



# C.R.A.B.

Citizens' Right to Access Beaches

## The Public Trust Doctrine

P.O. Box 1064

Point Pleasant Beach, NJ 08742

732-714-CRAB (2722) • [www.crabnj.com](http://www.crabnj.com)

# **THE PUBLIC TRUST DOCTRINE AS IT APPLIES TO BEACH ACCESS IN NEW JERSEY**

Although it has been around for centuries, the Public Trust Doctrine has recently become well known to the general public and is often referred to in discussions regarding beach access issues in New Jersey. Indeed, it is the basis for recent court decisions that have reaffirmed the public's rights to access and enjoy beaches along our coastline.

Because the Public Trust Doctrine is a common law document, it is open to interpretation and that subjective interpretation often leads to confusion on the part of the public as to what rights to access we may have.

Listed below are a series of responses to questions most frequently asked of our organization. These responses are based on our knowledge and interpretations of the Public Trust Doctrine and recent court decisions and should be viewed in that context.

## ***WHAT IS THE PUBLIC TRUST DOCTRINE?***

The Public Trust Doctrine has its roots in Ancient Roman History. In 520 AD the Emperor Justinian declared "By the law of nature these things are common to all mankind; the air, running water, the sea, and consequently the shores of the sea." The Public Trust Doctrine (PTD) taken in its most basic context and applied to contemporary situations states that the lands **BELOW** the **MEAN HIGH WATER LINE (MHWL)** are held in common for the public. Simply put, that means that we have an undisputable right to use and enjoy the lands below all tidally flowed water regardless of who claims upland ownership.

## ***HOW IS THE LOCATION OF THE MEAN HIGH WATER LINE (MHWL) DETERMINED?***

The actual location of the MHWL is determined by a series of measurements that make such a determination beyond the abilities of the layperson. Suffice it to say that the MHWL can be, and is sometimes located underwater.

## ***IF THE MHWL IS SOMETIMES LOCATED UNDERWATER, WHAT GIVES US THE RIGHT TO USE ANY PORTION OF THE BEACH?***

What gives us the right to not only go to the water but to be on a beach comes from court decisions that also brought into play the concept of REASONABLE USE OF DRY SAND. By applying the dry sand concept, the courts have expanded the public's rights to not only use the lands below the MHWL but to also spend time on the beaches that border the public trust lands.

## ***HOW MUCH DRY SAND IS THE PUBLIC ENTITLED TO USE?***

The most notable decisions of late have given the public access to, and use of entire beachfront property (including private property) from the toe of the dune to the water. (*Matthews v. Bay Head, State of NJ v. Atlantis*) In the Hudson River Walkway case the land (not necessarily beach) returned to the public amounted to a 40 ft. walkway area. In our current litigation we are seeking at least 30 ft. from the daily high tide line which is an easily identifiable line left in the sand and would always guarantee the public a portion of usable dry sand on a daily basis.

## ***WHAT IS THE DAILY HIGH TIDE LINE AND HOW DOES IT DIFFER FROM THE MHWL?***

The Daily High Tide Line or "rack" line is an easily identifiable mark left on the beach by the most recent high tide. It consists of shells, seaweed and other common objects deposited by the wave action upon the beach. The Daily High Tide Line will change with wave action and is easily visible and identifiable by any person on the beach. As stated above, the Mean High Water Line is determined by mathematical calculations and is not easily determined on a daily basis.

## ***I READ SOMEWHERE THAT THE PUBLIC HAS A RIGHT TO AT LEAST 10 FEET OF DRY SAND ON ANY BEACH ANYWHERE ALONG THE COASTLINE. IS THAT TRUE?***

Remember, the Public Trust Doctrine, which is the basis for our claims to beach access rights, is a

common law document and in its current form is subject to interpretation. At present, there is no set amount of dry sand guaranteed for public use. Some of the current confusion stems from letters sent to homeowners associations and a local municipality by the attorney general's office a few years back in which the state "ordered" public use of 10 ft. of dry sand above the "daily high tide line." Newspaper accounts and subsequent editorials inaccurately reported the 10 ft. figure as a statewide measurement and gave the impression that the state interpretation of the PTD in that matter was the actual PTD and in fact "the law." The MHWL (that elusive theoretical line) and the "daily high tide line" (a line we can all identify) were understandably misinterpreted as being interchangeable as one and the same measurement. They are not!

## ***SO WHAT DOES THIS ALL MEAN?***

### ***To sum things up ...***

- The PTD is common law and not a statute.
- We do have rights to reasonable dry sand as a result of court decisions based on the PTD.
- Those rights currently have to be reaffirmed on a case-by-case basis.
- That amount of dry sand is currently not a fixed amount and is still determined by the court in each case.
- The MHWL because it is not easily identifiable and sometimes underwater is useless in any determination of where we are allowed to go.
- Use of a Daily High Tide Mark would be a more meaningful measurement in determining dry sand available to the public.
- The State of New Jersey has correctly applied concepts of the Public Trust Doctrine resulting in favorable decisions on behalf of public beach access.
- Increased public awareness of the Public Trust Doctrine and proper application of PTD principles are currently our best defense in asserting our beach access rights.