

July 15, 2020

Mayor John Pallone
344 Broadway
Long Branch, NJ 07740

**RE: 1055 Ocean Avenue, Long Branch, New Jersey
Block 29, Lots 1, 1.01
Private Beach Issue**

Mayor John Pallone:

We are sending this letter to inform you of a beach access issue that has arisen at the aforementioned address. Recently, the owner of the property has placed a "PRIVATE PROPERTY – NO TRESPASSING" sign on the beach, as well as semi-permanent tents, chairs, volleyball net, cones and planters. In essence, the beachfront homeowner here is attempting to create a private beach on public property. See photograph below, July 8, 2020:



As you are aware, these beaches have benefitted from restoration projects through the U.S. Army Corps of Engineers (ACOE) since 2015. The federal government clearly did not intend to afford nearly \$40 million for a beach replenishment project that will benefit only a small class of oceanfront residents. With the addition of these newly replenished beaches, the taxpayers, who paid for this project, have an equal right enjoy the beaches in the City. Under the Public Trust Doctrine, the people of New Jersey are the beneficiaries of the lengthening of the dry beach created by this government-funded program.¹ The property owner does not own the dry sand beach that has been created through this project.

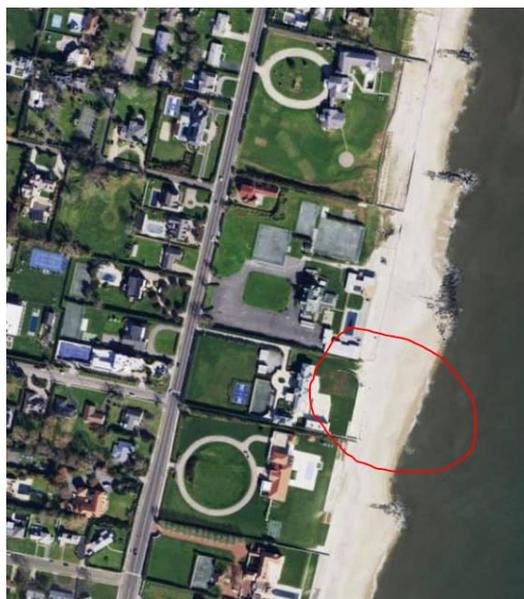
¹ See *City of Long Branch v. Jui Yung Liu*, 203 N.J. 464, 486 (2010) (The New Jersey Supreme Court held that the beach's increase due to federally-funded beach replenishment project constitutes an avulsion rather than an accretion, and thus the prior mean high-water mark remains dividing line between state-owned land and beachfront property owners' land).

The property owner's rights only extend to the land they owned prior to the restoration project (the prior mean high-water mark). In this case, that is the bulkhead at the end of their property line. Please review the following aerial photographs which show the property in 2012 and 2020. These photos evidence the fact that the mean high-water mark is the bulkhead on the western edge of the property owner's land. You can see that the entire beach was created by the ACOE project. Therefore, under the holding in Liu, the entire beach is public and subject to the historic Public Trust Doctrine. The property owner has no right to restrict access to the sand beyond the bulkhead.

2012



2020



In addition to the historic legal rights retained by the public to tidal areas, substantial funds are invested in shore protection. For these reasons, the expenditure of state monies for beach nourishment and shore protection structures carries with it a requirement for public access to these areas. Municipal governments must demonstrate that adequate public access, clearly defined in the aid agreements signed with the state, will be provided when signing the contracts. There is also a continuing obligation to ensure compliance.

Under the ACOE's Water Resources Policies and Authorities Regulations, public use is a condition for Federal participation in beach replenishment protection projects. Violations of the ACOE regulations may render the City ineligible for the federal cost share funding for beach restoration projects. The penalty for this would be millions of dollars.

On behalf of the undersigned groups, we are urging the City to take action against not only 1055 Ocean Avenue, but any beachfront homeowner/entity that attempts to take possession or create a "private beach" on the newly restored dry sand that was paid for by the taxpayers.

Respectfully,

AMERICAN LITTORAL SOCIETY
Tim Dillingham, Director

CITIZENS' RIGHT TO ACCESS BEACHES, C.R.A.B.
Ralph Coscia, President

COBRA: NJ BEACH ACCESS
Andrew L. Chambarry, Esq.

JERSEY COAST ANGLERS ASSOCIATION
George Browne, Public Access Chair

METUCHEN UNDERWATER DIVERS
Mike Lavitt, Delegate

NEW JERSEY COUNCIL OF DIVING CLUBS
Glenn A. Arthur, Chairman

SURFRIDER FOUNDATION, JERSEY SHORE CHAPTER
Joseph M. Coakley, Legislative Liaison

WEST END NJ/LONG BRANCH WATCHDOGS
Patty Fisher Verrochi

CC: U.S. Army Corps of Engineers, NY District
NJDEP, Bureau of Coastal Land Use Compliance and Enforcement