SUPREME COURT OF NEW JERSEY

CASE NUMBER C-844

CITY-NEWARK

PLAINTIFF

VS.

NATURAL-RESOURCE-COUNCIL

DEFENDANT

CONTROL DATE

CODE

REMARKS

SEPT. TERM-1976

IMAGES

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C844 SEP 1976

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APR 25 1977
SUPREME COURT
OF NEW JERSEY

SUPREME COURT OF NEW JERSEY
NO.
TERM

CITY OF NEWARK, et al.,

Respondents/Petitioners,

vs.

NATURAL RESOURCE COUNCIL IN THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al.,

Appellants/Respondents

Civil Action

Petition for Certification to the Superior Court, Appellate Division

Sat Below:

Carton, J.S.C., A.D.
Kole, J.S.C., A.D.
Larner, J.S.C., A.D.

PETITION FOR CERTIFICATION TO THE SUPERIOR COURT, APPELLATE DIVISION

FILED
APR 25 1977
Florence R. Peskoe
CLERK

JOHN R. WEIGEL
Attorney for or Special Counsel to City of Newark; City of Elizabeth; Esther G. Bertoni, et al.; New Jersey Land Title Insurance Association, et al.
Respondents/Petitioners
264 Fisher Place
Princeton, New Jersey 08540

Supreme Court Clerk
APR 25 '77

TABLE OF CONTENTS

	Page
Statement of the Case	1
Reasons for Certification	9
Procedural and Factual History	10
Argument THE APPELLATE DIVISION OPINION OF MARCH 29, 1977 IS BASED ON AN ERRONEOUS ASSUMPTION WITH RESPECT TO THE OCTOBER 15, 1975 ORDER OF THE TRIAL COURT WHICH SUBVERTS THE THRUST AND PURPOSE OF THE SAID ORDER AND LEAVES THIS IMPORTANT MATTER IN A STATE OF CONFUSION AND UNCERTAINTY WHICH THE APPEAL WAS INTENDED TO DISSIPATE	13
Conclusion	17
Certification	17

CASES CITED

	Page
O'Neill v. State Highway Department, 50 N.J. 307, 327 (1967)	4
City of Newark v. Natural Resource Council, 133 N.J. Super. 245 (Law Div 1974)	5, 8
New Jersey Sports & Exposition Authority v. Smila Rutherford, Inc., Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-20950-72, and companion cases	16

STATUTES CITED

N.J.S.A. 13:1B-13.1 et seq.	1, 10, 11
N.J.S.A. 13:1B-13.4	2, 5
Wharf Act of 1851, page 335	2
N.J.S.A. 13:17-1	15

OTHER CITATIONS

Constitution of 1947, Article I, Par. 2	15

STATEMENT OF QUESTION INVOLVED

DID THE APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY IN ITS OPINION OF MARCH 29, 1977 MAKE AN ERRONEOUS ASSUMPTION WITH RESPECT TO THE PARTIAL SUMMARY JUDGMENT ORDER OF OCTOBER 15, 1975 WHICH ALTERS THE THRUST AND PURPOSE OF THE SAID ORDER AND WHICH SHOULD BE CORRECTED BY THE SUPREME COURT?

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF NEW JERSEY:

Respondents, City of Newark; City of Elizabeth; Esther G. Bertoni, et al.; New Jersey Land Title Insurance Association, et al., respectfully show:

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STATEMENT OF THE CASE

Although the March 29, 1977 opinion of the Appellate Division of the Superior Court of New Jersey (Pa1) in this matter is worded in terms of affirmance of the partial summary judgment
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orders of the Trial Court (Honorable Theodore W. Trautwein) dated March 6, 1975 (Pa16), October 15, 1975 (Pa44), and December 23, 1975 (Pa48), this Petition for Certification is sought because the Appellate Division made a critical and erroneous assumption with respect to the October 15, 1975 order (Pa44) of the Trial Court
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which subverts the thrust and purpose of the said order and leaves this important matter in a state of confusion and uncertainty which the appeal was intended to dissipate.

This matter arises out of the most recent effort of the State
40
to map its sovereign ownership claims in the meadowlands pursuant to N.J.S.A. 13:1B-13.1 et seq. On June 13, 1973 the State published a base photomap and claims overlay covering the Newark/Elizabeth Meadows and six base photomaps and claims overlays covering portions

of the Hackensack Meadows. (NOTE: Subsequently, the State published 30 additional base photomaps and claims overlays covering other portions of the Hackensack Meadows; this appeal involves all 37 mapped areas.) The unusual procedural and factual history of these matters will be detailed below. It is sufficient here to indicate that these Petitioners believed that the published maps patently did not comply with the statutory mandate (N.J.S.A. 13:1B-13.4 directs the State to publish maps "clearly indicating those lands designated by the Council as State-owned lands"). Among other deficiencies, the published maps totally ignored every riparian grant and quitclaim deed ever issued by the State. Since 1869 when the Wharf Act (Public Laws of 1851, page 335) was first repealed, the State has issued numerous riparian grants and quitclaim deeds in the Newark/Elizabeth Meadows and the Hackensack Meadows. There are extensive riparian grants along Newark Bay, the Hackensack River, and the Passaic River. Some of these conveyances are nearly 100 years old. All are based on a high water line incorporated by the State in the legal description contained in said conveyances. Much of the land covered by these conveyances was reclaimed by the private owners decades ago and substantial improvements have been built upon it which have inured to the economic and commercial interests of the State. For generations much of the land covered by these conveyances has been assessed and taxed to support government. The 37 published maps assert State ownership claims as if the State

had never issued a riparian grant or quitclaim deed in the Newark/ Elizabeth Meadows or the Hackensack Meadows.

The legend printed on each of the 37 maps acknowledges that the maps do not reflect any riparian grants or leases. By leaving off any depiction of riparian grants and quitclaim deeds the State's published maps manifestly seek to avoid the question of the validity of those instruments as title conveyances. Most of the land previously conveyed by the State is depicted on the 37 maps as riparian or State owned, while some of the land is depicted by a "hatch-mark" symbol. It appears to these Petitioners that the erroneous assumption the Appellate Division made in its March 29, 1977 opinion (Pa1) arises from its failure to fully comprehend the State's use of the "hatch-mark" symbol on the published maps. On the published maps the State has employed three classifications of property (and, of course, by failing to reflect riparian grants and quitclaim deeds even these three classifications do not accurately reflect the State's position on the title question):

> 1. riparian lands: riparian lands are claimed by the State to be State owned even if the lands are the subject of private record title
>
> 2. uplands: uplands are acknowledged by the State to be privately owned
>
> 3. "hatch-marked" areas: the State neither claims ownership of "hatched" areas nor acknowledges that they are privately owned; according to the legend on

the published maps, unspecified "portions" of the "hatched" areas were "formerly" below mean high water (NOTE: It is extremely important to understand that "hatched" areas are filled-in meadowlands which are not tidally flowed today and for which the State's proofs do not permit it to draw the mean high water line as that line existed before the filling. O'Neill v. State Highway Department, 50 N.J. 307, 327 (1967) places the burden of proof on the title question on the State as to all "hatched" areas because the present scene is non-tidal. It is also important to understand that not all filled-in meadowlands are shown by the "hatch-mark" symbol; the State did have some proof of the former location of the mean high water line in some filled-in meadowlands).

The three classifications of property are obviously not mutually exclusive. "Hatched" areas clearly constitute a category of mixed ownership. Although the State has expressed its interest in "hatched" areas as a percentage of ownership for purposes of withdrawal of deposits in the condemnation actions, the published maps themselves do not contain any percentages and the State does not claim to be able to demarcate the former mean high water line in the "hatched" areas.

Since there was no factual dispute as to the omission of riparian grants and quitclaim deeds from the published maps nor any factual dispute as to what the "hatch-mark" symbol depicted, these Petitioners in September 1974 brought a Motion for Partial Summary Judgment (Pa14) before Judge Trautwein. This motion was directed at two distinct problems: 1) the failure of the "hatch-mark" symbol

of mixed ownership to meet the mandate of N.J.S.A. 13:1B-13.4 to publish maps "clearly indicating those lands designated by the Council as State-owned lands", and 2) the failure of the maps to satisfy the statutory requirement of giving public notice of the State's ownership claims by omitting valid riparian grants and quitclaim deeds. On

10

December 19, 1974 Judge Trautwein granted partial summary judgment to Petitioners on both aspects of the motion and gave the State 120 days to remap all "hatched" areas and to remap all areas in which the State had previously issued riparian grants or quitclaim deeds. Judge Trautwein's decision is reported at 133 N.J. Super. 245. The fact

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that Judge Trautwein considered the remapping of "hatched" areas as separate from the remapping of areas covered by previous riparian grants or quitclaim deeds is clear from the following language at 133 N.J. Super. 261:

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> "Much of what has been said on the question of the 'hatched' areas applies to appellants' contention on riparian grants. At present the maps do not reflect any grants of riparian lands by the State, unless one draws the negative inference from the 'hatched' or riparian legends that respondent council does not think there are any valid riparian grants in these areas. See N.J.S.A. 12:3-1 et seq.

