 548-3026

## Louisiana

Number of State Beaches - 3  
Number of Local Beaches - 3  
Number of Private Beaches - 1  
Charge for State Beaches - \$1-\$2/car  
Charge for Local Beaches - Free  
Charge for Private Beach - \$3/car  
Financing of Beach  
Expenses at Free Beaches - Local sales tax  
and royalties from oil and gas  
facilities in state.  
Contact Persons - Dr. Charles Groat  
Department of Natural Resources  
Coastal Resources Division  
P.O. Box 4396 - Capitol Station  
Baton Rouge, Louisiana 70804  
(504) 342-4500  
- Shea Penland  
Louisiana Geological Survey  
University Station - P.O. Box G  
Baton Rouge, La. 70893  
(504) 922-0088

## Maine

Number of Federal Beaches - 23 of Maine's beaches  
Number of State Beaches - 10% of Maine's beaches  
Number of Local Beaches - 15% of Maine's beaches  
Number of Private Beaches - 73% of Maine's beaches  
Charge for Beaches  
Federal Park - \$2/vehicle/day  
State Parks - \$1/person/day  
Local - Free  
Contact Person - Beverly Gilcreast  
207-288-3338  
Maine State Planning Office  
State Government Data Center  
State House - Station #38  
187 State Street  
Augusta, Maine 04333

## Maryland

Number of Federal Beaches - 1  
Number of Local Beaches - 1  
Charge for Beaches - Free  
Financing of Beach Expenses  
at Free Beaches - City and Hotel Taxes  
Contact Person - Dr. Jacob Lima  
Department of Natural  
Resources, Coastal Resources  
Division  
Tawes State Office Building  
Annapolis, Maryland 21401  
(301) 269-2784

## Massachusetts

Number of Federal Beaches - 13  
Number of State Beaches - 9  
Number of Local Beaches - 211  
Number of Private Beaches - 26  
Charge for State Beaches \$5/car/day on the average  
Charge for Local Beaches - Of the 211 local beaches in Massachusetts, the State has fee information for 44. Of these 44, 39 are free to the public

Contact Person - Cathy Abbott  
Department of Environmental Management - Planning Division  
225 Friend Street  
Boston, Massachusetts, 02114  
(617) 727-3160

## Mississippi

All beaches are locally run, and all are free.  
Financing of Beach Expenses at Free Beaches - Gasoline Tax for Shore Protection. The consumer pays \$.02/gallon tax on gas.

Contact Person - Jenell Tompkins  
Harrison County Board of Supervisors  
P.O. Drawer CC  
Gulfport, Mississippi 39502

## New Hampshire

Number of State Beaches 4  
Number of Local Beaches - 2  
Charge for State Beaches - \$4/car at 2 beaches and the other 2 are free.  
Charge for Local Beaches - Free  
Financing of Beach Expenses at Free Beaches - Local Taxes

Contact Person - Ray La Chan  
Department of Resources and Economic Development  
Division of Parks & Recreation  
P.O. Box 856  
Concord, New Hampshire 03301  
(603) 271-2343

## New York

Number of Beaches - Not Known  
Charge for State Beaches - \$1.50-\$3.50/car/day  
Charge for Local Beaches - Up to \$10/car on a weekend day  
Contact Person - Nancy Nugent  
Department of State, Division of Local Government & Community Services - 162 Washington St.  
Albany, New York 12231  
(518) 474-3643

## North Carolina

Number of Federal Beaches - 2 (cover 100 miles of coast  
which is 1/3 of coastline)  
Number of State Beaches - 3  
Number of Local Beaches - 21  
Charge for Beaches - All Free  
Financing of Beach  
Expenses at Free Beaches - Local taxes are used at local  
level.  
Contact Person - Julie Shambaugh  
Department of Natural Resources  
and Community Development  
Division of Coastal Management  
P.O. Box 27687  
Raleigh, North Carolina 27611  
(919) 733-2293

## Oregon

Miles of Federal Beaches - 63.4  
Miles of State Beaches - 129.46  
Miles of Local Beaches - 17.8  
Miles of Private Beaches - 151.24  
Charge for State Beaches - \$1/car/day  
Charge for Other Beaches - Free  
Financing of Beach  
Expenses at Free Beaches - Local revenues, but beach needs  
minimal upkeep. Have an annual  
volunteer day to clean up the  
beaches.  
Contact Persons - Robert Cortright  
Department of Land Conservation  
and Development  
1175 Court St., N.E.  
Salem, Oregon 97310  
(503) 378-4926  
- Peter Bond  
Department of Transportation  
State Parks & Recreation Division  
525 Trade Street, S.E.  
Salem, Oregon 97310  
(503) 378-5012

## Rhode Island

Number of State Beaches - 9  
Number of Local Beaches - 60, 32 of the 60 are public  
Charge for State Beaches - \$1-\$2/car/day residents  
\$2-\$3/car/day - non-residents  
\$10/car/season - residents  
\$18/car/season - non-residents  
Charge for Local Beaches - Phone calls to a few towns showed  
fees ranging from free to \$5/car.  
This was only a sampling, since  
local fee information was not  
available at the State level.  
Contact Person - William Hawkins  
Division of Parks & Recreation  
22 Hayes Street  
Providence, Rhode Island 02903  
(401) 277-2635

## South Carolina

Number of Federal Beaches - 1 (19 miles long)  
Number of State Beaches - 10 (27 miles long)  
Number of Private Beaches - 29 (many have public access-  
100 miles long)  
Charge for beaches - All are free  
Financing of Beach  
Expenses at Free Beaches - The state gives money to the  
cities and counties for parking  
and beach restoration  
Contact Person - Fred Cycle  
South Carolina Coastal Council  
19 Hagood Avenue  
Summerrall Center  
Suite 802  
Charleston, South Carolina 29403  
(803) 792-5810

## Texas

Number of Federal Beaches - 1 (80 miles in length)  
Number of State Beaches - 3 (7 3/10 mile total in length)  
Number of Local Beaches - Unknown  
Charge for State Beaches - \$2/car/day  
Charge for Other Beaches - All are free  
Financing of Beach  
Expenses at Free Beaches - The state did not have any  
information about the local  
beaches  
Contact Person - Robert Hauser, Chief of Park  
Operations, Texas Parks &  
Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744  
(512) 479 4800

## Virginia

Number of Federal Beaches - 1  
Number of State Beaches - 1  
Number of Local Beaches - 1  
Charge for Beaches - All are free  
Financing of Beach Expenses at Free Beaches - Local sales tax  
is used for local beach expenses.  
It is said that the City of  
Virginia Beach spends \$1.5  
million to maintain and operate  
the beach, and it collects \$50  
million in local sales taxes  
from vacationers.  
Contact Person - Scott Hardaway  
Virginia Institute of Marine  
Sciences  
Gloucester Point, Virginia 23062  
(804) 642-7275

Washington

Number of State/Municipal

Beaches - 40% of beaches  
Number of Private Beaches - 60% of beaches (These are the  
nicest beaches)  
Only 10% of the beaches in the state are usable and  
accessible by land.  
Charge for Beaches - Free  
Financing for Beach  
Expenses at Free Beaches - Local Taxes and State Sales  
Tax.  
Contact Person - Jim Scott  
Department of Ecology,  
Shorelands & Coastal Zone  
Management Program  
PV-11  
Olympia, Washington 98504-8711  
(206) 459-6781



## II. INVESTIGATION OF BEACH FEES IN AVON, BELMAR, SEA GIRT AND SPRING LAKE

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As part of our review of the beach fees established by shore communities in New Jersey, the Department studied the budgets of the municipalities charging the highest fees - Avon, Bay Head, Belmar, Sea Girt and Spring Lake - to assess the relationship between fees and expenditures.\* In our review of the 1985 Local Municipal Budgets for these municipalities, we observed a significant disparity between the revenues generated from beach badge sales and the town's calculation of expenditures for beach maintenance and operation. This initial analysis indicated that the 1985 revenues exceeded the expenses in roughly the following amounts: \$418,000 (Avon); \$1,600,000 (Belmar); \$200,000 (Sea Girt); and \$360,000 (Spring Lake).

