

CITIZENS ADVISORY COMMITTEE

of the New York – New Jersey Harbor & Estuary Program

To: Gary Brower, Esq., NJ Department of Environmental Protection

Cc: New York-New Jersey Harbor & Estuary Program Policy Committee
New York-New Jersey Harbor & Estuary Program Management Committee

From: New York-New Jersey Harbor & Estuary Program Citizens Advisory Committee
Robert Buchanan, Village Community Boathouse and Michelle Doran-McBean, Future City, Inc.,
Co-chairs

Re: Public access

Date: May 21, 2012

The Citizens Advisory Committee of the NY-NJ Harbor & Estuary Program has always supported the expansion of public access to our region's myriad waterfronts and waterways, and has applauded the creation of great public spaces like Hudson River Park, in Manhattan, and New Jersey's Hudson River Walkway. The harbor itself is our biggest open space—our 'Commons'—and free access to it contributes mightily to our quality of life and our collective well-being. Furthermore, increased access is the best way to awaken an interest in, and foster a sense of stewardship for, the estuary. Direct outdoor experience, especially at a young age, can help build a sense of collective responsibility for the natural world.

We are therefore particularly concerned by recent trends and setbacks that directly challenge the idea of full and open access to the harbor and the estuary, a recognized right of the public that dates back to Roman times. In New Jersey, pending policy changes at the state level treat public access as a privilege that can be regulated or curtailed locally, or trumped by private interests. On both sides of the harbor, expanded recreational boating and swimming have triggered concern from the commercial shipping sector about shared use, highlighting the need for education vs. regulation. On the land side, waterfront developments are often proposed and undertaken with only a minimal nod to questions of public access. Meanwhile, too many urban waterfront communities, particularly those lacking economic or political clout, have no access to the water at all.

In short, while our region—home to the most populated estuary in the country—has made great strides in expanding and preserving public access over the past generation, now—on the 25th anniversary of the Hudson River Walkway and the 40th anniversary of both the Coastal Zone Management Act and the Clean Water Act—is a critical time to preserve that momentum. Our waterfronts and waterways encompass an incredible diversity of uses, and it can be a struggle to achieve a balance among those uses. But rescinding or restricting access is not the way to achieve this goal. Instead, we should collectively reaffirm the principles enshrined in the Public Trust Doctrine, a body of common law that predates the creation of our own legal system, and insist that universal public access be the starting point for any discussion of planning, development, or even environmental restoration in the harbor and estuary.

Citizens Advisory Committee Co-Chairs

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Specifically, we urge that:

- 1) Public access concerns be placed at the top of the agenda in regulatory and planning initiatives that impact the harbor and the estuary, including New York City's Waterfront Action Agenda and New Jersey's proposed system of Municipal Public Access Plans (MPAPs). In addition, access advocates and groups including the Harbor Estuary Program's Public Access Working Group should be accorded the same standing as their business and environmental counterparts.
- 2) Government agencies at all levels work together towards the development of regional standards for shore and water access points, including parking and beach, pier and dock design guidelines that facilitate access to and from the water. In addition, those agencies should work together towards the development of a public access "metrics" that can clearly indicate access disparities and inequities in economic, demographic and geographic terms, reliably measure changes in access over time, and easily be communicated to the public.
- 3) Public access planning and spending address environmental justice concerns by focusing on underserved populations and low- or no-access communities. In New Jersey, for instance, the DEP's Public Access Map needs to be updated to include the northern half of the state—right now it does not. Furthermore, waterfront urban municipalities and neighborhoods should be eligible for access and beach replenishment funds, even if the water quality there is not yet suitable for bathing (beaches can also be used for boating and strolling).
- 4) Agencies and entities include a public access requirement in setting acquisition and conservation goals, and when planning remediation projects. In locations where industrial and commercial development precludes safe access, projects should require offsite public access contributions.
- 5) Public access projects require property owners to maintain, enhance or reconstruct greenways, walkways and other access points so as to maintain their safety, integrity and environmental function.
- 6) State agencies review MPAPs and other local plans for conformance or implementation, and ensure that minimum standards of free access are upheld over time. In New Jersey, for instance, the DEP could offer a free template MPAP to municipalities, and also offer small grants to enhance a basic MPAP and incentivize a shared services approach to preparing the plans with adjacent municipalities.
- 7) Public access also should be considered for the needs of those that use the water for boating. Provisions for the landing and docking of small boats need to be made at numerous points along the shoreline, to ensure the safety and recreational viability of the harbor and estuary.
- 8) Public officials and agencies as well as documents and development proposals explicitly acknowledge the Public Trust Doctrine and the concept of public ownership of the waterways and the foreshore.

We understand that there are many situations in which some restriction of public access may be justified—e.g., military bases and unexploded ordinance zones. The navigational precautions stressed in the Coast Guard's 'Operation Clear Channel' are sensible, and it's clear that full public access at many industrial and commercial sites is impractical, and on occasion, potentially dangerous.

There are also many valid views of waterfront residents and municipalities who may sometimes feel besieged by outside visitors.

However, we are concerned that the current political climate has spawned a rush to obtain public access 'exemptions' based on essentially economic grounds. We dispute the notion that unfettered public access represents a restriction on the 'rights' of commercial mariners or waterfront landowners; the prior and much greater right is that ensured by the Public Trust Doctrine. In the same way that government agencies and citizens' groups legally pursue payment for preventable damages to natural resources, such entities, we believe, would be entitled to pursue similar damages for any action or policy that would unfairly restrict or remove public access to Public Trust land or water.

Sincerely,

Michelle Doran-McBean, Future City, Inc., NJ HEP CAC Co-Chair
Robert Buchanan, Village Community Boathouse, NY HEP CAC Co-Chair

NOTE: The New York-New Jersey Harbor & Estuary Program (HEP) is a partner program and its members occasionally have conflicting positions on regulatory and management issues. One of HEP's roles is to facilitate the exchange of ideas and to work towards resolution of these issues. The opinions of individual agencies or committees do not necessarily reflect the opinion of the program as a whole.