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> "I therefore order respondent to prepare and publish an overlay for each map depicting which riparian grants the State recognizes as valid. Respondent has 120 days from the date of order to prepare those overlays."

The order granting partial summary judgment was not entered until

March 6, 1975 (Pa16). The State did not publish the new claims overlays within 120 days. The State sought a 90-day extension of time for compliance with the March 6, 1975 order and with its motion (Pa26) it provided the Court with the affidavit of Deputy Attorney General William C. Rindone, Jr. dated June 12, 1975 (Pa29) and the affidavit of Roland S. Yunghans, Chief of the State's Mapping Project, dated July 1, 1975 (Pa31). The State's moving papers portray a good-faith effort to comply with the March 6, 1975 order and a representation that the additional 90-day period is needed to achieve compliance. Relying on the State's representations, Judge Trautwein signed an order on July 2, 1975 (Pa34) extending time for compliance until September 24, 1975.

What Judge Trautwein himself later characterized as "the straw that broke this camel's back" was the Natural Resource Council resolution adopted September 10, 1975 (Pa39). By the September 10, 1975 resolution the State claimed 100% ownership of all "hatched" areas. This resolution of the Natural Resource Council was counseled by the Attorney General's Office and approved by the Commissioner of Environmental Protection. The 100% resolution ran in the face of the legend on the published maps (that only "portions" of the "hatched" areas were formerly below mean high water) and the sworn testimony of the State's own experts. As it was the turning point for Judge Trautwein, so too was the 100% resolution the turning point for these Petitioners.

Petitioners promptly filed a Motion to Supplement and Enforce the March 6, 1975 partial summary judgment order (Pa41).

On September 18, 1975 the State applied on short notice to Judge Trautwein for a 30-day extension of time to file the new overlays covering the riparian grants and quitclaim deeds. In light of the State's conduct in claiming 100% of the "hatched" areas, these Petitioners objected to any extension of time for filing the grants overlays unless the order contained a protective provision that on failure of the State to file the grants overlays within the extended time the private titles would be confirmed against any State ownership claim. In open court before Judge Trautwein on September 18, 1975 the Attorney General's Office was directed to include in the order extending time the protective provision requested by these Petitioners. The Attorney General's Office submitted a form of order (Pa44) which did not contain the protective provision Judge Trautwein had directed the Attorney General's Office to include, and, accordingly, Judge Trautwein in his own handwriting added the following as paragraph 3 (Pa45) before he signed the order of October 15, 1975 (Pa44):

> "3. In the event of non-compliance with ordering paragraph '#1' above all prior riparian grants and quitclaim deeds issued by the State shall be deemed valid and sufficient instruments to cut off and extinguish all right, claim, title and interest of the State of New Jersey in and to the lands conveyed thereby."

The thrust and purpose of the order of October 15, 1975 (Pa44) was to give the State one last opportunity to do what it was told on December 19, 1974 (133 N.J. Super. 245) by Judge Trautwein that it would have to do, namely, to take a position with respect to the validity or invalidity of the riparian grants and quitclaim deeds previously issued by the State within the Newark/Elizabeth Meadows and the Hackensack Meadows. On the failure of the State to take such a position by the extended date, the riparian grants and quitclaim deeds previously issued by the State would be confirmed as valid instruments of conveyance.

Again the State failed to comply with a time extension it requested. By his order of November 14, 1975 (Pa46) Judge Trautwein stayed the October 15, 1975 order until November 20, 1975. The appeal which the State took on April 21, 1975 (Pa19) from the March 6, 1975 partial summary judgment order (Pa16) was amended by order of the Appellate Division dated February 23, 1976 (Pa54) to include the October 15, 1975 order (Pa44). The Appellate Division by order dated February 23, 1976 (Pa54) denied a stay of Judge Trautwein's order of October 15, 1975. The stay of the October 15, 1975 order granted by Judge Trautwein (Pa46) expired on November 20, 1975 and was never thereafter extended by any court. By force of Judge Trautwein's order of October 15, 1975 (Pa44) all riparian grants and quitclaim deeds issued by the State in the Newark/Elizabeth Meadows and the

Hackensack Meadows are confirmed as valid instruments of conveyance.

On March 29, 1977 the Appellate Division filed an opinion (Pa1) which is worded in terms of affirmance of Judge Trautwein's partial summary judgment orders of March 6, 1975 (Pa16), October 15, 1975 (Pa44), and December 23, 1975 (Pa48). The last paragraph of the Appellate Division opinion is directed at the October 15, 1975 order. The last sentence of that paragraph states:

> "We assume that this provision (paragraph 3 of Judge Trautwein's order of October 15, 1975) applies only to prior grants and quit claim deeds of lands within the hatched area."

This Petition for Certification is directed at this erroneous assumption by the Appellate Division and the consequences which flow from it.

REASONS FOR CERTIFICATION

1. The erroneous assumption made by the Appellate Division in its opinion of March 29, 1977 (Pa1) subverts the thrust and purpose of the October 15, 1975 order (Pa44) of the Trial Court and leaves this important matter in a state of confusion and uncertainty which the appeal was intended to dissipate.

2. The Appellate Division opinion decimates years of conscientious effort through the judicial processes of our government to reach a final resolution of New Jersey's 17-year old tideland problem.

3. The Appellate Division opinion leaves open the validity of many titles in the Newark/Elizabeth Meadows and the Hackensack Meadows derived through riparian grants and quitclaim deeds issued by the State and the record owners and the affected municipalities have a right to have the title question concluded in the public interest.

4. The question decided by the Appellate Division is of enormous importance to the economic and commercial interests of the State in light of the geographic location of the properties covered by the prior riparian grants and quitclaim deeds issued by the State in the Newark/Elizabeth Meadows and the Hackensack Meadows.

5. The question decided by the Appellate Division has never been considered by the court of last resort of this State and should be so considered.

PROCEDURAL AND FACTUAL HISTORY

Because of the unique nature of the City of Newark case, Petitioners believe that the Supreme Court may be assisted in considering this Petition for Certification by a brief review of the procedural and factual history surrounding this matter. This case started as an appeal from the final determination of the Natural Resource Council in accepting certain maps as being those required by N.J.S.A. 13:1B-13.1 et seq. (The first effort by the State at compliance with N.J.S.A. 13:1B-13.1 et seq. produced the so-called

"gray and white" map which was published on January 14, 1970 and on which the State claimed ownership of approximately 11,000 acres in the Hackensack Meadows, including virtually the entire Town of Kearny. The "gray and white" map was suppressed by Judge Trautwein for evidentiary purposes on September 8, 1971.) Because no record was made before the Natural Resource Council on which the public or the courts could ascertain whether or not N.J.S.A. 13:1B-13.1 et seq. had been complied with, these Petitioners (as Appellants) moved before the Appellate Division for an order supplementing the administrative record. The motion was granted (Pa12), and the matter was remanded to the Assignment Judge of Bergen County to make appropriate findings of fact and conclusions of law related to the directives in the mapping statute (N.J.S.A. 13:1B-13.1 et seq.). At the same time the State moved before the Appellate Division to consolidate with the City of Newark case the various New Jersey Sports & Exposition Authority condemnation cases involving a tideland issue so that the question of the mapping would be concluded as to those cases. The Order of Consolidation was entered by the Appellate Division on August 24, 1973 (Pa11). Subsequently, the Appellate Division entered an order (Pa13) consolidating with the City of Newark case all of the remaining New Jersey Sports & Exposition Authority condemnation cases (these remaining cases did not involve a tideland issue and they were joined so that their mapping as uplands by the State would be con-

cluded). (NOTE: the New Jersey Sports & Exposition Authority condemnation involves approximately 750 acres in East Rutherford which is the site of the Hackensack Meadowlands Sports Complex.)

As noted above, these Petitioners in September 1974 moved for partial summary judgment (Pa14) which was granted by Judge Trautwein on December 19, 1974 (133 N.J. Super. 245) and the partial summary judgment order was entered on March 6, 1975 (Pa16). On April 21, 1975 the State filed a Notice of Appeal (Pa19) from the March 6, 1975 order (Pa16). The State did not move at that time before the Appellate Division to question the authority of Judge Trautwein under the order of remand (Pa13). Despite the Notice of Appeal filed on April 21, 1975 (Pa19), the State's moving papers on its request for a 90-day extension (Pa26, Pa29, and Pa31) for compliance with the March 6, 1975 order (Pa16) voice a good-faith effort at compliance and a representation that compliance can be achieved within the extended time. (NOTE: The State did nothing to perfect the appeal it filed on April 21, 1975 by complying with time requirements fixed by Rules of Court for the filing of its appellate brief and appendix; during all of calendar year 1975 no appellate brief or appendix was ever filed by the State, and no dismissal of the appeal was ever ordered by the Appellate Division for failure of the State to prosecute the appeal).