In response to this initial analysis, we sought meetings with officials in all four municipalities to discuss the revenues and expenditures relating to the operation and maintenance of their respective beaches. These meetings, which involved frank and detailed discussions of municipal expenditures, were conducted in November and December 1986. Either at these discussions, or subsequent to the meetings, we were provided with

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\* Our investigation of Bay Head's practices will be discussed in Part IV of this Report.

detailed lists of expenditures assertedly attributable to the maintenance and operation of the beaches in these towns. These "budgets" were largely based on estimates by municipal officials and an auditor of the expenses in their budgets that should be allocated to summer activities and beach-related operations. According to the figures presented by the municipalities, there were no excessive beach fee revenues in these towns and, in some cases, the officials asserted that their beach operations were unprofitable. Subsequent to these discussions, we visited each of the four municipalities to view the beaches and related facilities.

After reviewing our records of these meetings and the materials submitted by these municipalities, several questions emerged. First, to what extent were the assumptions underlying the figures submitted by these four municipalities consistent with the practices of surrounding communities? Second, how could these municipalities be charging beach fees that were higher than any other shore community and barely be breaking even or, in some cases, allegedly losing money? To consider these questions in an informed fashion, we then found it necessary to obtain data from surrounding municipalities. (This information is presented in Part III of the Report).

Based on the information supplied by a number of oceanfront municipalities, and our review of the materials submitted by the towns under investigation, we undertook an

evaluation of the specific expenditures for the maintenance and operation of the beaches. However, we realized that there were several levels of analysis involved, since the specific expenditures were predicated on a variety of assumptions about the appropriate method of allocating costs for beach-related operations. Therefore, we not only had to analyze the specific items set forth in the supplementary information supplied by the towns, but also the general assumptions underlying the material provided to us.

It is our overall conclusion that an analysis of these general suppositions is critical to an understanding of the four municipalities' approach to beach fees and expenditures. It is not fruitful in our view to engage in a line-item audit of expenses without first exploring in detail the validity of these premises.

To fully assess certain practices and assumptions, it is essential to review briefly the applicable law on beach fees in New Jersey. The law on public access in New Jersey has undergone considerable development while the principles governing beach fees remain relatively unexplored. As a general matter, allegations of excessive beach fees implicate rights under the public trust doctrine and N.J.S.A. 40:61-22.20. We shall discuss each of these legal bases in turn.

1. The Public Trust Doctrine

The public trust doctrine acknowledges that the ownership, dominion and sovereignty over land flowed by tidal waters, which extend to the mean high water mark, is vested in the State in trust for the people. Matthews v. Bay Head Imp. Ass'n., 95 N.J. 306, 312 (1984). The public right to use the tidal lands and water encompasses navigation, fishing and recreational uses, including bathing, swimming and other shore activities. Borough of Neptune City v. Borough of Avon-by-the-Sea, 61 N.J. 296, 309 (1972).

The public trust doctrine has primarily evolved in areas relating to public access to municipal beaches. Clearly, in order to exercise the rights guaranteed by the public trust doctrine, the public must have access to municipally owned dry sand areas as well as the foreshore. For some time, however, certain municipalities were distinguishing between residents and nonresidents in providing this access, and making it difficult, if not impossible, for nonresidents to use the New Jersey beaches. In a series of cases over the past fifteen years, the New Jersey Supreme Court was confronted with alleged discriminatory practices which impaired the public's broad rights of access. In Avon, the Court struck down a municipal ordinance that required nonresidents to pay a higher fee than residents for the use of the beach. The Court held that where a municipal beach is dedicated to public use, the public trust doctrine "dictates

that the beach and the ocean waters must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible." 61 N.J. 309.

In Van Ness v. Borough of Deal, 78 N.J. 174 (1978), the Court invalidated a municipal dedication of a portion of the beach for use by its residents only. The Court emphasized that the public's right to use municipally-owned beaches under the public trust doctrine is not dependent upon the municipality's dedication of its beaches to use by the general public. The Court also stated that a municipality may not "allocate to the public on a limited basis, rights which, under the doctrine, the public inherently has in full." 78 N.J. 180.

The Court has also extended the public's rights to certain essential facilities adjacent to beaches. For example, in Hyland v. Borough of Allenhurst, 78 N.J. 190 (1978), the Court, while not relying on the public trust doctrine, concluded as follows:

'[W]here municipal toilet facilities exist adjacent to a public beach area, it would be an abuse of municipal power and authority to bar the users of the public beach [whether residents or nonresidents] from access to this basic accommodation. 78 N.J. 196.

The next stage in the evolution of the public trust doctrine is found in Lusardi v. Curtis Point Property Owners Ass'n., 86 N.J. 217, 228 (1981), where the doctrine was extended to include municipally owned dry sand area in light of the

Court's recognition that enjoyment of rights in the foreshore is inseparable from use of dry sand beaches.

The most recent decision in this area, Matthews v. Bay Head Imp. Ass'n., supra, presented the issue of whether, ancillary to the public's right to enjoy the tidal lands, the public had a right to gain access through and to use the dry sand areas not owned by a municipality but by a quasi-public body. In brief,\* the public trust doctrine was held to encompass a public right of "access to and use of privately-owned dry sand areas as reasonably necessary." 95 N.J. 326. The Court left for future resolution the exact contours of these public rights:

Precisely what privately-owned upland sand area will be available and required to satisfy the public's rights under the public trust doctrine will depend on the circumstances. Id.

In sum, while these cases do not involve the specific application of the public trust doctrine to allegations of excessive beach fees, there is every reason to assume that the principles underlying this doctrine will apply with equal force to disproportionate beach charges which effectively operate as a bar to public access.

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\* The Matthews decision will be discussed in greater detail in Part IV, which addresses whether the Bay Head Improvement Association is in compliance with the mandate of this decision.

2. The Setting of Fees Under N.J.S.A. 40:61-22.20

The other source of legal authority relating to the setting of fees is N.J.S.A. 40:61-22.20. This statute provides, in pertinent part, that a governing body of a shore municipality which owns lands bordering on the ocean "shall have the exclusive control, government and care thereof and of any boardwalk, bathing and recreational facilities, safeguards and equipment... and may, in order to provide funds to improve, maintain and police the same and to protect the same from erosion, encroachment and damage by sea or otherwise, and to provide facilities and safeguards for public bathing and recreation, including the employment of lifeguards, by ordinance, provide for the charging and collecting of reasonable fees for the regulation of persons using said lands and bathing facilities; for access to the beach and bathing and recreational grounds so provided and for the use of the bathing and recreational facilities. . . ."

Several observations about the statute are in order. First, the statute authorizes, but does not require, the setting and collection of beach fees. Second, the statute allows fees to be collected to meet a limited range of beach costs: 1) the improvement, maintenance and policing of the beach; 2) the protection of the beach from erosion and other related damage; and 3) the provision of facilities and other protective measures for public bathing and recreation, including lifeguards. Significantly, all of these appear to be direct costs attributable to beach operation and maintenance rather than

indirect costs or general municipal expenditures unrelated to the operation of the beaches. Third, there is an apparent tension in the statute between the ability of municipalities to pass on their beach related costs through the imposition of beach fees and the statutory mandate that the beach fees must be "reasonable." The Supreme Court has, for instance, recognized that "[t]he rationale behind N.J.S.A. 40:61-22.20 certainly is that such municipalities may properly pass on some or all of the financial burden, as they decide, by imposing reasonable beach user fees." Borough of Neptune City v. Borough of Avon-by-the-Sea, 61 N.J. 311. However, there is no mention in this decision of the point at which the elevation of beach fees becomes unreasonable. The statute, unfortunately, also does not provide guidance on this critical issue, which is at the heart of the present controversy over beach fees. Thus, in view of the statutory language, it is not surprising that there is a difference of opinion over the specific nature and extent of costs that may be permissibly offset by beach fees or whether there is any restriction at all on the maximum allowable beach fee.

