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NJ SUPREME COURT UPHOLDS APPELLATE DIVISION RULING STRIKING DOWN THE DEP'S PUBLIC ACCESS RULES

Supreme Court Declines to Hear Appeal by NJDEP

NJDEP Rules Limiting Access Far Exceed the Legislature's Delegation to Agency

June 22, 2016: The New Jersey Supreme Court declined to hear an appeal by the New Jersey Department of Environmental Protection on its "Public Access Rules," which were struck down by the Superior Court of New Jersey Appellate Division, in a unanimous decision, on December 22, 2015.

"The NJ Supreme Court's order is a victory for public access to our coasts throughout New Jersey. Public access is a right, not a privilege," said Debbie Mans, Baykeeper & Executive Director, NY/NJ Baykeeper. "Under the invalidated Public Access Rules Governor Christie turned over our coast to corporations and private property owners. Giving public lands over to businesses is a failure of the State's responsibilities to protect the waterfront as a public resource for all to enjoy. The New Jersey Legislature needs to step up and provide clear guidance that the coast belongs to the people."

"This decision upholds the Public Trust Doctrine and should send a very strong message to the Christie Administration that the waterfronts and shorelines belong to the citizens of New Jersey," said Captain Bill Sheehan, Riverkeeper & Executive Director, Hackensack Riverkeeper. "Now the NJ Department of Environmental

Protection will have to work with the Legislature and New Jersey's Waterkeepers on any future attempts to regulate public access. This case should demonstrate the value that Waterkeepers bring to the communities of New Jersey and all over the planet."

"Earlier this year, the New Jersey Legislature gave the NJDEP the authority to require public access, both on-site and off-site, through permits, so NJDEP should have no excuses for not upholding the Public Trust Doctrine and ensuring the public has access to their waterfront," said Mans. "What is still missing is authority for NJDEP to require more comprehensive public access planning, which is why we are committed to working with the NJ Legislature to develop comprehensive public access legislation that treats all coasts and communities equally."

Background:

Attorneys for NY/NJ Baykeeper and Hackensack Riverkeeper appealed the 2012 NJDEP Public Access Rules, The Superior Court, Appellate Division heard oral arguments on the appeal on May 19, 2015 and issued their decision on December 22, 2015.

The court held that:

"Some limited provisions of the Rules could fall 'within the fair contemplation of the delegation of [an] enabling statute,' CAFRA...However, the Rules apply to many municipalities that are not subject to CAFRA, because that statute only applies to certain municipalities. Moreover, the Rules far exceed the Legislature's limited delegation of authority to DEP under CAFRA to regulate 'land uses in the coastal zone.'...We also agree with the appellants that the Rules are not authorized by any other legislative enactment or by the Legislature's delegation of powers to DEP pursuant to the public trust doctrine. We are constrained, therefore, to invalidate the Rules."

CAFRA stands for the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., which regulates land use in coastal zones. The northern boundary of CAFRA is the confluence of Cheesequake Creek with the Raritan Bay.

"The 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.

The opinion: <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.

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 advocate of the NY-NJ Harbor. 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, NY/NJ 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 NY-NJ Harbor.

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