The September 10, 1975 resolution of the Natural Resource Council (Pa39) claiming 100% State ownership of all "hatched" areas was declared to be "arbitrary, capricious, and unreasonable" by Judge Trautwein in his order of December 23, 1975 (Pa48).

10 Petitioners have included in their appendix various items (Pa51 through Pa69) which relate to the State's efforts in early 1976 to salvage an appeal in these matters; the Appellate Division grant of the appeal but denial of the State's request for instructions to Judge Trautwein and denial of a stay of Judge Trautwein's orders; denial

20 by the Supreme Court of Petitioner's motion for direct certification; various correspondence related to the Appellate Division opinion of March 29, 1977; the Petition for Rehearing and Partial Recall of the Appellate Division opinion of March 29, 1977, and the Notice of Petition for Certification.

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ARGUMENT

THE APPELLATE DIVISION OPINION OF MARCH 29, 1977 IS BASED ON AN ERRONEOUS ASSUMPTION WITH RESPECT TO THE OCTOBER 15, 1975 ORDER OF THE TRIAL COURT WHICH SUBVERTS THE THRUST AND PURPOSE OF THE SAID ORDER AND LEAVES THIS IMPORTANT MATTER IN A STATE

40 OF CONFUSION AND UNCERTAINTY WHICH THE APPEAL WAS INTENDED TO DISSIPATE

It is urged that this Petition for Certification be granted

because of the unfair consequences which would otherwise flow to these Petitioners. These Petitioners have invested years of effort in trying to move New Jersey's 17-year old tideland problem to a final and fair resolution. They did not seek to cast themselves in the role of litigants with their State. They were forced into that role by the State. When those acting in the name of the State published the January 14, 1970 "gray and white" map claiming State ownership of 11,000 acres in the Hackensack Meadows, including virtually the entire Town of Kearny, they forced private property owners into court to protect their property from the absurd claims of the State. When the Natural Resource Council failed to make a record before it which would inform the public of the steps followed by the administrative agency in adopting seven base photomaps and claims overlays on June 13, 1973, it forced these Petitioners to file a Notice of Appeal (Pa3) and a Motion for Supplementation of the Administrative Record (Pa7). When the State included a mixed classification ("hatch-mark" areas) of property ownership on its maps and when the State failed to reflect valid riparian grants and quitclaim deeds on its maps, the State forced these Petitioners into filing the Motion for Partial Summary Judgment (Pa14). From the date of Judge Trautwein's decision of December 19, 1974 (133 N.J. Super. 245) until the present the State has adopted a tactic of stonewalling in an effort to have its way and to frustrate the judicial process to the extent that process did not see things the State's way. The conduct of those acting in the State's name in these matters in 1975 is

inexplicable to any person of conscience and fair-mindedness. These Petitioners fully respect the obligation of the State to express the most extensive ownership claim which its proofs will reasonably permit it to support. Those who are acting in the State's name have repeatedly chosen to ignore the declaration of purpose of the Hackensack Meadow-
10 lands Reclamation and Development Act found in N.J.S.A. 13:17-1 and which provides in part:

> "... while the State, in the name of the people, has an obligation to assert its interest in the meadowlands that are clearly state-owned, it has an equal obligation to establish a framework within
> 20 which private owners may assert their interests and take title to meadowlands that are privately owned..."

In New Jersey the people are sovereign. Constitution of 1947, Article I, Par. 2. Government is instituted "for the protection, security, and benefit of the people..." ib. The State is not the
30 sovereign. Officials and employees of the State are not the sovereign. There is one set of Rules of Court which obliges all; there is not one set of Rules of Court for the State and another set of Rules of Court for everybody else. If our system of government is to work, the orders of courts must have the respect of the State as well as
40 the respect of the citizen. People's lives have been exhausted in the 17-year old tideland problem. The municipalities of the State and their citizens should not be left forever to wait for the State to define and redefine its ownership claims. The people who are the

sovereign have a right to know what lands are in the public domain and what lands are in the private domain.

While the Attorney General's Office may find it "appropriate" (Pa61) that this matter be determined on the basis of the erroneous assumption made by the Appellate Division, these Petitioners hold it most inappropriate that a matter of this magnitude be concluded on such a basis. The October 15, 1975 order (Pa44) was intended to result in the confirmation of the validity of all riparian grants and quitclaim deeds in the Newark/Elizabeth Meadows and the Hackensack Meadows if the State failed to publish the grants overlays within the extended time it requested. The State failed to publish the grants overlays within the required time. The October 15, 1975 order is entitled to its full force and effect.

One assumption that we can fairly make is that the State failed to file the grants overlays because it had no basis for challenging its own riparian grants and quitclaim deeds. On October 30, 1975 the State lost a challenge to one of its own quitclaim deeds when Judge Trautwein upheld the validity of a quitclaim deed in New Jersey Sports & Exposition Authority v. Smila Rutherford, Inc., Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-20950-72, and companion cases. Concern should not be expressed that the October 15, 1975 order (Pa44) works any unfairness against the State. It must be remembered: that the State was not compelled to make the conveyances;

that the State fixed the monetary consideration it believed was appropriate for the conveyances; and that the State has always been in a better position than its citizens to know where the State's ownership claims lie.

CONCLUSION

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Wherefore the respondents pray, for the reasons set forth herein, that the Supreme Court grant certification.

Respectfully submitted,

20 Dated: April 22, 1977

John R. Weigel
Attorney for Respondents/Petitioners

CERTIFICATION

I hereby certify that the foregoing Petition presents a substantial question meriting
30 certification, and that it is filed in good faith and not for purposes of delay.

John R. Weigel
Attorney for Respondents/Petitioners

40

C844 SEP 1976

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May 6, 1977

FILED
MAY 9 1977
Florence R. Peskoe
CLERK

Ms. Florence R. Peskoe
Clerk, New Jersey Supreme Court
State House Annex
Trenton, N. J. 08625

Re: City of Newark, et al. v.
Natural Resource Council in the
Department of Environmental
Protection, et al.

Dear Ms. Peskoe:

This will confirm that our office, on behalf of the Borough of East Rutherford and numerous other clients which we represent in the above captioned matter, do hereby join in the petition for certification filed by John R. Weigel, Esq., on behalf of the City of Newark, et als., on April 25, 1977.

Kindly advise the Court accordingly. Our position is basically the same as he has set forth in his petition and appendix. It is hereby adopted.

Very truly yours,

Alfred A. Porro, Jr.
Alfred A. Porro, Jr.

AAP:vml

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Kole, J.S.C., A.D.
Larner, J.S.C., A.D.

FILED
APR 25 1977
Florence R. Peskoe
CLERK

APPENDIX TO PETITION FOR CERTIFICATION TO THE SUPERIOR COURT, APPELLATE DIVISION

JOHN R. WEIGEL
Attorney for or Special Counsel to City of Newark; City of Elizabeth; Esther G. Bertoni, et al.; New Jersey Land Title Insurance Association, et al.
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TABLE OF CONTENTS

	Page
Appellate Division Opinion of March 29, 1977	Pa1
Notice of Appeal dated July 18, 1973	Pa3
Motion for Supplementation of Administrative Record Under R. 2:5-5(b) dated July 18, 1973	Pa7
Appellate Division Order of August 24, 1973.	Pa11
Appellate Division Order of August 26, 1973.	Pa12
Appellate Division Order of May 8, 1974.	Pa13
Notice of Motion for Partial Summary Judgment dated September 23, 1974	Pa14
Order for Partial Summary Judgment dated March 6, 1975.	Pa16
Notice of Appeal filed April 21, 1975.	Pa19
Notice of Motion returnable June 26, 1975.	Pa26
Affidavit of William C. Rindone, Jr. dated June 12, 1975 .	Pa29
Affidavit of Roland S. Yunghans dated July 1, 1975	Pa31
Order Extending Time for Compliance with the Court's Order of March 6, 1975 dated July 2, 1975	Pa34
Affidavit of Donald T. Graham dated October 1975	Pa36
September 10, 1975 100% Resolution of the Natural Resource Council	Pa39
Notion of Motion to Supplement and Enforce the Orders of the Court dated September 30, 1975	Pa41
Order of Judge Trautwein dated October 15, 1975	Pa44
Order of Judge Trautwein dated November 14, 1975	Pa46
Order Granting Partial Summary Judgment dated December 23, 1975.	Pa48

TABLE OF CONTENTS

	Page
Appellate Division Opinion of March 29, 1977	Pa1
Notice of Appeal dated July 18, 1973	Pa3
Motion for Supplementation of Administrative Record Under R. 2:5-5(b) dated July 18, 1973	Pa7
Appellate Division Order of August 24, 1973.	Pa11
Appellate Division Order of August 26, 1973.	Pa12
Appellate Division Order of May 8, 1974.	Pa13
Notice of Motion for Partial Summary Judgment dated September 23, 1974	Pa14
Order for Partial Summary Judgment dated March 6, 1975.	Pa16
Notice of Appeal filed April 21, 1975.	Pa19
Notice of Motion returnable June 26, 1975.	Pa26
Affidavit of William C. Rindone, Jr. dated June 12, 1975 .	Pa29
Affidavit of Roland S. Yunghans dated July 1, 1975	Pa31
Order Extending Time for Compliance with the Court's Order of March 6, 1975 dated July 2, 1975	Pa34
Affidavit of Donald T. Graham dated October 1975	Pa36
September 10, 1975 100% Resolution of the Natural Resource Council	Pa39
Notion of Motion to Supplement and Enforce the Orders of the Court dated September 30, 1975	Pa41
Order of Judge Trautwein dated October 15, 1975	Pa44
Order of Judge Trautwein dated November 14, 1975	Pa46
Order Granting Partial Summary Judgment dated December 23, 1975.	Pa48