Moreover, we are not aware of any judicial decision in New Jersey which directly addresses these issues. In Bor. of Neptune City v. Bor. of Avon-by-the-Sea, supra, the Supreme Court did observe that municipalities, in determining reasonable fees, may "consider all additional cost legitimately attributable to



the operation and maintenance of the beachfront, including direct beach operational expenses, additional personnel and services required in the entire community, debt service of outstanding obligations incurred for beach improvement and preservation and a reasonable annual reserve designed to meet expected future capital expenses therefor." Id. at 311. It is significant that the Court does not at all discuss when the passing on of these costs could result in unreasonable beach fees.

In sum, the present state of the law with regard to N.J.S.A. 40:61-22.20 is unsettled in two critical areas affecting beach fees: 1) the specific types and levels of permissible costs that may be allocated to beach operations and maintenance; and 2) what constitutes a reasonable beach fee under the statute.

### 3. Findings Relating To Beach Fees and Expenditures

#### In Avon, Belmar, Sea Girt and Spring Lake

As mentioned above, we concluded after a careful review of the specific expenditures of Avon, Belmar, Sea Girt and Spring Lake (hereinafter referred to as "the municipalities") that there were fundamental questions about the municipalities' approaches to beach fees and expenditures. In our view, an analysis of the faulty assumptions underlying the allocation and compilation of expenditures, rather than a line-item audit of specific expenditures, is more appropriate for a proper evaluation of the reasonableness of the fees charged by these municipalities.

In the following discussions, we shall present our findings from these investigations.

1. We find the beach fees charged by the municipalities to be seriously disproportionate when compared to the median and mean beach fees on the New Jersey shore. The average weekday beach fee for all New Jersey communities is \$3.40 compared to \$5.00 for Belmar, Avon and Sea Girt and \$7.00 for Spring Lake. The average weekend fee is \$4.70 compared to \$8.50 (Avon), \$8.00 (Belmar and Spring Lake) and \$7.00 (Sea Girt). The median weekday fee for beach badges in shore communities is \$3.50 and the median weekend fee is \$5.00. Viewed in this comparative fashion, it is obvious that the daily fees charged by these communities are significantly greater than the norm in other New Jersey shore municipalities.

2. We find that the total beach expenses reported by the municipalities, when considered in relationship to the annual total expenses of the town, appear to be unusually high, especially considering that these expenses presumably only are for beach related operations that are conducted for only 70-90 days of the year. As the chart on page 28 reveals, these ratios are as follows: Avon (25%); Belmar (36%); Spring Lake (27%) and Sea Girt (23%).

This is especially significant when the ratio of beach expenditures to total town expenditures in Avon, Belmar, Sea Girt and Spring Lake is compared to that of four surrounding towns -

Beach Revenue vs. Beach Expenditures & Total Expenditures for Avon, Belmar, Spring Lake & Sea Girt

(Actual 1985)

	<u>Beach Fee Revenues</u>	<u>Beach Expenditures</u>	<u>Total Town Expenditures</u>	<u>Beach Expenditures Is What % of Total Town Expenditure</u>	<u>(Miles) Length of Beach</u>
Avon	\$ 507,961.40	\$ 367,220.00	\$1,496,158.07	25%	.5
Belmar	1,962,116.00	1,944,690.20	5,470,157.25	36%	1.4
Spring Lake	714,272.98	771,786.00	2,880,251.31	27%	2.0
Sea Girt	328,697.00	347,050.00	1,508,757.46	23%	1.1
Bradley Beach	519,914.00	511,187.00	5,111,879.00	10%	.9
Manasquan	951,179.50	985,654.79	7,350,247.05	13.4%	1.1
Ventnor	152,000.00	269,387.00	7,328,611.00	3.7%	1.7
Beach Haven	109,908.00	104,430.00	1,832,929.00	5.7%	1.9

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4/1x

Bradley Beach (10%); Manasquan (13.4%); Ventnor (3.7%); and Beach Haven (5.7%). This strongly suggests that the expenses attributable to beach operation and maintenance in the four municipalities are either overstated or substantially excessive.

3. We find that the characterization of estimates of expenditures varied significantly among the municipalities and were frequently based on subjective guesses or estimates rather than on objective data that was documented and capable of verification through a uniform accounting system. At the outset of our investigation, the municipalities claimed that the general beach revenues and expenditures listed in their municipal budgets were inaccurate and did not disclose the full picture regarding their expenses. Therefore, each municipality provided us with a detailed calculation of additional expenses that were assertedly attributable to the operation of the beach. This breakdown of beach expenses was impossible in many instances to verify, since the asserted beach costs were not demarcated as such in municipal budgets.

Additionally, we find that this system can frequently result in subjective and arbitrary calculations about expenditures and a lack of uniformity in the determination and allocation of these expenses. In several discussions, we were advised that this was the first time municipal officials in these towns had ever broken down expenses in this fashion, notwithstanding the fact that, under the statute, their

calculation of reasonable beach fees is supposed to be based on such a careful and documented assessment of expenditures.

4. We find that the municipalities do not limit their expenditures to the direct costs of operation and maintenance of the beach, but also include a wide range of estimates of indirect costs. These indirect costs include: (1) legal fees and court costs for summer sessions; (2) insurances costs for general, auto, property, and contractor's liability, as well as workmen's compensation insurance for beach related personnel; (3) salaries of township personnel hired to spend a portion of their time on beach related tasks; (4) regular police used in the summer months for beach related problems or for tasks in the beach area.; (5) engineering costs for beach improvements; (6) beachfront entertainment and recreational activities; (7) public buildings and grounds maintenance; (8) beach personnel benefits and social security; (9) portions of salaries of a variety of municipal employees; (10) street and road maintenance costs; (11) litter cost outside of the beach area as a result of the influx of people; (12) boardwalk lumber replacement costs; (13) street lighting on boardwalk; (14) utility costs (sewer, water, restroom); (15) costs for the care of parks and playgrounds close to but not on the beach; (16) equipment costs (capital, maintenance and repair costs); (17) debt service for capital improvements, and (18) parking meter maintenance.

In order to keep beach fees affordable, many of the towns surrounding these four Monmouth County shore communities have decided to charge beach users only for direct summer beach expenses. (See Part III). According to these towns, direct summer beach expenses are limited to lifeguards, beach equipment costs, beach cleaning, trash pick-up on the beach and boardwalk, beach badge checkers and the beach patrol. These towns pay for indirect beach expenses from general revenues.

Furthermore, we find that, as discussed above, many of these indirect costs were, for the most part, based on subjective estimates and judgments about expenses rather than any precise auditing scheme. This made it extremely difficult in the context of our investigation to determine with any degree of accuracy what, if any, of such indirect costs are properly attributable to beach operation and maintenance. Finally, some of these appear to be outside the ambit of the appropriate allowable expenses under pertinent law.

5. We find that the municipalities are charging beach users for recreational activities and entertainment which occur in the beach area or on the boardwalk. These are activities that may increase the attractiveness or character of the community for residents and tourists, but they are not necessary for the operation of the beach. Additionally, since all beach users do not take advantage of municipally sponsored shore activities, beach fee revenues should not be used to finance these

activities. Indeed, these activities are open and available to all members of the public, regardless of whether they have purchased a beach badge. Furthermore, such events typically take place once a week or once a season; therefore, they cannot be considered expenditures relating to the regular operation of the beach. For example, Spring Lake holds a yearly event called Big Sea Day. The town pays \$3,000 for games, food, a band and a cook-out and considers this event a beach related expense which should be offset by beach fee revenues. Or, Belmar has live entertainment and sponsors various activities at its Pavillion. These events are listed as a beach expense in the town's detailed budget breakdown.

In our opinion, people who use the beach on all other days in the season should not be charged for these occasional events which occur when they are not using the beach. Nor should beach fees be used to subsidize events or activities open to all members of the public, regardless of whether they possess a beach badge. Instead, if necessary, people who want to attend these activities could pay a small fee to attend the individual event.

