

**Hudson River Waterfront Conservancy of NJ, Inc.**  
**46 Grand Cove Way**  
**Edgewater, NJ 07020**

January 22, 2024

Via E-Mail ([Melissa.Abatemarco@dep.nj.gov](mailto:Melissa.Abatemarco@dep.nj.gov)) and Regular Mail

Melissa P. Abatemarco, Director  
Office of Legal Affairs  
Attn: Rule Making Petitions  
New Jersey Department of Environmental Conservation  
401 W. State Street; Mail Code 401-041  
PO Box 402  
Trenton, NJ 08625-0402

RE: PETITION FOR RULEMAKING  
Proposed Amendments to N.J.A.C. 7:7-2.4  
Petitioner: Hudson River Waterfront Conservancy

Dear Ms. Abatemarco:

The Hudson River Waterfront Conservancy (**HRWC**) is a non-profit corporation which works with the (“**NJDEP**” or “**Department**”) to oversee the completion and maintenance of the Hudson River Walkway (the “**Walkway**”). The Walkway, which is designed to run from The Bayonne Bridge to the George Washington Bridge, was mandated by law in 1984 to be built by property owners whose land abuts the Hudson River and the Kill van Kull. The HRWC was created in this same legislation. As part of its mandate, the HRWC has also been involved with developing the design standards for the Walkway (see <https://www.hudsonriverwaterfront.org/documents/Design-Standards-7-12-88.pdf> ) as adopted by the NJDEP, enforcement of the Public Trust Doctrine (“**PTD**”) to allow access by the general public to NJ waterfronts, and as a tool to spur completion of the Walkway.

This is a Petition for Rulemaking pursuant to the Administrative Procedure Act, seeking to modify the manner in which the Department of Environmental Protection allows construction to proceed under the Coastal Zone Management rules N.J.A.C. 7:7-2.4 (a) 1 and (d) without the need to obtain a Waterfront Development Permit pursuant to N.J.S.A. 12-5.1, et. seq.

The Administrative Procedure Act, at N.J.S.A. 52:14B-4(f), provides in relevant part, that any interested person may petition an agency to adopt a new rule, or amend or repeal and existing rule. The Department has adopted regulations implementing this provision at N.J.A.C. 7:1D-1.1 et seq. The following Petition has been prepared in accordance with the requirements of those rules.

## SUMMARY OF PROPOSAL

### Synopsis:

- NJDEP's goal since 1984 has been to foster completion of the Hudson River Walkway
  - Department does so by issuing Waterfront Development Permits requiring construction of that portion of the Walkway whenever an adjacent property owner desires to construct on land along the waterfront, but the Department cannot require any construction to commence even after a Permit has been issued.
  - Currently, there remain only 5 short 'gaps' to be completed in the Walkway
- NJDEP has a statutory duty to enforce the Public Trust Doctrine, but by lack of enforcement, has effectively ceded this responsibility to the private entities, such as HRWC
  - HRWC has brought several successful actions to enforce the PTD along the Hudson River
  - When finalized these actions will lead to construction of temporary walkway segments to fill these 'gaps'
- The Courts have recognized the public's right to access under the PTD, but wants to know that a 'temporary walkway' would be allowed or permitted by the NJDEP before issuing an order.
- The Rule sought in this Petition will allow the Department to:
  - Fulfill its goal of functionally allowing for an uninterrupted Hudson River Walkway (See 7:7E-3.48 Hudson River Waterfront Area and the Department's Hudson River Waterfront Walkway Design Standards <https://www.hudsonriverwaterfront.org/documents/Design-Standards-7-12-88.pdf> ); and
  - Discharge its public duty to enforce the PTD.