TABLE OF CONTENTS

	Page
Notice of Notion for Instructions, etc.	Pa51
Appellate Division Order of February 23, 1976 granting appeal and denying instructions and stay.	Pa54
Appellate Division Order of February 23, 1976 granting leave to file responsive brief out of time	Pa55
Supreme Court Order of February 15, 1977 denying certification	Pa56
Appellate Division Order of February 18, 1977 Severing Appeal, etc.	Pa57
John R. Weigel letter of March 30, 1977 to the Appellate Division	Pa58
Deputy Attorney General Morton J. Goldfein letter of March 31, 1977 to the Appellate Division	Pa60
John R. Weigel letter of April 4, 1977 to the Appellate Division.	Pa62
Letter of Honorable Lawrence A. Carton dated April 7, 1977	Pa64
Petition for Rehearing and Partial Recall of Appellate Division Opinion of March 29, 1977.	Pa65
Notice of Petition for Certification dated April 15, 1977.	Pa69

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2066-76

CITY OF NEWARK, et al.,

Respondents,

v.

NATURAL RESOURCE COUNCIL IN THE
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, et al.,

Appellants.

Submitted March 14, 1977 -- Decided MAR 29 1977

Before Judges Carton, Kole and Larner.

On appeal from Superior Court, Law Division, Bergen County, whose opinion is reported at 133 N.J. Super. 245 (Law Div. 1974).

Mr. William F. Hyland, Attorney General of New Jersey, attorney for appellants, Natural Resource Council in the Department of Environmental Protection, et al. (Mr. Stephen Skillman, Assistant Attorney General, of counsel; Mr. Morton Goldfein, Deputy Attorney General, on the brief).

Mr. John R. Weigel, attorney for respondents, City of Newark, et al.

Messrs. Gladstone, Hart, Mandis, Rathe & Shedd, attorneys for respondent, Bergen County Associates (Mr. Marvin H. Gladstone, of counsel and on the brief).

Mr. Alfred A. Porro, attorney for respondent, Borough of East Rutherford.

Mr. William J. Ward filed statement in lieu of brief on behalf of New Jersey Sports and Exposition Authority.

PER CURIAM

We affirm the order for summary judgment entered March 6, 1975 essentially for the reasons expressed in Judge Trautwein's opinion

reported in Newark v. Natural Resource Counc. Dept. Environmental Protect., 133 N.J. Super. 245 (Law Div, 1974).

We also affirm the trial court's orders for partial summary judgment dated October 15, 1975 and December 23, 1975. These supplemental orders permit the record holders of specific lands located in the "hatched" areas referred to in the above reported opinion to proceed with quiet title actions involving land in those areas. Although somewhat irregular because they may have exceeded the scope of our remand, we deem the orders entirely proper under the circumstances. We note that, notwithstanding the fact these orders allow the property owners to proceed in such actions by way of motions for summary judgment or other types of proceedings, they still reserve to the State the right to present proofs in support of any contention that the premises in question are riparian lands.

We note the provision of the order of October 15, 1975 to the effect that in the event of non-compliance by the State agency with the March 6, 1975 order "in connection with the grant overlay to be promulgated by the Natural Resource Council * * * all prior riparian grants and quit claim deeds issued by the State shall be deemed valid and sufficient instruments to cut off and extinguish all right, claim, title and interest of the State of New Jersey in and to the lands conveyed thereby." We assume that this provision applies only to prior grants and quit claim deeds of lands within the hatched area.

Affirmed.

A TRUE COPY

Elizabeth McLaughlin

Clerk

MOTIONS/PETITIONS

SUPE R COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3311-72
MOTION NO. M-1067-75
BEFORE PART F

JUDGES CARTON
CRAHAY
HANDLER

CITY OF NEWARK, ET AL

VS.

NATURAL RESOURCE COUNCIL
IN THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
ET AL.

MOVING PAPERS FILED January 7, 1976
ANSWERING PAPERS FILED January 20 & 21, 1976
DATE SUBMITTED TO COURT January 28, 1976
DATE ARGUED
DATE DECIDED FEBRUARY 23, 1976

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION TO AMEND NOTICE OF APPEAL	X In Part		X

SUPPLEMENTAL:

Motion to amend Notice of Appeal is granted.
Motion for instructions is denied.
Motion for stay is denied.

No additional briefs required on the present motions. Schedule for filing briefs will be fixed upon filing of court's findings pursuant to remand.

I hereby certify that the foregoing is a true copy of the original on file in my office.
Elizabeth McLaughlin
Clerk

FOR THE COURT:
Lawrence A. Carton
P.J.A.D.

WITNESS, THE HONORABLE LAWRENCE A. CARTON, JR. , PRESIDING JUDGE OF PART F , SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, THIS 23rd DAY OF February 1976 .

Elizabeth McLaughlin
CLERK OF THE APPELLATE DIVISION

MOTIONS/PETITIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3311-72
MOTION NO. M-1182-75
BEFORE PART F

CITY OF NEWARK, ET AL

VS

NATURAL RESOURCE COUNCIL, ETC., ET AL

JUDGES: CARTON
CRAHAY
HANDLER

MOVING PAPERS FILED JANUARY 26, 1976
ANSWERING PAPERS FILED
DATE SUBMITTED TO COURT JANUARY 28, 1976
DATE ARGUED
DATE DECIDED FEBRUARY 23, 1976

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION/~~PETITION~~ FOR LEAVE TO FILE RESPONSE BRIEF OUT OF TIME	X		.

SUPPLEMENTAL:

I hereby certify that the foregoing is a true copy of the original on file in my office.

Elizabeth McLaughlin
Clerk

FOR THE COURT:

[signature]
P.J.A.D.

WITNESS, THE HONORABLE LAWRENCE A. CARTON, JR., , PRESIDING JUDGE OF PART F, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, THIS 23rd DAY OF February 1976.

Elizabeth McLaughlin
CLERK OF THE APPELLATE DIVISION

SUPREME COURT OF NEW JERSEY
M-518 SEPTEMBER TERM 1976

CITY OF NEWARK,

Plaintiff-Movant,

v.

NATURAL RESOURCE COUNCIL IN THE DEPT. OF ENVIRONMENTAL PROTECTION, etc., et al,

Defendants-Respondents.

ORDER

This matter having been duly presented to the Court, it is ORDERED that the motion for direct certification is denied.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 15th day of February, 1977.

Florence R. Peskoe
Clerk

FILED
FEB 15 1977
Florence R. Peskoe
CLERK

A TRUE COPY
Florence R. Peskoe
CLERK

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2066-76

ORIGINAL FILED

ELIZABETH

CITY OF NEWARK, et al., vs. NATURAL RESOURCE COUNCIL IN THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al.	ORDER TO SEVER APPEAL, ETC.

This matter being opened to the court on its own motion and it appearing that on July 19, 1973 the plaintiff's, City of Newark, et als. filed a notice of appeal from a June 13, 1973 decision of the Natural Resource Council, Dept. of Environmental Protection, (Appellate Division Docket Number A-3311-72); and subsequently while the appeal was on temporary remand the defendants-respondents on April 21, 1975 filed a notice of appeal under the same docket number from a March 6, 1975 order of the Superior Court, Law Division, Bergen County; and it further appearing that the later notice of appeal should have been treated as a séparate appeal, and for good cause having been shown;

It is on this 18th day of February, 1977 HEREBY ORDERED that the appeal filed on April 21, 1975 by the defendants-respondents is severed and all pleadings, etc. filed pertaining to the same are herewith transferred to the severed appeal which shall now proceed under the Appellate Division docket number of A-2066-76.

/s/ [signature]
P.J.A.D.

[signature]
Clerk

JOHN R. WEIGEL

LAW OFFICES
264 FISHER PLACE
PRINCETON, NEW JERSEY 08540
AREA CODE (609) 452-1166

March 30, 1977

Honorable Lawrence A. Carton, Jr.
Judge of the Superior Court
91 East Front Street
Red Bank, New Jersey 07701

Honorable Martin J. Kole
Judge of the Superior Court
217 Court House
Hackensack, New Jersey 07601

Honorable Samuel A. Larner
Judge of the Superior Court
520 Broad Street
Newark, New Jersey 07102

Re: City of Newark, et al v. Natural Resource Council, et al - Superior Court of New Jersey, Appellate Division - Docket No. A-2066-76

Dear Judges:

I received today a copy of the per curiam opinion dated March 29, 1977 in the above entitled matter. The last paragraph of the opinion deals with Judge Trautwein's order of October 15, 1975 (Ra23) relating to the prior riparian grants and quitclaim deeds issued by the State of New Jersey. The last sentence of the paragraph in question states:

> "We assume that this provision applies only to prior grants and quitclaim deeds of lands within the hatched areas."