6. We find that certain of the municipalities appear to be setting beach fees for reasons unrelated to and unauthorized by law. During the course of our investigation, we became aware of statements by municipal officials that they were setting fees based on a desire to prevent overcrowding, to discourage out-of-towners from using the municipality's facilities, or to prevent an influx of visitors to their communities when surrounding communities raised beach fees. However, the pertinent statute

only permits the setting of beach fees to meet certain beach-related expenditures, and the above asserted reasons for raising beach fees are inconsistent with the statutory authority vested in oceanfront municipalities.

7. We find that the municipalities generally assume that the daily fees (for "day-trippers") should be set at a level that subsidizes the weekly/monthly/seasonal beach fees. Municipal officials uniformly expressed an interest in keeping seasonal beach fees lower and daily fees higher, proportionately, in order to make a season pass more attractive for beach users to purchase. For example, while the daily badges ranged from \$5 to \$8.50, badges for the entire season ranged from \$25 to \$40. Thus, a seasonal badgeholder paid roughly 5 to 8 times the amount of a daily badgeholder, yet was able to obtain the ability to use the beach approximately 90 times more than such a "day-tripper".

Although there might be a rational basis to promote the sale of seasonal badges to supply a guaranteed source of income (see Hyland v. Long Beach Tp., 160 N.J. Super. 201 (App. Div. 1978), this approach generally favors residents over nonresident day-trippers. Therefore, there should be a concerted effort to ensure that the subsidies, if any, provided by the daily fees are not excessive and do not impair the public access rights of the largely nonresident daily beach badge users. From our experience, daily fees of \$7.00 and \$8.50 effectively bar many nonresident citizens, particularly those with low and moderate



incomes, from using the beaches for a day. Consequently, the daily fees, at present, are disproportionately subsidizing the other beach fees in these municipalities, and a more careful balance among these fees should be struck.

8. We find that these municipalities are charging summer beach users for year-round beach and boardwalk-related expenses. For example, storm damage costs, boardwalk repair and replacement, and year-round street lighting costs along the boardwalk are listed as beach expenses in the Spring Lake, Sea Girt, Avon and Belmar budgets. Additionally, beach users are paying for street lighting during the evening hours, which are outside the normal range of bathing hours. Although N.J.S.A. 44:61-22.20 does not expressly prohibit these costs, we think that the inclusion of all these year-round beach and boardwalk related expenses in setting fees is inconsistent with the underlying statutory intent. These year-round expenditures should not be subsidized by summer beach users, but should be substantially absorbed by the residents of the municipality who obtain the benefits for the entire year. In short, the majority of beach users use the beach only in the summer months and should not be charged for expenses incurred, and benefits enjoyed, by the municipality throughout the year.

9. We find that many of the expenses of these municipalities are attributable to costs incurred by the community in response to an influx of people during the summer,

nor merely to beach operation and expenditures. We were repeatedly advised of costs associated with the increased summer activity in the municipalities that were considered in calculating beach fees. These include the costs of lawsuits attributable to summer crowds at licensed premises, expenses associated with summer rentals in certain communities and the need for additional police to manage traffic or oversee the conduct of summer visitors. We do not think that it is reasonable to calculate beach fees on the basis of general revenue expenditures linked to increases in municipal services or obligations that stem from the non-beach activities of visitors during the summer months.

10. We find that municipal officials generally assumed in our discussion that the oceanfront was a significant burden with few, if any, tangible benefits to the municipality. We also find that the municipalities often viewed "day-trippers" as intruders who have an adverse effect upon the character of their communities, rather than as joint owners of the ocean and beaches under the public trust doctrine. This ignores the well-established principle that the municipalities which are fortuitously located on the oceanfront are custodians of property belonging to all the public, and not the sole and exclusive proprietors of our ocean sand beaches.

This general attitude was conveyed in the calculation of costs and expenditures. While there was a rather detailed effort

to itemize the financial expenditures attributable to beach operation and maintenance, there was only slight, if any, recognition of the significant financial benefits to communities. Nor was there a proper recognition that certain asserted expenses, such as street lighting or road maintenance, would have to be absorbed by the community even if there were no beachfront. We recognize that there may be a range of expenses related to the beaches and that the increased seasonal population may require the expansion of certain municipal services and personnel. However, we also find that there are substantial benefits to oceanfront municipalities. As the Supreme Court has observed, "the values of real estate in the community, both commercial and residential, are undoubtedly greater than those of similar properties in inland municipalities by reason of the proximity of the ocean and accessibility of the beach." And "commercial enterprises located in the town are more valuable because of the patronage of large numbers of summer visitors." Bor. of Neptune City v. Bor-of-Avon-By-The-Sea, 61 N.J. 300-01. These factors, in turn, increase the tax ratables for the entire community and directly and indirectly benefit the residents of the municipality.

Therefore, we are unable to accept the view that there are no benefits connected with an oceanfront municipality, and we find that the benefits to these communities are substantial. For similar reasons, we find that the general assumption that the

beach expenditures can be computed by comparing the costs incurred by a shore town with the expenses of an inland community is equally myopic and flawed.

Because the municipalities significantly discounted the benefits to their communities, they operate under the assumption that beach fees and expenditures are a "zero sum" calculation and disavow any responsibility on the part of their taxpayers to subsidize the beachfront operation or to keep their beach fees affordable. This disregards the range of economic benefits to shore communities; such benefits should lead Avon, Belmar, Sea Girt and Spring Lake, like their counterparts in surrounding municipalities, to make every effort to keep beach fees affordable. This requires that only the expenses properly related to the operation and maintenance of the beach be considered by the municipalities in setting their beach fees.

#### 4. Conclusion

The beach fee statute permits municipalities to charge "reasonable" fees to offset certain expenditures for operation and maintenance of the beach. The statutory language is vague and somewhat ambiguous. Even if the expenses reported by Avon, Belmar, Sea Girt and Spring Lake are accurate, our investigation reveals that their beach fees and expenses are excessive when compared to other New Jersey shore municipalities. We also find it very troubling that the municipalities did not develop a well-documented method of computing expenditures, but often based

their costs on subjective estimates. Furthermore, in a variety of instances, the costs were not properly attributable to beach front operations or were overstated. As a consequence, we find that the expenditures were inflated and, as a result, the beach fees were excessive.

Moreover, the method of setting beach fees by the municipalities is in many respects, more a function of attitude than of accounting. During our meeting with the four shore towns and in discussions with other shore community officials, we were presented with estimates of many indirect costs involved in operating a beach. However, if beach fees are treated as fair game to offset every municipal expenditure related, either directly, indirectly or even peripherally, to the operation and maintenance of the beach or to the influx of summer visitors, then there will be no effective legislative limit on appropriate costs. Additionally, the legislative concept of "reasonable" beach fees will be rendered meaningless.

In contrast to these municipalities, other shore towns in and out of New Jersey have similar direct and indirect costs but hold a different philosophy on determining what expenses will be passed through to users in the form of beach fees: beach fees must be kept affordable for the general public. The Public Advocate concludes that this approach, rather than a subjective effort at developing estimates to justify excessive and

restrictive beach fees, is more compatible with the public trust doctrine and the statutory directives relating to beach fees.

### III. SURVEY OF BEACH FEE PRACTICES OF OTHER SELECTED OCEAN AND MONMOUTH COUNTY MUNICIPALITIES

The Department of the Public Advocate interviewed 9 shore municipalities north and south of Avon, Belmar, Spring Lake and Sea Girt to compare their 1986 beach fees, the philosophy behind the charges and whether these towns generate enough beach fee revenues at current levels to offset beach expenses. We did not undertake an investigation of specific expenditures, but instead sought to ascertain the overall practices and attitudes of these communities regarding beach fees. Our principal findings regarding these municipalities are as follows:

- (1) The general philosophy of these communities is to keep beach fees affordable even if this means that certain expenses would have to be met by general revenues, not by beach fees.
- (2) There was no uniform method in these municipalities for determining what costs should be offset by beach revenues. However, in contrast to the four communities under review, the prevailing approach is to use beach fee revenues to pay only for direct expenses, such as lifeguards, beach cleaning, and checkers.

