

## Hackensack Riverkeeper \* NY/NJ Baykeeper

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**FOR IMMEDIATE RELEASE****CONTACTS:**

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**NEW JERSEY LEGISLATURE PASSES BILL REQUIRING NJ  
DEPARTMENT OF ENVIRONMENTAL PROTECTION TO INCLUDE  
PUBLIC ACCESS IN PERMITS**

*Legislation **does not** reinstate recently struck-down inequitable, restrictive rules*

The public access legislation passed last night (S3321/A4927) authorizes the NJ Department of Environmental Protection (NJDEP) to require public access to waterfront and adjacent shoreline, or off-site public access if on-site public access is not feasible, as a condition of waterfront development approvals and CAFRA permits. Senators Bob Smith (D-17), Jeff Van Drew (D-1), and Christopher “Kip” Bateman (R-16) sponsored the Senate bill, S3321. Assemblypersons L. Grace Spencer (D-29) and Scott T. Rumana (R-40) sponsored the identical Assembly bill, A4927.

“While this hastily drafted legislation will clarify NJDEP’s continuing authority to require public access as a condition of issuing certain permits, it is insufficient to address the Appellate Division’s ruling striking down the public access rule,” said Debbie Mans, Executive Director & Baykeeper, NY/NJ Baykeeper. “We will continue our efforts in working toward comprehensive legislation that will guarantee public access for all of New Jersey’s coastal communities. Public access is a right not a privilege.”

In a unanimous decision released on December 22, 2015, the New Jersey Appellate Division sided with NY/NJ Baykeeper and Hackensack Riverkeeper and struck down

the “Public Access Rules” promulgated in 2012 by the New Jersey Department of Environmental Protection. NY/NJ Baykeeper and Hackensack Riverkeeper brought the action challenging the public access rules in order to address problems with the rule, most notably the rules’ inequitable restrictions on the public access that our urban coastal communities could provide. The court’s decision found the 2012 rules to be outside the scope of DEP’s legal authority (*ultra vires* in legal jargon), and therefore struck down the rules in their entirety.

“Governor Christie’s 2012 rule placed inequitable restrictions on the public access that our urban coastal communities, such as Newark, Jersey City and Perth Amboy, could provide,” said Hackensack Riverkeeper Captain Bill Sheehan. “The December court decision upholds the Public Trust Doctrine and sent a very strong message to the Christie Administration that the waterfronts and shorelines belong to the people of New Jersey.”

The opinion can be downloaded at: <https://www.judiciary.state.nj.us/opinions/a1752-12.pdf>.

The case was argued for the appellants, Hackensack Riverkeeper and NY/NJ Baykeeper, by Chris Len, former Staff Attorney, Edward Bonanno of Pringle, Quinn, Anzano, P.C., on the brief and Andrea Leshak, Hackensack Riverkeeper and NY/NJ Baykeeper Staff Attorney, on supplemental brief. Over twenty environmental, fishing and surfing groups representing over 50,000 members and supporters state-wide signed a statement in opposition to NJDEP’s rules when they were originally proposed.

“The 2012 NJDEP Rule significantly rolled back public access requirements along our urban and suburban coasts, to the detriment of the millions of people who live along these rivers and bays,” said Mans. “If NJDEP treats the 2012 rule as valid, in particular its restriction of public access in our urban and suburban coastal areas, despite a clear ruling from the court, then we will have no choice but to review our legal options. Further, this legislation does not address the court’s invalidation of the Municipal Public Access Plans (MPAPs), a core component of the 2012 Public Access Rule.”

Now NY/NJ Baykeeper and Hackensack Riverkeeper seek comprehensive legislation that will protect the public's rights.

### **About Hackensack Riverkeeper**

Founded in 1997 by Captain Bill Sheehan, Hackensack Riverkeeper is the leading environmental organization working on Hackensack River issues. A founding member of the international Waterkeeper Alliance, the group engages in a fourfold clean water strategy of environmental Action, Advocacy, Education and Litigation in its ongoing work to protect, preserve and restore the Hackensack River.

### **About NY/NJ Baykeeper**

NY/NJ Baykeeper is the citizen guardian of the NY-NJ Harbor (Hudson-Raritan Estuary.) Since 1989, it has worked to protect, preserve, and restore the environment of the most urban estuary on Earth to benefit its natural and human communities. Through Estuary-wide programs Baykeeper seeks to end pollution, improve public access, conserve and restore public lands, restore aquatic habitats, encourage appropriate and discourage inappropriate development, carry out public education, and work with federal and state regulators and citizen groups as partners in planning a sustainable future for the Hudson-Raritan Estuary Watershed.

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Protecting, preserving, and restoring the NY/NJ Harbor Estuary since 1989.  
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