The Court's assumption is incorrect. The State has published 37 base photomaps and claims overlays. One of the base photomaps and claims overlays covers the Newark/Elizabeth meadows and the 36 remaining base photomaps and claims overlays cover areas in the Hackensack meadows. The State did not indicate on any of these base photomaps and claims overlays any areas as being privately owned on the basis of an existing riparian grant or quitclaim deed.

Honorable Lawrence A. Carton, Jr.
Honorable Martin J. Kole
Honorable Samuel A. Larner -2- March 30, 1

This problem is totally separate and distinct from the "h
problem. The purpose of Judge Trautwein's order of Octob
1975 was to obtain compliance with that portion of the Ma
1975 order relating to the preparation of new claims over
all areas which had been the subject of prior riparian gr
quitclaim deeds. The State, in effect, was directed to t
position as to the validity or invalidity of riparian gra
quitclaim deeds within the total area mapped on the 37 ba
maps.

By copy of this letter I am inviting Deputy A
General Morton J. Goldfein to confirm to the Court that t
is factually correct and that the Court's assumption is e

Respectfully,

John R. Weigel

JRW:s
cc: Honorable Theodore W. Trautwein
Assistant Attorney General Stephen Skillman
Deputy Attorney General Morton J. Goldfein
Marvin H. Gladstone, Esq.
Alfred A. Porro, Jr., Esq.
William J. Ward, Esq.

JOHN R. WEIGEL

Honorable Lawrence
Judge of the Superi
91 East Front Stree
Red Bank, New Jerse

Honorable Martin J.
Judge of the Superi
217 Court House
Hackensack, New Jer

Honorable Samuel A.
Judge of the Superi
520 Broad Street
Newark, New Jersey

Re: Ci
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Dear Judges:

I recei
March 29, 1977 in t
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State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
ENVIRONMENTAL PROTECTION SECTION
36 WEST STATE STREET
TRENTON 08625

WILLIAM F. HYLAND
ATTORNEY GENERAL

ROBERT J. DEL TUFO
FIRST ASSISTANT ATTORNEY GENERAL

STEPHEN SKILLMAN
ASSISTANT ATTORNEY GENERAL
DIRECTOR

MORTON GOLDFEIN
DEPUTY ATTORNEY GENERAL
CHIEF

March 31, 1977

Hon. Lawrence A. Carton, Jr., J.S.C.
91 East Front Street
Red Bank, New Jersey 07701

Hon. Martin J. Kole, J.S.C.
217 Court House
Hackensack, New Jersey 07601

Hon. Samuel A. Larner, J.S.C.
520 Broad Street
Newark, New Jersey 07102

Re: City of Newark, et al. v. Natural Resource Council, et al - Superior Court of New Jersey, Appellate Division - Docket No. A-2066-76

Dear Judges:

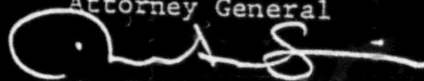
This letter is in response to Mr. Weigel's request of March 30 that the Court reconsider the last sentence of the opinion of March 29.

Our principal concern in bringing the matter before your Court at this time was to seek guidance as to the Law Division's jurisdiction pursuant to the remand order. The focus of the briefs before the Court was the hatched areas and neither party addressed the "grants overlay" question . From our perspective, a favorable decision in the pending case of N.J.S.E.A. v. Smila Rutherford, Inc., et al., Appellate Division, Docket No. A-1651-75 (in which we are seeking a share of condemnation proceeds by attacking a prior grant as having been made for grossly inadequate consideration) would be dispositive of the grants overlay question and the Natural Resource Council has deferred adopting the prepared overlays pending that decision. The case has been argued and a prompt decision is anticipated.

The overlays issue was not considered by this Court and I therefore think the inclusion of the last sentence in your opinion is appropriate.

Respectfully yours,

WILLIAM F. HYLAND
Attorney General



Morton Goldfein
Deputy Attorney General

cc: Hon. Theodore W. Trautwein, A.J.S.C.
John R. Weigel, Esq.
Marvin H. Gladstone, Esq.
Alfred A. Porro, Jr., Esq.
William J. Ward, Esq.
Stephen Skillman, Assistant Attorney General

MG:lm

JOHN R. WEIGEL

LAW OFFICES
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PRINCETON, NEW JERSEY 08540
AREA CODE 609 452-1166

April 4, 1977

Honorable Lawrence A. Carton, Jr.
91 East Front Street
Red Bank, New Jersey 07701

Honorable Martin J. Kole
217 Court House
Hackensack, New Jersey 07601

Honorable Samuel A. Larner
520 Broad Street
Newark, New Jersey 07102

Re: City of Newark, et al v. Natural Resource Council, et al - Superior Court of New Jersey, Appellate Division Docket No. A-2066-76

Dear Judges:

While I am reluctant to prolong the correspondence in this matter, I do not believe Deputy Attorney General Goldfein's letter of March 31, 1977 to the Court fairly reflects the record.

The State on April 21, 1975 filed a Notice of Appeal from the whole of Judge Trautwein's partial summary judgment order of March 6, 1975. In January 1976 the State filed a motion with the Appellate Division which sought, among other relief, an order:

> "Amending the Notice of Appeal in this matter to include the Orders of the Superior Court, Law Division, dated December 23, 1975 and October 15, 1975."

The February 23, 1976 order of the Appellate Division (Ra83) granted the motion to amend the Notice of Appeal, thereby incorporating in this appeal Judge Trautwein's orders of December 23, 1975 and October 15, 1975.

Contrary to the State's contentions as set forth in Deputy Attorney General Goldfein's letter of March 31st, the October 15, 1975 order was before the Court on this appeal, was the subject of briefing and was specifically commented on in the March 29, 1977 per curiam opinion.

Honorable Lawrence A. Carton, Jr.
Honorable Martin J. Kole
Honorable Samuel A. Larner -2- April 4,1977

In its March 29th opinion, this Court incorrectly assumed that the October 15, 1975 order applied only to "hatched" areas. The October 15, 1975 order applies generally to the mapped areas and is not limited to "hatched" areas.

The Appellate Division by its order of February 23, 1976 in this matter denied the State's motion to stay the December 23, 1975 and October 15, 1975 orders, and, despite this Court's order, Mr. Goldfein acknowledges that the Natural Resource Council "has deferred adopting the prepared overlays" pending decision in another case. The fact that a related issue may be pending before the Appellate Division in another matter should not form the basis for this Court to refuse to decide an issue properly before it. I respectfully urge the Appellate Division to reconsider that portion of its March 29th opinion which is based on the erroneous assumption that the October 15, 1975 order applies only to "hatched" areas.

I am prepared to file a motion before the Appellate Division for such reconsideration and at the same time to take appropriate action before the Supreme Court to protect my clients' rights on any appeal. I would welcome an expression of the Court's desires under the circumstances.

Respectfully,

John R. Weigel

John R. Weigel

JRW:s
cc: Honorable Theodore W. Trautwein
Assistant Attorney General Stephen Skillman
Deputy Attorney General Morton J. Goldfein
Marvin H. Gladstone, Esq.
Alfred A. Porro, Jr., Esq.
William J. Ward, Esq.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

LAWRENCE A. CARTON, JR.
JUDGE

91 EAST FRONT STREET
RED BANK, NEW JERSEY 07701

April 7, 1977

John R. Weigel, Esq.
264 Fisher Place
Princeton, N.J. 08540

Re: City of Newark v. Natural Resource Council
Docket No. A-2066-76

Dear Mr. Weigel:

The Court has considered your letter of April 4. We are not persuaded that the opinion is erroneous or that there is any valid reason for making a change in our interpretation of the record.

You are, of course, free to take any further action you consider desirable and appropriate.

Very sincerely yours,

Lawrence A. Carton, Jr.

Lawrence A. Carton, Jr.

cc: Hon. Martin J. Kole
Hon. Samuel A. Larner
Hon. Theodore W. Trautwein
Assistant Attorney General Stephen Skillman
Deputy Attorney General Morton J. Goldfein
Marvin H. Gladstone, Esq.
Alfred A. Porro, Jr., Esq.
William J. Ward, Esq.

TO THE HONORABLE LAWRENCE A. CARTON, JR., HONORABLE MARTIN J. KOLE, AND HONORABLE SAMUEL A. LARNER, JUDGES OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION:

Respondents/Petitioners, City of Newark; City of Elizabeth; Esther G. Bertoni, et al.; New Jersey Land Title Insurance Association, et al., pursuant to Rule 2:11-6, hereby petition for rehearing and partial recall of the Appellate Division judgment and opinion of March 29, 1977 in this matter.