#### 1. Asbury Park

Asbury Park charges \$3/person/day on weekdays, \$5/person/day on weekends, and \$35/season (\$18 for senior citizens) for beach passes. According to the Beach Supervisor in Asbury Park, the town wants to attract people, and he believes

that raising the fee would drive people away. The City just wants to break down even, but is presently unable to do so.

Beach fee revenues generated cover beach cleaning only. The cost of lifeguards, janitors, locker and maintenance personnel, security guards, insurance, and any other beach expenses come from general revenues.

## 2. Bradley Beach

Bradley Beach's charges approach those of the four communities investigated by the Public Advocate. Bradley Beach charges \$4/person/day on weekdays, \$6/person/day on weekends, \$15/person/season for 14 and 15 year olds and senior citizen (sold until June 22nd), and \$30/person/season for everyone else. Thirteen year olds go free. According to a Bradley Beach Commissioner, the daily and seasonal beach fees went up in 1986 due to a \$48,000 increase in beach related insurance in 1986. The Commissioner claims that the weather in a given year determines whether the municipality will or will not break even. In 1985, Bradley Beach broke even, but the Commissioner was not sure yet whether the town broke even in 1986.

The Commissioner considers beach expenses to be water, electricity, beach cleaning, garbage collection, lifeguards, lifeguard equipment, police, building and boardwalk maintenance, insurance, beach ticket takers, storm damage and street lighting.



### 3. Manasquan

Manasquan's charges also approach those of the municipalities discussed in Part II. Manasquan charges \$4.50/person/day on weekdays, \$6/person/day on weekends, \$30/adult/season, \$20/season for 14-16 year olds, and \$10/season for senior citizens. Children under 14 can use the beach free of charge. According to the Beach Registrar in Manasquan, the municipality does not seek to restrict the number of beach users; it does not limit the number of badges sold.

Overall, the Beach Registrar believes that beach revenues generated are adequate to pay for beach expenses. However, this past summer, revenues fell short of what was needed to finance beach expenditures.

### 4. Seaside Park

Seaside Park charges \$2/person/day on weekdays, \$3/person/day on weekends, \$9/person/week, \$17/person/season before June 15 and \$20/person/season after June 15. According to the Acting Borough Clerk in Seaside Park, the municipality tries to keep the beach user fee affordable to encourage families to come down. She believes that the money Seaside Park has generated from beach user fees has been sufficient to pay for beach upkeep. According to the Acting Borough Clerk, beach expenses include beach cleaning, lifeguards, beach badge checkers, garbage collection and equipment costs.

5. Beach Haven

Beach Haven charges \$3/person/week, \$3/person/season to June 15 and \$5/person/season after June 15. According to the Municipal Clerk in Beach Haven, the municipality tries to keep the beach user fee low but high enough to compensate for the increased garbage and trash generated as a result of beach users, and for the expense of lifeguards, beach badge checkers and beach cleaning. In 1986, revenues generated from the beach user fee were not enough to pay for beach expenses.

6. Surf City

Surf City charges \$3/person/week, \$6/person/season prior to May 31st, and \$8/person/season after May 31st. According to the Mayor of Surf City, the municipality has never performed a cost analysis to compare beach revenues with beach expenditures. However, he believes that if the municipality was not a shore community, operation costs for local government would drop dramatically.

The mayor considers beach expenses to include not only lifeguards, beach tags, tag checkers and beach cleaning, but also garbage costs, street lighting, police protection, a portion of insurance, a portion of social security, beach related legal fees and engineering costs, and workmen's compensation. He believes that beach revenues have paid for lifeguards, beach tags, tag checkers and beach cleaning only. However, even these costs have

recently increased, and as a result, the town will have to raise beach fees this summer.

7/8. Ventnor/Margate (Reciprocal Badge System)

Ventnor and Margate charge \$3.50/person/week, \$5/person/season before May 31st, and \$10/person/season after May 31st. According to the Clerk of Ventnor/Margate, she believes that the beach should be for the pleasure of the towns' guests. Therefore, when setting the beach fees, the town considers what the average person can afford. If the fee was based on needed revenue to pay for all beach operating expenses, she feels the fee would be too high.

The clerk conveyed that beach fee revenues probably pay for vital services - services to protect public health and safety - such as lifeguards, beach equipment, trash collection and beach cleaning. However, she does not believe that beach fee revenues are sufficient to pay for the additional costs of running a beach such as liability insurance, capital expenses, etc.

9. Ocean City

Ocean City charges \$3/person/week, \$5/person/season before June 1st and \$7/person/season after June 1st. According the Treasurer's Office in Ocean City, the beach fee helps offset beach expenditures but does not cover all costs of operating the beach in Ocean City. Property tax revenues are used to pay for additional beach expenses.

In sum, our survey revealed that, in general, the fees, philosophy and practices in these surrounding communities were more likely to facilitate public access opportunities than those of the four Monmouth County municipalities discussed in Part II. The position of many of these officials was that the beaches belong to everyone and fees should not operate as a deterrent to tourists; therefore, beach fees were designed to cover only direct expenses directly attributable to the upkeep of the oceanfront.

IV. INVESTIGATION OF COMPLIANCE OF BAY  
HEAD IMPROVEMENT ASSOCIATION WITH  
SUPREME COURT DECISION IN MATTHEWS V.  
BAY HEAD IMP. ASS'N.

The Bay Head Improvement Association is a private beach association which controls and services a significant portion of the beach property in Bay Head. In Matthews v. Bay Head Imp. Ass'n., 95 N.J. 306 (1984), the Supreme Court concluded that the Association was acting in a quasi-public capacity, since its activities paralleled those of a municipality in its operation of the beachfront. The Court, therefore, held that the Association's policy of limiting membership only to residents and foreclosing the public was in conflict with the public trust doctrine and, accordingly, required that membership in the Association be open to the public. As the Court stated:

In this manner the public will be assured access to the common beach property during the hours of 10:00 a.m. to 5:30 p.m. between mid-June and September, where they may exercise their right to swim and bathe and to use the Association's dry sand area incidental to those activities. Although such membership rights to the use of the beach may be broader than the rights necessary for enjoyment of the public trust, opening the Association's membership to all, nonresidents and residents, should lead to a substantial satisfaction of the public trust doctrine. Id. at 332.

To ensure compliance with this decision, the Court directed the following: (1) the Association must make available "a reasonable quantity" of daily as well as seasonal badges to

the nonresident public; (2) the number of badges to be afforded to nonresidents should take into account all relevant matters, "such as the public demand and the number of bathers and swimmers that may safely and reasonably be accommodated on the Association's property, whether owned or leased;" (3) the Association "may continue to charge reasonable fees to cover its costs of lifeguards, beachcleaners, patrols, equipment, insurance, and administrative expenses"; and (4) the fees may not discriminate in any respect between residents and nonresidents.

Since the 1984 Supreme Court decision, the Department of the Public Advocate has received numerous complaints from nonresidents of Bay Head who have been denied seasonal beach passes to the Bay Head beach. Although the Bay Head Improvement Association (BHIA) has advertised a nonresident application period, the complainants have raised questions about whether the Association's policies and practices are effectively limiting nonresident applicants in violation of the requirements of Matthews. In order to evaluate and respond to these complaints in a proper manner, the Department of the Public Advocate conducted an investigation into the BHIA's beach badge sales practices in 1986. The following are our principal findings:

- (1) No Bay Head resident has ever been denied a seasonal beach membership.
- (2) Approximately 19% (1396) of the 7250 seasonal badges were issued to nonresidents.

- (3) The application process is strikingly different for residents and nonresidents.
- (4) The Association's restriction on the number of people who can use the beach is inconsistent with pertinent state guidelines.
- (5) The revenues from fees exceed expenditures for beach maintenance and operation.

Our findings are derived from the data provided to us by the Bay Head Improvement Association. We shall discuss this information in the context of the mandates of the New Jersey Supreme Court.

(1) Whether the application procedure discriminates against nonresidents?

