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Section: Opinion

Marina owners seek balance between privacy and public access

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By MELISSA DANKO

I am writing in response **to** the March 24 editorial "Float compromise on public access." The Marine Trades Association of New Jersey has been working for nearly two years **to** protect the rights of marine businesses and property owners on the issue of public access **to** the state's waterways.

Our association has spent these two years in discussions with state Department of Environmental Protection officials, including Commissioner Lisa Jackson, **to** develop a public access rule that is realistic and provides meaningful and quality access **to** the water without causing undue burdens and irreparable damage **to** our marine businesses.

This issue came **to** the forefront in November 2006 when the DEP proposed changes **to** the Coastal Zone Management rules on public access. **Marinas** applying for a general or individual permit would be required **to** provide a significant amount of public access in order **to** obtain permit approval.

Marinas would have **to** provide permanent access, including a walkway, across the entire waterfront on the property despite the configuration or operation of the **marina**. This access would need **to** be provided **to** anyone 24 hours a day, even after the business is closed. Parking would need **to** be provided, even if additional land had **to** be purchased, and **marinas** would have **to** provide for the walkway in perpetuity by way of a conservation easement.

Following the posting of this new rule, our association, more than 70 **marinas** and hundreds of citizens provided written comments that the rule's requirements would have a serious and negative impact on their livelihood, their property rights and the safety of the people visiting **marinas**.

Despite the hours of meetings, the hundreds of pages of comments and the DEP's knowledge of the consequences of this proposal, in November the agency adopted the proposed rule that mandates "one size fits all" 24/7 public access with other requirements.

The rules require a surrender of property rights and force business owners **to** make decisions about their operations that they may not be able **to** afford or cannot reasonably implement. They fail **to** address the issues of liability and security risks, the unfunded mandates on parking — which alone could financially ruin a business — construction and facilities, and the fact each **marina** is different in its size, scope and ability **to** yield **to** the DEP's demands.

The rules are impracticable, unlawful and violate the very principles of affording access that they purportedly support. The DEP claims a deed restriction by way of a conservation easement is necessary **to** preserve public access rights. There is no justification **to** force a **marina** owner **to** deed restrict his or her property if the operations of the **marina** will remain the same.

If the right so clearly flows from the Public Trust Doctrine, as alleged by the state, then no deed restriction should be necessary. A **marina** owner and customers have **to** pay for upkeep, taxes, insurance and other costs for property over which they will have limited use. Essentially, this requires **marinas**, many of which have operated as family businesses for years, **to** surrender their property **to** the state. This is tantamount **to** eminent domain.

Our association had no choice when the DEP ignored everyone's comments on these mandates other

than **to** file a lawsuit **to challenge** the rule. The DEP is proposing **to** close nine state parks and reduce services at three others because it cannot afford **to** keep these parks open, yet it is continuing **to** require **marinas to** incur additional costs under these public access rules.

We were pleased when a bipartisan group of legislators introduced legislation **to** bring sanity back **to** the public access debate. The Public Access and **Marina** Safety Act was introduced March 17 **to** develop a realistic approach **to** provide public access **to** the water and **to** protect **marinas** in the process. The legislation makes it clear that a "one size fits all" rule does not work and that taking **marina** property from their owners is the wrong approach **to** preserving our rights **to** the waters of the state.

The bill requires a **marina to** develop an access plan, addresses the needs of both the public and the businesses, and provides penalties for failing **to** comply. Most importantly, it brings reason **to** the access issue. **Marinas** should not be forced, through their permits, **to** allow access **to** their properties at all times of the day and night nor should they be forced **to** deed-restrict their properties in perpetuity. Lost in all of this is that **marinas** already provide public access. **Marinas** are unique. They provide public boat-ramps, fuel, fishing access supplies, slips, restaurants, boat maintenance and more. Access **to** the water and access **to** the services that **marinas** offer are provided **to** the general public. The very nature of their business operations ensures that the public has use of public trust waters. It is essential **to** their livelihood.

We will continue **to** pursue every option available **to** fight these unlawful and impractical rules because their impacts are very real. **Marinas** will either never upgrade their facilities or will be forced by the rule **to** sell **to** private developers when they no longer can operate. New Jersey needs more **marinas**, not fewer, and the effect of the DEP rule will never allow that **to** happen.

When we lose a **marina**, we all lose a place **to** bring our families, a place **to** carry on our traditions and a place that is so important **to** our economy. In short, lose a **marina** and lose access **to** the water. Our association will press for the Public Access and **Marina** Safety Act **to** become law.

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