Respondents/Petitioners, City of Newark, et al., respectfully urge the following as the reason supporting this Petition:

1. The Appellate Division in its opinion of March 29, 1977 made an erroneous assumption with respect to the October 15, 1975 order of the Trial Court (Honorable Theodore W. Trautwein) which subverts the thrust and purpose of the said order and leaves this important matter in a state of confusion and uncertainty which the appeal was intended to dissipate.

2. This matter arises out of the most recent effort of the State of New Jersey to map its sovereign ownership claims pursuant to N.J.S.A. 13:1B-13.1 et seq. The State has published a total of thirty-seven base photomaps and claims overlays. One base photomap and claims overlay depicts the Newark/Elizabeth Meadows; the thirty-six remaining base photomaps and claims overlays depict various areas of the Hackensack Meadows. These various base photomaps and claims overlays were published by the State as its effort to make that determination and certification of State-owned lands mandated by N.J.S.A. 13:1B-13.2 and N.J.S.A. 13:1B-13.4.

3. These Petitioners did not believe that the published

maps complied with the statutory mandate. Among other deficiencies, the maps totally ignored every riparian grant and quitclaim deed ever issued by the State. Since 1869 when the Wharf Act (Public Laws of 1851, page 335) was first repealed, the State has issued numerous riparian grants and quitclaim deeds within the Newark/ Elizabeth Meadows and the Hackensack Meadows. There are extensive riparian grants along Newark Bay, the Hackensack River, and the Passaic River. On the thirty-seven base photomaps and claims overlays the State asserted its ownership claims as if it had never issued a riparian grant or quitclaim deed. These Petitioners believed that the State's action ran in the face of the mandate of the statute to publish maps "clearly indicating those lands designated by the Council as State-owned lands" (N.J.S.A. 13:1B-13.4). Petitioners took their case to Judge Trautwein, and he agreed that the State's mapping had to reflect all valid riparian grants and quitclaim deeds. He directed the State to issue new claims overlays for all areas which were the subject of riparian grants or quitclaim deeds. Judge Trautwein's opinion of December 19, 1974 on this matter is reported at 133 N.J. Super. 245. The fact that Judge Trautwein directed his concern to all thirty-seven mapped areas is clear from the following language at 133 N.J. Super. 261:

> "Much of what has been said on the question of the 'hatched' areas applies to appellants' contention on riparian grants. At present the maps do not reflect any grants of riparian lands by the State, unless one draws the negative inference from the 'hatched' or riparian legends that respondent council does not think there are any valid riparian grants in these areas. See N.J.S.A. 12:3-1 et seq.
>
> "I therefore order respondent to prepare and

> publish an overlay for each map depicting which riparian grants the State recognizes as valid. Respondent has 120 days from the date of order to prepare those overlays."

4. Judge Trautwein entered an order granting partial summary judgment on March 6, 1975 (Ra6). The order required the State to remap its ownership claims within: (1) all "hatched" areas, and (2) all areas that had ever been the subject of a riparian grant or quitclaim deed. The State did not comply with Judge Trautwein's March 6, 1975 order within 120 days and time was extended on the State's representation that it was making a good-faith effort to prepare the new overlays. The State's repeated efforts to frustrate Judge Trautwein's orders culminated in the October 15, 1975 order (Ra23). The October 15, 1975 order applies to all thirty-seven mapped areas. The State, after failing from December 19, 1974 to prepare new overlays, was given one last opportunity to comply with the directives of the Court. The State again failed to issue the new claims overlays within the required time. The October 15, 1975 order operates to confirm the validity of the riparian grants and quitclaim deeds previously issued by the State within all thirty-seven mapped areas of the Newark/Elizabeth Meadows and Hackensack Meadows. The Appellate Division by its order of February 23, 1976 (Ra83) denied a stay of the October 15, 1975 order of Judge Trautwein.

5. The last paragraph of the Appellate Division opinion of March 29, 1977 in this matter discusses ~~the~~ October 15, 1975 order and its language confirming prior riparian grants and quitclaim deeds. The last sentence of the paragraph states:

> "We assume that this provision applies only to prior grants and quit claim deeds of lands

within the hatched area."

This assumption by the Appellate Division is incorrect and results in a subversion of the thrust and purpose of the October 15, 1975 order. This Petition seeks a recall of so much of the judgment and opinion in this matter as is grounded on this erroneous assumption.

Respectfully submitted,

Dated: April 7, 1977

John R. Weigel
John R. Weigel
Attorney for Petitioners

CERTIFICATION

Pursuant to Rule 2:11-6(a), I hereby certify that this Petition is submitted in good faith and not for purposes of delay.

John R. Weigel
John R. Weigel
Attorney for Petitioners

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2066-76

CITY OF NEWARK, et al., :

Respondents, :

v. :

NATURAL RESOURCE COUNCIL IN THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al., :

Appellants. :

NOTICE OF PETITION FOR CERTIFICATION

Notice is hereby given that the respondents, City of Newark; City of Elizabeth; Esther G. Bertoni, et al.; New Jersey Land Title Insurance Association, et al., will petition the Supreme Court of New Jersey for certification to the Appellate Division to review so much of the final judgment of the Appellate Division entered in this action on March 29, 1977 as modifies the order of the Trial Court (Honorable Theodore W. Trautwein) entered on October 15, 1975.

Dated: April 15, 1977

John R. Weigel

JOHN R. WEIGEL
Attorney for or Special Counsel to City of Newark; City of Elizabeth; Esther G. Bertoni, et al.; New Jersey Land Title Insurance Association, et al., Respondents
264 Fisher Place
Princeton, New Jersey 08540
(609) 452-1166

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NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

Supreme Court
13755

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2066-76

RECEIVED
AUG 25 '77
Supreme Court Clerk

CITY OF NEWARK, et al.,

Respondents,

v.

NATURAL RESOURCE COUNCIL IN THE
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, et al.,

Appellants.

On remand from the Supreme Court of New Jersey by Order of July 27, 1977 - Decided AUG 25 1977

Before Judges Carton, Kole and Larner.

On appeal from Superior Court, Law Division, Bergen County, whose opinion is reported at 133 N.J. Super. 245 (Law Div. 1974).

Mr. William F. Hyland, Attorney General of New Jersey, attorney for appellants, Natural Recource Council in the Department of Environmental Protection, et al. (Mr. Stephen Skillman, Assistant Attorney General, of counsel; Mr. Morton Goldfein, Deputy Attorney General, on the brief).

Mr. John R. Weigel, attorney for respondents, City of Newark, et al.

Messrs. Gladstone, Hart, Mandis, Rathe & Shedd, attorneys for respondent, Bergen County Associates (Mr. Marvin H. Gladstone, of counsel and on the brief).

Mr. Alfred A. Porro, attorney for respondent, Borough of East Rutherford.

Mr. William J. Ward filed statement in lieu of brief on behalf of New Jersey Sports and Exposition Authority.

PER CURIAM

On March 29, 1977 we rendered a per curiam opinion in this case. On July 27, 1977 the Supreme Court ordered that a petition for certification be granted and remanded the matter summarily to us for clarification of that portion of our opinion dealing with a trial court's order of October 15, 1975.

We supplement our opinion of March 29, 1977 pursuant to such remand by modifying the last two paragraphs on page 2 of that opinion to read as follows:[1]

We note the provision of the order of October 15, 1975 to the effect that in the event of non-compliance by the State agency with the March 6, 1975 order "in connection with the grant overlay to be promulgated by the Natural Resource Council * * * all prior riparian grants and quit claim deeds issued by the State shall be deemed valid and sufficient instruments to cut off and extinguish all right, claim, title and interest of the State of New Jersey in and to the lands conveyed thereby." We assume that this provision applies only to prior grants and quit claim deeds of lands within the hatched area. Nothing herein is intended to in any way relieve the State, through the Natural Resource Council, of the duty imposed by the trial court of preparing and publishing an overlay for each map depicting which riparian grants the State recognizes as valid. This requirement applies to both the hatched and unhatched areas.

Affirmed.

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1 The added portion is underlined.

A TRUE COPY

Elizabeth McLaughlin
Clerk

RECEIVED
C844 SEP 1976
MAY 24 1977
SUPREME COURT OF NEW JERSEY

SUPREME COURT OF NEW JERSEY
NO.
Term September 1976

CITY OF NEWARK, et al.,

Respondent/Petitioners,

vs.

NATURAL RESOURCE COUNCIL IN THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al.,

Appellants/Respondents

Civil Action

Petition for Certification to the Superior Court of New Jersey, Appellate Division

Sat Below:

Carton, J.S.C., A.D.
Kole, J.S.C., A.D.
Larner, J.S.C., A.D.