In 1986, the Association published a notice stating that it will accept applications from non-Bay head residents for both small family memberships (four badges minimum) and large family memberships (six badges minimum). The notice set forth the following relevant instructions:

- (1) Letters must be postmarked no earlier than April 7 and no later than April 21. Letters postmarked before or after these dates would be disregarded.
- (2) Applications must be made by mail and will not be accepted hand-delivered at the office. The Association established a no telephone call from nonresidents policy.
- (3) Letters would be taken strictly on a first-come, first-serve basis.

After the applications were received, a lottery system was utilized to determine what persons among those submitting applications would be offered membership.

The application procedure for residents of Bay Head is very different. Resident homeowners who had been full season members the previous year automatically received an application by mail and were encouraged to complete the application and return it by mail. They were not restricted in the time period for filing their applications, and they could bring their application to the office after June 1. Resident tenants were directed to apply at the office and show a copy of their lease. No Bay Head resident has ever been denied a seasonal beach membership.

It's obvious from the above descriptions that the application procedures for nonresidents are significantly more restrictive than those for residents. Both the opportunity to seek a membership, and the length of time to apply, are considerably limited. Indeed, any nonresident whose application for membership is not postmarked within the relevant time periods is summarily rejected. The effect of these limitations is to discriminate between residents and nonresidents in contravention of the public trust doctrine.

(2) Whether the Association has made a reasonable quantity of seasonal and daily badges available to nonresidents?



In 1986, the Bay Head Improvement Association (BHIA) sold 7,250 seasonal badges. Of those 7,250 seasonal badges sold, only 1,396 were issued to nonresidents. (5113 were sold to full season residents and the rest were split between half season residents, the hotels, firemen and policemen). This means that roughly 19% of the seasonal badges were sold to nonresidents. According to the Association, no nonresident was refused a daily membership as of July 7, 1986. In limiting the number of seasonal beach memberships and badges, the Association took into consideration three factors: (1) state and federal guidelines for beach occupancy; (2) the geographical makeup of the beaches; and (3) the health, safety and welfare of those using the beach. On the basis of these factors, the Association has concluded that, under ideal conditions, 6000 people can be safely and reasonably accommodated on its beaches on a daily basis.

Several conclusions emerge from our analysis of this data. First, the 1984 Supreme Court decision directed the Association to take into account "public demand" in determining the number of daily and seasonal badges to be afforded nonresidents. However, this factor is glaringly absent from the list of items the Association took into consideration in limiting the number of seasonal beach membership and badges. According to the Association's own figures, while public demand has substantially increased, the number of seasonal memberships offered overall, and the number offered to nonresidents, in

particular, have decreased. For example, the total number of seasonal badges sold dropped by 202 badges from 1985 to 1986, and there were 57 fewer memberships.

Moreover, although the BHIA did increase its nonresident seasonal badge sales by 39 between 1985 and 1986, the number and percentage of nonresident applicants offered applications significantly decreased even though there was a greater public demand for nonresident applications. In 1985, 396 nonresident applications were received in a timely fashion and, according to the Association, 396 were offered memberships. In contrast, while 677 application were received in 1986, the Association restricted its consideration to the 411 applications that were postmarked on the first day of the application period. Of these, 340 were offered memberships. Therefore, despite an increased public demand, fewer seasonal memberships were issued in 1986 and fewer nonresident applicants were offered memberships.

Second, as mentioned above, the Association believes that its beach can only safely and reasonably accommodate 6000 people on a daily basis. The Association purportedly bases this assumption on state guidelines for beach occupancy. However, according to New Jersey guidelines, each beach has the capacity

to hold at least 435 people per acre per day.\* Since Bay Head's beach is approximately 19 acres, the beach should conservatively be able to accommodate comfortably 8265-10,000 people (or at least 2200-4000 more than are presently being accommodated). If DEP's assumptions regarding the amount of time people spend on the beach are used in this calculation, then the estimate of persons who can be comfortably accommodated dramatically increases.

Additionally, other communities with comparable beaches accommodate a larger number of people than Bay Head. For example, Sea Girt safely holds up to 9000 people on a 1 mile stretch of beach and Seaside Heights attracts 30,000-40,000 people a day on the weekend, on 9/10 mile of beach, and the captain of the beach patrol explained that there has never been a drowning in the history of the beach patrol. Consequently, our investigation reveals that the Association has failed to take into account public demand in distributing memberships and has seriously underestimated the number of people who can safely and reasonably use the Bay Head beach. Furthermore, the Association

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\* New Jersey's State Outdoor Recreation Plan considers an appropriate 10' x 10' (or 100 square feet per acre) area to be the ideal comfort zone space. This comfort zone would allow 435 people to share comfortably each acre of beach at the same time. However, since DEP assumes that many people spend approximately 1/2 of the day time hours at the beach, the capacity of each acre of beach is even greater (870 people per acre per day).

has set an arbitrary limit on people that can comfortably use the beach without considering the obvious fact that only a percentage of the people with beach badges are likely to use the beach on any given day. Significantly, the Association has not attempted to regulate the number of people on the beach on a particular day, but has instead, at the outset, unduly restricted the potential number of nonresident people who can obtain memberships. As a result, the Association has unreasonably limited the quantity of seasonal badges available to nonresidents in violation of the Supreme Court's decree in Matthews.

(3) Whether the Association is charging reasonable fees to cover its expenditures related to the beach?

The Association charges a beach fee of \$6.00 on weekdays and \$8.00 on holidays and weekends. Large family (6) memberships cost \$175.00 and small family (4) memberships cost \$125.00. These are among the highest beach fees in New Jersey. In 1985, the Association generated \$220,919 in revenues from beach membership sales, a figure that does not include revenues from daily beach badge sales. In calculating expenditures, the Association allocated categories of expenses that appear to go beyond those items listed as permissible costs by the Supreme Court; however, even accepting the Association's statement of

expenses,\* the 1985 revenues exceeded expenses by at least \$34,000. As mentioned above, this does not include whatever additional revenues were generated by daily badges.

Under these circumstances, the Association's fees appear to be unreasonable under the standards pronounced by the New Jersey Supreme Court. Moreover, these fees far exceed the mean and median beach fees at New Jersey shore municipalities (see page 27). Therefore, it may be appropriate to seek judicial clarification before a definitive conclusion can be reached on this aspect of the Court's decree.

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\* The only exception is a \$48,100.00 professional expense in 1985 which far exceeds the \$3,500 budgeted for 1985 and the \$3000 budgeted for 1986. We have, therefore, deducted \$44,500 from this expense, since the listed amount obviously reflects an extraordinary expense for that year.

## V. RECOMMENDATIONS

Based on our investigation of complaints of excessive beach fees and other obstacles about the rights of public access at New Jersey's beaches, we have formulated eight recommendations. The touchstone of our recommendations is the paramount statewide policy, crystallized in the public trust doctrine, of encouraging broad public access to our ocean beaches. When this important policy is frustrated by the actions of individual shore municipalities, there is a need for aggressive State action to ensure that our precious ocean beaches can be shared equally by all citizens of New Jersey, not just the residents of oceanfront communities.

1. The State Should Immediately Study The Feasibility of Purchasing All Dry Sand Beaches and Assuming The Operation of The Beaches.

There is a disturbing lack of uniformity among municipalities in formulating beach budgets and in protecting the public's broad rights of access to ocean beaches. Since the beaches belong to all the people of this State under the public trust doctrine, it does not appear to be fair or reasonable to allow the continued operation of a balkanized system of beach operations, where fees and practices can dramatically differ within the space of a few miles. It is also contrary to the public interest for many New Jersey citizens, particularly those with low and moderate incomes, to be effectively barred from the ocean beaches because of escalating beach fees. Therefore, we

conclude that the time is propitious for the State Legislature, or appropriate administrative agencies, to engage in a careful and detailed analysis of the feasibility and costs of a State buy-out of dry sand beaches and of the State's assumption of the operation and maintenance of these beaches.