While the Department has an obligation under the PTD to enforce the public's right to access lands adjacent to the mean highwater line<sup>1</sup>, HRWC has undertaken this obligation. Consequently, the Department has been relieved of the need to expend scarce resources on PTD enforcement obligations.<sup>2</sup> The Department has also stated that its goal is to have the Walkway completed which will run for over 18 miles. There currently are only 5 gaps in the Walkway aggregating less than 1 mile.

HRWC has brought 2 actions in Bergen County Chancery Division to enforce the public's right of access pursuant to the PTD—one at 615 River Road, Edgewater, NJ ("**615 Partners**") and the second on the East side of River Road North Bergen, NJ abutting the Borough of Edgewater ("**Riverview Development**"). Each of these sites is now vacant land with fencing to prevent public access and creates a gap in the Walkway (hereinafter referred to as a "**Gap**"). Each of these sites has obtained a WDP, which calls for construction of a Walkway, but which will not have to commence such work until at least 2028. In each case, the Court has recognized the public's right to access pursuant to the PTD and that to do so safely, a suitable, albeit 'temporary', path must be installed at each site, but is reluctant to issue an order

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<sup>1</sup> (See N.J.S.A. 13:1D-150 "The Department of Environmental Protection has the authority **and the duty** to protect the public's right to access tidally flowed water land and the adjacent shorelines under the Public Trust Doctrine and statutory law." (Emphasis added).

<sup>2</sup> Also, as cited in Hudson River Waterfront Conservancy of NJ, Inc. v Admiral's Walk Condominium Association, Inc., (March, 2023) <file:///C:/Users/rklem/OneDrive/Desktop/HRWC/Admiral%20Walk%20Docs/2022%20LITIGATION/Summy%20Jdgmt%20Motion/230113%20Court%20Order%20+%20Decision.pdf> ((See Order and Rider to Order Dated January 14, 2023, Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. BER-C-184-22, Hon. Lisa Perez Friscia, J.S.C.), at Pages 90-91).

granting such access without first having the parties obtain an appropriate permit from the NJDEP for the desirable path.<sup>3</sup>

As explained below, the Coastal Zone Management Rules (“**CZM**”) require that any “excavation or filling” located within 100 feet of the waterfront area requires the issuance by the Department of a Waterfront Development Permit (“**WDP**”) issued pursuant to N.J.A.C. 7:7-2.4 Each of the “paths” referred to in the preceding paragraph currently will require a full WDP. This requirement, while well intended (it is designed to avoid adverse impacts on waterfront resources) will delay completion of the Walkway and require resources beyond those of the non-profit HRWC. This proposal is intended to remedy that situation and allow uninterrupted lateral enjoyment of the Walkway<sup>4</sup>

As described herein, the Petitioner is asking that the Department modify the CZM to allow construction of a temporary and limited path which will allow the public to enjoy access to the waterfront and use of the Walkway without interruption and detours around these sites. It will allow HRWC to bring these sites into compliance with the PTD.

The Petitioner believes that this proposal will not in any way undermine the Department’s goal of minimizing adverse impacts to marine and waterfront resources that may result from a more extensive permanent development. Nor will it interfere with construction of the permanent portions of the Walkway as required pursuant to the full WDP issued for each site. Also, the limited circumstances to which the proposal would be applied will prevent its application to other coastal areas of the State.

- 1. Full Name and Address of Petitioner:** Hudson River Waterfront Conservancy of NJ, Inc., 46 Grand Cove Way, Edgewater, NJ 07020.

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<sup>3</sup> HRWC is working with the U.S. Army Corps of Engineers and the site owner to obtain permission for public access on a third site located at 115 River Road, Edgewater, NJ (“**Quanta Site**”) which will also require issuance of a WDP to proceed with construction, which will include its portion of the Walkway.

<sup>4</sup> Another Gap which HRWC has taken action to fill involved The Admiral’s Walk Condominium Association and lands leased by The Marketplace at Edgewater. The remedies as currently contemplated to complete each of these Gaps will be permanent (i.e. not temporary) and involve more extensive work than contemplated in this Petition, and, therefore, will require a full WDP.