FILED
MAY 24 1977
Florence R. Parker
CLERK

REPLY BRIEF ON PETITION FOR CERTIFICATION

JOHN R. WEIGEL
Attorney for or Special Counsel to City of Newark; City of Elizabeth; Esther G. Bertoni, et al.; New Jersey Land Title Insurance Association, et al
Respondents/Petitioners
264 Fisher Place
Princeton, New Jersey 08540

TABLE OF CONTENTS

	Page
STATEMENT OF REPLY	1
CONCLUSION	5

CASES CITED

Page

Newark v. Natural Resource Council, 133 N.J. Super. 245, 261 (Law Div. 1974) 2

New Jersey Sports & Exposition Authority v. Borough of East Rutherford, Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-16799-72 1

New Jersey Sports & Exposition Authority v. Smila Rutherford, Inc., Superior Court of New Jersey, Appellate Division, Docket No. A-1651-75 4

OTHER AUTHORITY CITED

Rule 4:42-2. 2

STATEMENT OF REPLY

Nowhere in its Brief in Opposition to the Petition for Certification does the State dispute the fact that the Appellate Division made an erroneous assumption in its March 29, 1977 opinion (Pa1) with respect to the October 15, 1975 order (Pa44) of the Trial Court (Honorable Theodore W. Trautwein) which subverts the thrust and purpose of the said order.

Instead, the State advances three grounds against the grant of certification:

1. that the "petition does not present a question of general public importance" (Rb7-10 to 11);

2. that it would be "premature for this Court to consider the narrow issue presented by this petition at this time" (Rb8-8 to 10);

3. that the matter "would be rendered moot" by a pending motion for reconsideration of a quiet title judgment entered by Judge Trautwein in <u>New Jersey Sports & Exposition Authority v. Borough of East Rutherford, et al</u>, Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-16799-72 (Rb8-11 to 30).

The third ground advanced by the State for denying the Petition for Certification is patent nonsense. The so-called <u>Borough of East Rutherford</u> case has nothing whatsoever to do with the issue of the riparian grants and quitclaim deeds. The State well knows that the pending matter referred to at Rb8-11 to 30 is the State's own application to Judge Trautwein to vacate the judgment quieting title to those portions of East Rutherford's property depicted as "hatched" on the claims overlay. After Judge Trautwein entered his December 23, 1975 order (Pa48) declaring the resolution of the Natural Resource

Council (Pa39) claiming 100% ownership of the "hatched" areas to be "arbitrary, capricious and unreasonable and ...null and void and of no force and effect," the Borough of East Rutherford availed itself of the procedure set forth in ordering paragraph 4 (Pa50) of the December 23, 1975 order. The Borough applied for and obtained judgment quieting title to the "hatched" areas within the parcel it owned of record. Even if Judge Trautwein vacates the judgment quieting title to the "hatched" areas of the parcel of land owned by the Borough, such judgment will in no way affect the October 15, 1975 order (Pa44) or that portion of the March 6, 1975 order (Pa16) relating to riparian grants and quitclaim deeds.

As its second ground, the State argues that it would be "premature" to consider the "narrow issue" raised in the Petition for Certification (Rb8-8 to 10). Rule 4:42-2 provides for entry of a final judgment upon less than all claims if "there is no just reason for delay." In September 1974 these Petitioners (as Appellants) moved for partial summary judgment (Pa14) on the issue of the riparian grants and quitclaim deeds. Judge Trautwein granted Petitioners the requested relief. See Newark v. Natural Resource Council, 133 N.J. Super. 245, 261 (Law Div. 1974). In commenting on why he granted Petitioners partial summary judgment, Judge Trautwein said (pages 256-257):

> "Though there are a variety of arguments made against accepting these maps, appellants' relief could only serve to clarify the remaining issues for trial. Such a clarification is consistent with the spirit and purpose of our judicial

> system, i.e., 'to facilitate the granting of justice and to bring about an impartial and expeditious determination of the essential merits of the issues between the parties.' Devlin v. Surgent, supra, 18 N.J. at 153."

In the face of the State's assertion that they were improper, the Appellate Division in its March 29, 1977 opinion (Pa1) held that Judge Trautwein's orders of March 6, 1975 (Pa16), October 15, 1975 (Pa44), and December 23, 1975 (Pa48) are "entirely proper under the circumstances."

While the issue raised by the Petition for Certification may conceivably be characterized as "narrow" when viewed with the plethora of complex issues relating to the mapping of sovereign ownership claims to meadowlands, it is nonetheless an extremely important issue, implicating as it does 100 years of State conveyancing in the Newark/Elizabeth Meadows and the Hackensack Meadows.

The first ground advanced by the State, i.e., that the "petition does not present a question of general public importance" (Rb7-10 to 11), is absurd. The riparian grant and quitclaim deed issue is at least as important as the "hatching" issue. The lands involved in the riparian grant and quitclaim deed issue include virtually all of the developed waterfront areas of Newark Bay, the Passaic River, and the Hackensack River, including the Port Newark Complex, the Port Elizabeth Complex, and the Newark Airport Complex. Not only is the riparian grant and quitclaim deed issue of enormous importance to the record owners, it is of enormous importance to the affected municipalities and to the State itself.

The State's Brief is largely an effort to obfuscate these matters and to further delay the ultimate day of reckoning. As recently as March 31, 1977 when the Attorney General's Office wrote to Judges Carton, Kole and Larner (Pa60), it indicated that the case of New Jersey Sports & Exposition Authority v. Smila Rutherford, Inc., Superior Court of New Jersey, Appellate Division, Docket No. A-1651-75 (and companion cases) would be "dispositive" of the riparian grant and quitclaim deed issue. Thereafter, on April 29, 1977 the Appellate Division (Judges Fritz, Ard and Pressler) affirmed Judge Trautwein's opinion of October 30, 1975 in the Smila Rutherford case.

New Jersey's tideland controversy is already 17 years old. It is unnecessary here to recite the long and tortuous litany of the State's conduct during that 17-year period. It is enough to say that as recently as January 14, 1970 the State of New Jersey claimed to own virtually the entire Town of Kearny and that as recently as September 10, 1975 the Natural Resource Council claimed 100% ownership of the "hatched" areas. The State has a solemn duty to act fairly and in a manner which least harms its citizens. The time is at hand when at least this one issue related to the riparian grants and quitclaim deeds should be put to rest. It is folly to continue to leave to tomorrow what should be done today. The simple fact is that the State has no basis for challenging the riparian grants and quitclaim deeds it has previously issued in the Newark/Elizabeth Meadows and the Hackensack Meadows. This Court should put to rest the riparian grant and quitclaim deed issue by granting

certification and giving to Judge Trautwein's order of October 15, 1975 its full force and effect.

CONCLUSION

For the reasons more fully set forth in the Petition and in this Reply Brief, these respondents pray that the Supreme Court grant certification.

Respectfully submitted,

John R. Weigel

John R. Weigel
Attorney for Respondents/
Petitioners

Dated: May 23, 1977

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CITY OF NEWARK, et al,

Appellants-Petitioners,

vs.

NATURAL RESOURCE COUNCIL IN THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al,

Respondents-Respondents.

On Petition for Certification to Superior Court of New Jersey, Appellate Division

Sat Below:
Carton, Kole and Larner, JJ.A.D.

BRIEF IN OPPOSITION TO PETITION FOR CERTIFICATION

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TABLE OF CONTENTS

Page

COUNTERSTATEMENT OF THE CASE 1

ARGUMENT:

CERTIFICATION SHOULD BE DENIED SINCE THE NARROW QUESTION OF MAPPING PRIOR RIPARIAN GRANTS SHOULD AWAIT PRESENTATION TO THIS COURT OF THE COMPLETE TIDELANDS MAPPING APPEAL 7

CONCLUSION 10

CASES CITED

Brown v. Lins Pharmacy, 67 N.J. 392 (1975) 7

N.J. Sports & Exposition Authority v. Boro of E. Rutherford, (Docket #L-16799-72) 4, 7, 8

Newark v. Natural Resource Council, Dept. of Environmental Protection, 133 N.J. Super. 245 (Law Div. 1974) 3

N.J. Sports & Exposition Authority v. Boro of E. Rutherford (A-3555-75) 9

N.J. Sports & Exposition Authority v. Smila-Rutherford, Inc. v. Fund for the Support of Free Public Education, (Docket No. A-1651-75) 9

O'Neill v. State Highway Dept., 50 N.J. 307 (1967) 1, 7

STATUTES CITED

	Page
N.J.S.A. 13:1B-13.1 *et seq.*	1, 2, 7
N.J.S.A. 13:1B-13.3	2
N.J.S.A. 13:1B-13.4	2

RULES CITED

R. 2:12-4	7

COUNTERSTATEMENT OF THE CASE

The petition presently before the Court seeks certification of a part of the comprehensive appeal challenging the methodology used by the State to map its tidelands holdings as was recommended by this Court* in O'Neill v. State Highway Dept., 50 N.J. 307 (1967) and mandated by the Legislature. L. 1968, c. 404, N.J.S.A. 13:1B-13.1 et seq.

To date, and in compliance with the legislative direction that initial attention be directed at those areas, the State has mapped 34,714 acres in the Newark/Elizabeth and Hackensack Meadowlands. This mapping shows that 5,061 acres are or were formerly tideflowed and thus are owned by the State. It also shows that 29,061 acres in the mapped area are not tidelands, thus confirming private claims of ownership to those lands.