From our investigation of this issue, there do not appear to be any compelling policy reasons to perpetuate a non-uniform system of regulating the beaches. Not only does the present system result in disparate regulations, but it also places public officials of the shorefront municipalities in an inevitable conflict of interest, since they must be very responsive to the parochial interests of their resident constituents and still be protectors of the statewide public trust of nonresidents in ocean beaches. State officials would, in contrast, possess the single and paramount mission of protecting the public trust rights of all citizens unencumbered by conflicting loyalties to residents of shorefront municipalities.

Our investigation of other coastal states reveals that state governments can effectively operate and manage ocean beaches, charging very low, if any, fees. The experiences of these other states should be explored, and the appropriateness of adopting approaches successfully implemented elsewhere should be considered. The rights in ocean beaches are vested in all citizens of the State, and there is a corresponding obligation on the part of State government to assure the establishment of

uniform and consistent practices to protect these rights at a reasonable cost.

Finally, the financial costs of a buy-out should be closely studied. Although some have suggested that the State buy-out of dry sand beaches would be extremely expensive, there are strong reasons for sharply limiting any potential costs of such an approach. Indeed, while the federal and state constitutions require that a party receive just compensation for any taking of private property for public use, the New Jersey Supreme Court decisions on the public trust doctrine strongly indicate that a buy-out would not constitute a taking of property for which a municipality or private owner would be entitled to compensation by the State. As the Court stated in Van Ness v. Borough of Deal, 78 N.J. 181:

[O]ur adjudication that the Deal municipal dry sand beach is subject to the Public Trust Doctrine does not create a public right where none existed previously. It merely gives recognition to the existence of such right. To say this adjudication constitutes a compensable taking is questionable at best.

Furthermore, under Matthews v. Bay Head Imp. Ass'n, supra, every privately owned dry sand upland beach is already subject to the assertion of a paramount public interest under the public trust doctrine. It is unlikely, therefore, that the establishment of this claim in an individual case would be considered a compensable taking. Guidance on the federal constitutional questions that arise from the specific application of the public



trust doctrine to private property should be forthcoming in a case presently pending before the United States Supreme Court. Nollan v. California Coastal Commission, Docket No. 86-133. A decision in this case is expected by July 1987.

However, we acknowledge that a study of these issues requires the consideration of a variety of legal, practical and financial issues that could take a considerable amount of time to resolve. Consequently, we are also proposing several other recommendations which can be implemented within a briefer time period.

2. The Legislature Should Enact Comprehensive Legislation Addressing Beach Fees and Operations As Well As Public Access Rights. The Legislature Should Give Particular Consideration To The Establishment of A Method of State Subsidies For Municipalities Where Legitimate Beach Expenditures Exceed Their Revenues From A Legislatively Capped Beach Fee.

Despite several New Jersey Supreme Court decisions and a few lower state court pronouncements, there is still a degree of uncertainty about the rights of the public and obligations of oceanfront municipalities. In Recommendation #3, we discuss the need for judicial clarification of the only legislative pronouncement in this area, N.J.S.A. 40:61-22.20.

However, the relief sought in these legal actions can be more effectively and systematically implemented by the enactment of comprehensive legislation addressing the fee setting process of municipalities and other municipal activities affecting public

access. This legislation should include, at the very least, the following: (1) the creation of a uniform procedure for the development of beach budgets and for state review of these budgets; (2) explicit limitations on costs for the maintenance and operation of the beaches and boardwalk that may be offset by beach fees; the specific allowable costs should be legislatively articulated, and restricted to a limited range of necessary and direct expenses that are not reimbursable from other state or federal programs; (3) the establishment of a uniform \$2.00 cap on daily beach fees (the financing of any municipal deficits resulting from the cap are discussed above); (4) the specific delineation of the access rights of the public and the corresponding obligations of the municipalities and the owners of private dry sand beach areas to provide appropriate access to the beaches; (5) measures to limit indirect barriers to public access, such as restrictive traffic and parking laws or the vacating of street ends or public streets; (6) a description of the access rights of the public to bay beaches and other tidal waters; and (7) a citizen suit provision which authorizes private individuals to initiate litigation to vindicate their rights under the legislation, and allows prevailing citizens to recover attorneys' fees and expert fees and other costs for prosecuting such actions.

One of these recommendations merits additional discussion in light of the concern of municipalities that a legislative cap on beach fees might result in beach expenditures

exceeding available revenues. Since the ocean beaches belong to all the citizens of the State, we believe that the State should assume some financial responsibility for the imposition of a cap on daily beach fees to facilitate broad public access. In addressing an analogous issue, the State currently provides "in lieu of tax payment aid," to municipalities in order to make up for lost tax revenues because of nontaxable state property located within their borders. N.J.S.A. 54:4-2.2a et seq. There are compelling reasons for treating ocean beaches in a similar fashion. The public trust doctrine establishes a statewide policy of maximizing public access to our beaches; in effect, the ocean beaches are state property held in trust for all of our citizens by the municipalities. If municipalities can demonstrate to appropriate state officials that they are unable to raise enough money to meet legitimate and necessary beach expenditures because of the cap on daily fees, the state should similarly subsidize some or all of the difference to make up for lost beach revenues in the affected municipalities. In this fashion, the general revenues of the municipalities would not be burdened with expenditures that should rightfully be assumed by all taxpayers of the State, who will be sharing the benefits resulting from the lower beach fees.

3. Judicial Clarification Should Be Sought Of A Municipality's Obligation Under N.J.S.A. 40:61-22.20 (The Beach Fee Statute).

As we have explained above, N.J.S.A. 40:61-22.20 does not provide clear guidance on two critical issues affecting beach fees: (1) the specific types and levels of permissible costs that may be allocated to beach operations and maintenance; and (2) what constitutes a reasonable beach fee under the statute. We are concerned that the ambiguity in the statutory language, combined with the absence of any definitive judicial construction of its provisions, may have contributed to the setting of high beach fees in several municipalities. Under these circumstances, it is contrary to the public interest for such important issues affecting both the public's right of access to ocean beaches and the municipalities' responsibilities in setting beach fees to remain unresolved.

The Public Advocate will, therefore, seek judicial clarification of these issues by pursuing appropriate legal actions against Avon, Belmar, Sea Girt and Spring Lake. In these cases, we will specifically seek a ruling on the nature and scope of permissible costs that may be considered by a municipality in setting fees and an interpretation of what constitutes a "reasonable" beach fee. Since municipalities have a responsibility to ensure broad public access and since lower fees increase the accessibility of ocean beaches, we will also seek a judicially imposed reasonable cap on beach fees in these municipalities.

This litigation will also enable us to conduct a more probing and searching inquiry into, and accounting of, the

specific determinations made by Avon, Belmar, Sea Girt and Spring Lake. Equipped with the rights of discovery granted to parties in lawsuits, the Public Advocate will be afforded the opportunity to evaluate and question in a much more detailed fashion the assertions of municipal officials relating to the necessary costs and expenditures for the operation and maintenance of their beaches. We will also be able to utilize appropriate experts in reviewing and auditing the determinations of Avon, Belmar, Sea Girt and Spring Lake in setting their beach fees.

4. The Bay Head Improvement Association Should Act Immediately To Increase Nonresident Memberships And To Reduce Beach Fees In Accordance With The Relief Ordered In Matthews v. Bay Head Improvement Ass'n. The Association Should Also Institute An Application Process That Does Not Arbitrarily Discrimination Between Residents and Nonresidents of Bay Head.

We have analyzed the present practices of the Bay Head Improvement Association in light of the relief ordered by the New Jersey Supreme Court in the 1984 Matthews decision. We have found that the Association is not in compliance with several key aspects of the Court's decision. Therefore, we have concluded that, unless several immediate steps are taken, legal action should be instituted to compel the Association to comply with the Court's decision. Along these lines, we recommend the following:

- (1) The Association immediately and substantially increase its nonresident acceptance rate to bring the number of nonresident members in line with present public demand and the New

Jersey State guidelines on beach occupancy.

- (2) Since beach revenues far exceed expenditures, daily beach badge should be lowered for this season, and seasonal beach badge fees should be reduced in the future.
- (3) The application process should be considerably altered to place residents and nonresidents on an equal footing with respect to the opportunity to apply for, and the time period for seeking, memberships.