## 2. The Substance or Nature of the Rulemaking requested:

Existing CZM Rules. The CZM provides in relevant part:

### “N.J.C.A. 7:7-2.4 **Waterfront Development**

- (a) The waterfront area regulated under this chapter varies in width in accordance with the following: ...
  - 3. In those areas of the State outside of both the CAFRA area and outside the Hackensack Meadowlands District, the regulated waterfront area shall include: i. All tidal waterways and lands lying thereunder, up to and including the mean high-water line; and ii. Adjacent upland areas within 100 feet of the mean high-water line; and ii. Adjacent upland areas within 100 feet of the mean high-water line....”
- (d) A permit shall be required ..., or for the excavation or filling of any area any portion of which is in the waterfront area as defined in (a) above, with the following exceptions listed below:
  - 1. In the waterfront area defined in (a)3 above, the construction, alteration, expansion or reconstruction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet landward of the mean high-water line.
  - 2. In the waterfront area defined in (a)3 above, the construction, alteration, expansion or reconstruction of any existing structure located more than 100 feet landward of the mean high-water line, provided that no change in land use results, and that the enlargements do not exceed 5,000 square feet.
  - 3. In the waterfront area defined in (a)3 above, minor additions to or changes in existing structures or manufacturing operations that do not result in adverse environmental impacts to special areas defined at N.J.A.C. 7:7-9, provided the addition is located in an existing cleared area of the site, and is set back a minimum of 15 feet landward of the mean high water line, where such change does not result in a change in the present land use of the site;
  - 4. In the waterfront area defined in (a)3 above, the installation of a wind turbine(s), provided the wind turbine(s) is: .....
  - 5. In the waterfront area defined in (a)3 above, the installation of a solar panels, provided the solar panels are: .....

The rationale for requiring NJDEP approval of any development within such areas is that such development can create impacts on the adjacent water bodies, including impacts on the sedimentation and course of the water body and storm water run-off into that water body.

WDP and Impediment to Walkway Development. The Waterfront Development Act 12:5-3 (b)(3) requires a WDP for any activity covered by the CZM.

The Walkway, described below, is within the area covered by the CZM. If the holder of a WDP within this area commences any construction, it is required to construct its portion of the Walkway. However, the holder of a WDP has no obligation to commence any construction. The WDP lasts for a period of 5 years and is frequently renewed for an additional 5-year period. Consequently, completion of the adjacent portion of the Walkway under a WDP, may not occur for over 5 years, if at all. WDP holders have taken the position that the WDP takes precedent over the PTD and allows them to prevent access under the PTD. In this way, the existence of a WDP impedes development of that portion of the Walkway.

NJDEP Walkway Mandate. Another goal of the NJDEP is to complete a public Walkway from the Bayonne Bridge to the George Washington Bridge running along the Hudson River, Upper New York Harbor and the Kill Van Kull and their tributaries. N.J.A.C. 7:27E-3.48 which sets forth extensive rules which require individual landowners abutting the Hudson River, Upper New York Harbor and the Kill Van Kull and their tributaries to develop the Walkway on their portion of the waterfront. The NJDEP has adopted the report (See <https://www.hudsonriverwaterfront.org/documents/1984-Plan-and-Design-Guidelines.pdf>) of the HRWC titled “The Walkway Plan” which sets forth the design requirements for the Walkway (See <https://www.hudsonriverwaterfront.org/documents/1984-Plan-and-Design-Guidelines.pdf>) and incorporates these criteria when issuing a WDP (See *Hudson Waterfront Walkway Plan and Design Guidelines, March, 1984, Prepared for The State of New Jersey Department of Environmental Protection, Prepared by: Wallace Roberts & Todd, Architects, Landscape Architects, Urban and Environmental Planners; Louis Berger & Associates, Engineers, Economists and Planners; Ralph B. Hirsch, Executive Director Bicycle and Pedestrian Transportation Research Center.*)

The Walkway when completed will be over 18 miles in length.