Additionally, there were 589 acres, or approximately 1-1/2% of the total area mapped, for which analysis was inconclusive under the State's mapping methodology. On the one hand, there was insufficient evidence for the State to assert categorically that the area was tidelands. On the other hand, there were some

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* ". . . [A]s a matter of good housekeeping, the appropriate officers of the State should do what is feasible to catalog the State's farflung holdings. . . ." O'Neill, 50 N.J. at 320.

indications of prior tidal influence which led the responsible State officials to conclude that they could not simply disavow any claim of State ownership without further study. Accordingly, these 589 acres were marked "cross-hatched" on the Hackensack photomaps.

10 After the maps of the Newark/Elizabeth and Hackensack meadowlands had been accepted and approved by the Natural Resource Council and the Commissioner of Environmental Protection, an appeal was taken to the Appellate Division by numerous parties challenging the validity of the State's methodology in the mapping (Pa3).
20 Thereafter, the Appellate Division consolidated the appeal with numerous tidelands quiet title actions arising out of condemnations brought by the New Jersey Sports & Exposition Authority and remanded the matter to the Law Division ". . . to conduct such proceedings and to make appropriate findings of fact and conclusions of law
30 to be submitted to this Court for determination of . . . (1) whether the maps published by respondent were prepared in accordance with the requirements of N.J.S.A. 13:1B-13.1 et seq. and specifically N.J.S.A. 13:1B-13.3, and were promulgated and adopted in accordance with the provisions of N.J.S.A. 13:1B-13.4." (Pa12). Extensive
40 discovery was commenced in the Fall of 1973 and the Law Division fixed a trial date and procedure for hearings by pretrial order

issued on December 19, 1975.

However, prior to trial, on the motion of several of the appellants, the Law Division entered a "partial summary judgment" declaring the designation by the State of 589 acres as "cross-hatched" to be invalid and ordering the State to prepare, within 120 days, new map overlays delineating which of the areas previously designated as "cross-hatched" would be claimed by the State and which prior riparian grants were to be recognized as valid conveyances of the State's interest. Newark v. Natural Resource Council, Dept. of Environmental Protection, 133 N.J. Super. 245 (Law Div. 1974). Subsequently, when the State was unable to complete the new mapping directed by the Law Division within the time it had set, the court concluded that the State "cannot demarcate (said) former mean high tide in the filled meadowlands which are depicted as 'hatched' on the tideland claim overlays and title to the said 'hatched' areas should be quieted in the record owners"; and it invited motions for partial summary judgment by owners of said property. The court also sought to "cut off and extinguish" the State's rights in all prior riparian grants (Pa45). The State filed

notices of appeal from these orders because it was felt that such orders exceeded the scope of the Law Division's authority under the remand from the Appellate Division and raised the specter of the State being deprived of its claim to the tidelands areas by summary proceedings. After oral argument on February 17, 1976 on the State's motion for instructions, a stay of the Law Division's orders authorizing the quieting of title by summary proceedings and clarification of the time for the filing of briefs, the Appellate Division by order dated February 23, 1976 denied the motion for a stay and provided that a schedule for the filing of briefs on the merits would be fixed upon filing by the trial judge of recommended findings in the main part of the appeal over which the Law Division continued to exercise jurisdiction (Pa54).

Thereafter, hearings concerning the overall mapping methodology employed by the State throughout the Hackensack and Newark/Elizabeth meadowlands commenced on March 8, 1976 and proceeded to occupy some 36 court days. Additional proceedings were conducted by depositions and the Law Division determined the record closed in the Fall of 1976 whereupon the court directed its attention to a consolidated quiet title action (N.J. Sports & Exposition Authority v. Boro of E. Rutherford, Docket #L-16799-72) in which the techniques of delineation employed in the overall mapping were evaluated as to

specific parcels of land at issue between the Boro and the State. Trial of that case was concluded in February 1977. Counsel in both cases are presently completing preparation of recommended findings and conclusions which are to be filed by May 16, 1977 with the Law Division. The appeal has thus reached the stage where the Law Division judge can shortly discharge his responsibility to make findings of fact and conclusions of law to be submitted to the Appellate Division for determination as provided by the original remand.

However, by letter from the clerk of the court dated January 11, 1977, the Appellate Division *sua sponte* vacated the part of its order of February 23, 1976 providing that a schedule for briefs would be fixed upon filing of the Law Division's findings on the main part of the case and instead provided for the filing of briefs on an accelerated basis as to the Law Division's order dealing with "cross-hatching." A separate docket number (A-2066-76) was assigned when the court, *sua sponte*, severed these issues (Pa57). By its opinion of March 29, 1977, the Appellate Division affirmed the Law Division's rejection of the "cross-hatching." (Pa1). The opinion confined its effect to "hatched" areas and petitioner unsuccessfully sought to have the Appellate Division revise its opinion to include all previous riparian grants--whether within or outside of "hatched" areas (Pa58 to 68).

It is the narrow issue of the Appellate Division's treatment of the prior riparian grants provision in the Law Division's orders which Appellants-Petitioners urge this Court to review now. The effect of the Appellate Division's opinion is to defer consideration of this issue until presentation of the complete record.

ARGUMENT

CERTIFICATION SHOULD BE DENIED SINCE THE NARROW QUESTION OF MAPPING PRIOR RIPARIAN GRANTS SHOULD AWAIT PRESENTATION TO THIS COURT OF THE COMPLETE TIDELANDS MAPPING APPEAL.

While the overall tidelands mapping controversy presents significant issues which this Court should consider, this petition does not present a question of general public importance as contemplated by the Rules of Court. R. 2:12-4. Certification is not to be granted where there has not been a final judgment of the Appellate Division "except for special reasons." R. 2:12-4. Brown v. Lins Pharmacy, 67 N.J. 392, 398 (1975).

This matter involves a comprehensive attack on a major State program to map tidelands in accordance with this Court's urging and the Legislature's mandate. O'Neill v. State Highway Dept., supra; L. 1968, c. 404; N.J.S.A. 13:1B-13.1 et seq. After years of discovery, more than 30 days of hearings, and the complicated trial of a lengthy consolidated quiet title action*, the Law Division is preparing to submit recommended findings of fact and conclusions of law to the Appellate Division for determination pursuant to the original remand order (Pa12).

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* N.J. Sports & Exposition Authority v. Boro of E. Rutherford, et al (Docket #L-16799-72), is referred to herein as "the East Rutherford case.")

Therefore, the issues in this matter will be decided and ripe for presentation to this Court in the near future. In light of the complexity of the case and necessity that the issues presented be considered with a complete record, it would be premature for this Court to consider the narrow issue presented by this petition at this time.

Further, the Law Division orders which are the subject of the pending petition are presently under reconsideration by the Law Division in light of the record in East Rutherford which reflects a more refined analysis of the peculiar problems of mapping the "cross-hatched" areas. The State's motions to vacate those orders have been pending before the Law Division which reserved decision pending the East Rutherford trial which offered an exhaustive presentation of proofs as to the mapping techniques. Should the Law Division vacate the orders giving rise to this petition, same would be rendered moot.

Concern as to the effect of the Law Division's orders on the grants overlay question also weighs against this Court's granting this petition at this time. The specific language (handwritten into the form of order by the Law Division) which petitioners sought to have the Appellate Division affirm provides:

"3. In the event of non-compliance with ordering paragraph '#1'* above all prior riparian grants and quit claim deeds issued by the State shall be deemed valid and sufficient instruments to cut off and extinguish all right, claim, title and interest of the State of New Jersey in and to the lands conveyed thereby." (Pa45).

Questions as to the extent of inquiry the State should make in considering which "riparian grants and quitclaim deeds" should be recognized and included on the overlays in question predated the Appellants-Petitioners' motion giving rise to this petition. Most recently, the Appellate Division "affirmed substantially" the Law Division unreported decision that in the absence of a clear showing of fraud or mistake, the State (through the Trustees of the Fund for the Support of Free Public Education) was foreclosed from attacking a grant for what appeared to be less than adequate consideration. N.J. Sports & Exposition Authority v. Boro of E. Rutherford (A-3555-75) and N.J. Sports & Exposition Authority v. Smila-Rutherford, Inc. v. Fund for the Support of Free Public Education (A-1651-75), decided April 29, 1977 (Ra1). A decision has not yet been reached as to whether to petition this Court for certification. In light of all this, the Appellate Division sought to tread on narrow ground and therefore decided to confine its decision

* Paragraph 1 ordered adoption of grants overlays by the Natural Resource Council no later than October 25, 1975 (Pa45).

to the "hatched areas" questions--thereby leaving the grants overlay issue to the day when it could be considered with a complete record and in the context of the complete case. This Court should do likewise.

10

CONCLUSION

WHEREFORE, Respondents urge that the Supreme Court deny the petition for certification for the reasons set forth herein.

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Respectfully submitted,

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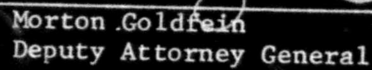

By Morton Goldfein
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