5. All Private Beach Associations Should Be Required to Make Available A Reasonable Quantity of Daily As Well As Seasonal Badge Memberships At Reasonable Fees To The Nonresident Public.

In Matthews v. Bay Head Improvement Association, 95 N.J. 306 (1984), the New Jersey Supreme Court mandated the Bay Head Improvement Association (B.H.I.A.) to make a reasonable quantity of daily and seasonal memberships available to nonresidents at reasonable fees. However, the Court stopped short of requiring all other private associations along the New Jersey coast to open their memberships to nonresidents. Unfortunately, we are not aware of any private beach associations that have voluntarily responded to the spirit and language of the Court's decision by opening up their memberships to the nonresident public.

In order to increase the supply of available public beaches, to institute a policy that does not merely apply to Bay Head but, as a matter of fairness, is applicable to all private

beach associations, and to ensure compliance with the dictates of the Matthews decision, the Public Advocate urges the Legislature to mandate that all private beach associations in the State to make available a reasonable quantity of their memberships to nonresidents at a reasonable fee.

6. Ocean Municipalities Should Not Set Daily Fees As A Means of Subsidizing Monthly or Seasonal Beach Badges. The Day-Trippers, Who Are Primarily Nonresidents, Should Not Be Forced To Assume A Disproportionate Financial Burden In Order To Lower The Costs For Monthly and Seasonal Badgeholders, Who Are Largely Residents or Long-Term Visitors of the Municipality.

We recognize that there may be a legitimate basis for providing discounts for seasonal and weekly beach users. However, we do not think that it is appropriate to raise daily beach fees to an excessive level in order to provide disproportionate subsidies to seasonal and weekly users, most of whom are residents of, or long term visitors to, the municipality. Instead, we recommend that these fees be adjusted and that if a discounted fee is provided for seasonal and weekly users, the costs of this discount should not be passed on in such substantial amounts to the day trippers. At the present levels, there is sufficient room for municipalities to raise the weekly and seasonal fees, thereby allowing them to reduce the daily fees, while still providing a reasonable discount for weekly, monthly or seasonal users.

7. State, County and Municipal Governments Should Develop A Coordinated Approach To Address The Lack of Available Parking Spaces For Nonresidents In New Jersey Shore Municipalities.

In the course of investigating the matters discussed in this report, the Department also received many complaints about the lack of available parking spaces for nonresidents of New Jersey shore municipalities. This remains a substantial impediment to public access at many of New Jersey's beaches. To address this problem, many municipalities in the State have metered their streets or banned parking altogether on streets. This has the effect of discriminating against nonresidents who are dependent upon the availability of public parking spaces to use the beaches. In the complaints received by this Department, the complainants commonly expressed their concern about severe time limitations on parking or the total unavailability of public parking.

We recommend that the State and shore communities immediately explore a variety of measures to increase public parking and access to the beaches, such as the increased availability of mass transit to shore communities, the establishment of regular shuttles from outlying parking areas to shore municipalities,\* tying private development to construction

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\* At present, this Department is only aware of one shuttle system, that which serves Island Beach State Park.



of public parking lots, building additional public parking lots, where possible, and relaxing or eliminating the present restrictions on metered or street parking. We recognize that certain proposed solutions may be more appropriate in some communities than others; however, we urge state, county and municipal officials to explore the most appropriate solutions for each municipality. Certainly, it is in everyone's interest to facilitate the ability of tourists and visitors to the New Jersey shore to relax and enjoy the amenities of oceanfront communities without being discouraged or frustrated by the lack of public parking.

8. State, County and Municipal Governments Should Develop An Aggressive Program For Addressing Ocean Pollution.

During our investigation, we received repeated complaints about ocean pollution and the trash that washes up on our shores. Although this issue does not implicate the public access concerns that underlie the rest of this report, we do not think that any discussion of the ocean beaches can ignore the adverse effects of ocean pollution upon our shore communities and tourism in this State. We recommend that these issues be addressed in an aggressive and coordinated fashion and that the highest priority be accorded to addressing the various sources of ocean pollution.

For example, minimally treated sewage discharged into the ocean has, at times, forced the closing of the beaches because of excessive fecal coliform counts. The extreme example

was the closing of the beach at Long Branch for over 10 weeks during the 1986 season. This contamination points out the need for a major coordinated effort to upgrade the treatment of waste at the municipal sewage treatment facilities in the shore communities and for the development of regional planning to avoid overburdening existing sewage treatment facilities. Aggressive steps also need to be taken to reduce the contamination resulting from nonpoint sources such as storm water runoff from cities and farms that carries with it human and animal wastes, fertilizers, pesticides and other toxic chemicals into rivers and streams, and ultimately into the ocean.

In addition, the State's beaches suffer from unsightly trash that continues to wash up on the sand. The source of much of this trash in the northern beaches has been attributed to New York's Fresh Kills landfill in Staten Island. The quality of the ocean itself has also been placed at risk by the ocean dumping of highly toxic sewage sludge, acid and other chemical waste, dredge spoils, and the proposed burning of toxic chemicals off New Jersey's shores.

The Department of the Public Advocate recommends the development of a detailed and coordinated plan, with appropriate timetables, addressing the abatement of all sources of pollution of the ocean and beaches. Central to such an effort is the prompt upgrading of sewage treatment facilities and the control of storm runoff pollution. Finally, the litigation to force the City of New York to abate the trash dumping on our beaches which

results from the unloading of barges at the Fresh Kills landfill should continue to be aggressively pursued by the Attorney General.

# APPENDIX

## 1986 Beach Fee Schedule

	<u>Weekday</u>	<u>Weekend</u>	<u>Weekly</u>	<u>Seasonal</u>
Sandy Hook	\$2 (per car)	\$3 (per car)		
Sea Bright	\$3	\$3.50		\$30.00
Long Branch	\$2	\$3.00		\$20.00
Deal	\$4	\$5.00		\$35.00
Asbury Park	\$3	\$5.00		\$35.00
Ocean Grove	\$4	\$5.00		\$38.00
Bradley Beach	\$4	\$6.00		\$30.00
Avon	\$5	\$8.50		\$35.00
Belmar	\$5	\$8.00		\$25.00
Spring Lake	\$7	\$8.00		\$45.00
Sea Girt	\$5	\$7.00		\$40.00
Manasquan	\$4.50	\$6.00		\$30.00
Point Pleasant	\$2	\$3.00		\$35.00
Bay Head	\$6	\$8.00		\$125.00*
Lavallette		\$5.00	\$7/weekly	\$20.00
Ortley Beach			\$8/weekly	\$15.00
Seaside Heights	\$2	\$3.00		\$15.00
Seaside Park	\$2	\$3.00		\$17/20.00**
Island Beach	\$3 (per car)	\$4.00 (per car)		
BarNEGAT State Park	\$2 (per car)	\$4.00 (per car)		
BarNEGAT Twp.			\$15/weekly	\$8/12.00**
Beach Haven			\$3/weekly	\$3/5.00**
Harvey Cedars			\$4/weekly	\$8.00
Surf City			\$3/weekly	\$8.00
Ship Bottom			\$3/weekly	\$6.00
Long Beach Twp.			\$3/weekly	\$3/5.00**
Brigantine			\$3/weekly	\$7.00
Atlantic City	FREE	FREE	FREE	FREE
Ventnor/Margate			\$3.50/weekly	\$10.00
Longport			\$3.50/weekly	\$10.00
Ocean City			\$3.00/weekly	\$ 7.00
Sea Isle			\$3/weekly	\$ 7.00
Avalon/Stone Harbor			\$3/weekly	\$ 7.00
Wildwood	FREE	FREE	FREE	FREE
Cape May	\$2	\$2.00		\$ 9.00
Cape May Point St. Pk.	FREE	FREE	FREE	FREE
Cape May Point			\$9.00	\$ 9.00

\* Minimum 4 badges required

\*\* Pre-season discount

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