Interface with the PTD. Under the PTD the public is allowed access to the mean high-water line. The NJ Supreme Court has determined that such access also includes a lateral area along the waterfront 30 feet wide. (See the Departments own analysis and concurrence at <https://www.nj.gov/dep/cmp/access/njparightslegal.htm>). It should be noted that the Walkway falls completely within the lands covered by the PTD.

In many circumstances where the land in question is uneven, rough and/or overridden with vegetative growth, for the public to enjoy safe access under the PTD a suitable path must be installed. The Courts are reluctant to issue orders granting public rights under the PTD without knowing first that a ‘safe’ path is ‘permitted’ by the Department on such lands. Under the CZM, installation of such a path requires a full WDP which requires substantial financial resources. HRWC has expended its limited resources seeking to enforce the PTD—a duty that it is the Department’s obligation to enforce (See Hudson River Waterfront Conservancy of NJ, Inc. v Admiral’s Walk Condominium Association, Inc., *Ibid*), and, consequently, lacks the resources to prepare and pursue a full WDP.

Relief Sought. Petitioner seeks a 'permit-by-rule' or an additional exemption pursuant to 7:7-2.4(d) in limited circumstances as follows:

- 1) It would apply only in sites where:
  - (i) the PTD allows public access; and
  - (ii) a portion of the Walkway would be constructed under a WDP, whether or not a WDP has been issued for that site
- 2) It would allow construction of a path within the PTD area
- 3) The path would be:
  - (i) No more than 8 feet wide; and
  - (ii) The cover material for the path must be comprised of:
    1. Pavers, and/or (see photo attached hereto) for an example of such pavers)
    2. asphalt laid over crushed stone, which stone shall be set no more than eight inches high and/or
    3. compacted earth or compacted stone.
  - (iii) If option (3) (ii) 2, above is selected, the cover of the path must allow all surface water to either:
    1. flow directly into the Hudson River,
    2. Percolate into soils under the path,
    3. Directed to drainage pipes on the land side of the path which, in turn, lead to the waterside of the path, and/or
    4. Directed to sleuths cut within the path.
- 4) Fencing and other obstructions may be removed to provide access to the path
- 5) The path must be removed (and PTD rights temporarily suspended) upon commencement of construction of the permanent Walkway under a WDP issued for the site. The rule would state that its provisions are not negated by the existence of a WDP.
- 6) The rule would not apply to:
  - (i) Riparian lands owned by the State; or
  - (ii) Where a WDP is issued which applies solely for construction of a portion of the Walkway.

Alternatively, Petitioner seeks a determination that the actions referred to above are not deemed to be "excavation or fill" as controlled pursuant to 7:7-2.4(d).

### **3. Reasons for Request:**

Necessity to Complete the Walkway. The Walkway has become a major recreational and transportation destination for many in Hudson and Bergen Counties and favored pedestrian access for destinations East of River Road and Port Imperial Way from Weehawken to Edgewater. It has enjoyed overwhelming success and is enjoyed by many on a year-round basis. For safety reasons, the Walkway is the preferred route for pedestrians and bicyclists who

prefer using the Walkway rather than the narrow sidewalks running along heavily and fast trafficked River Road and Port Imperial Way.

There are currently three Gaps in the Walkway which aggregate less than 3,000 linear feet. However, each of these Gaps require Walkway users to divert over 1,800 feet to River Road (900 feet in each direction). One of these Gaps (the Quanta site) requires pedestrians and bicyclists to leave the sidewalk and face high-speed traffic exiting around a 'blind-curve' from a deceleration lane on River Road into the Cityplace Shopping Mall. At another Gap (the Riverview site) because of deformation of sidewalk fencing, pedestrians and bicycles are often forced to move into River Road traffic if passing face-to-face. The third Gap (the 615 Partners site), requires pedestrians and bicyclists to leave the sidewalk and face heavy traffic entering the main entrance to the adjacent popular Marketplace and Trader Joes Shopping Plaza from River Road.

It should also be noted that each of these Gaps creates even greater safety and access problems under the federal American for Disabilities Act for wheelchair-bound people trying to utilize the Walkway.

For the foregoing safety reasons alone, and because of the NJDEP's goal to see that the Walkway is fully implemented, the temporary Walkway, as envisioned by this Petition, will allow these remaining 'Gaps' to be completed, albeit on a temporary basis, allowing the public access under the PTD and enjoyment of the Walkway without needing to divert to River Road, until the final Walkway is developed.

Less Impacts. The temporary Walkway envisioned by this Petition, will have a far smaller footprint, and contain less non-impervious materials resulting in lower impacts on the environment and the adjacent waterways than the current exceptions to the CZM and WDP contemplated in 7:7-2.4(d), discussed above as well as development of the final Walkway envisioned in the respective WDPs. Its limited width, materials and temporary nature all go towards limiting its impact.

WDP Inadvertently Hinders NJDEP Goals Regarding the Walkway. The WDP is intended to allow the Department to regulate development which may have an impact on New Jersey's waters. However, in the instances referred to in this Petition, the WDP actually hinders the Department's other objective which is to foster completion and utilization of the Walkway. The lack of negative impact, or at most a de-minimus impact, that a temporary Walkway will have on New Jersey's waters must be balanced against the improved public safety and other benefits which inure to the public by granting this Petition.

Public Resources. Development and pursuit of a WDP application requires expenditure of ten's of thousands of dollars on engineering and legal fees. In the instances of the 'Gaps' referred to above, there are no private entities which have an interest in making such expenditures. The HRWC as a small eleemosynary entity whose mission is to further the public's benefits from the Walkway, lacks the resources to develop and pursue a WDP. The

actions sought in this Petition will allow the HRWC to move forward with a temporary solution regarding the remaining 'Gaps' in the Walkway—benefiting the general public.

**4. Petitioner's Interest in the Request:**

Petitioner is small non-profit corporation whose eleemosynary mission is to further the public's benefits from the Walkway. As such, Petitioner works with the Department to oversee development affecting and completion of the Walkway. The relief sought in this Petition will allow HRWC to fulfill its mission by fostering development of temporary segments of the Walkway to close the remaining 'Gaps' in the Walkway for the benefit of the general public who will be able to traverse the Walkway without interruption created by the 'Gaps'.

**5. The statutory authority under which the Department may take the requested action.**

The Department has ample authority under the Coastal Area Facility Review Act, NJSA 13:19-1, the Waterfront Development Act, NJSA 12:5-3 and the Coastal Zone Management Rules to take the requested action.

**6. Existing Federal or State Statutes and Rules which may be pertinent to the request.**

The requested action, if implemented, would allow Petition to cause the Walkway 'Gaps' to be completed on a temporary basis which will remove obstacles to the general public's use of the Walkway, allow the Department to fulfill its goals as envisioned under N.J.A.C. 7:7e-3.48 ("Hudson River Waterfront Area"), and under the PTD, and allow handicapped use of the Walkway, which is now impeded by the 'Gaps' in potential violation of the American for Disabilities Act of 1990, as amended ("ADA") (U.S.C., Title 42, Chapter 126, Section 12101.) The impacts of a rule amendment will, therefore, be beneficial to the environment in keeping with the Coastal Facility Review Act, the Hudson River Waterfront Area provisions and the PTD, and further the goals of the Federal ADA.

**CONCLUSION**

The Petitioner, for the reasons stated above, hereby petition the Department to modify its Coastal Zone Management Rules to permit construction of temporary segments of the Walkway which will fill the remaining 'Gaps' in the Walkway until construction of a permanent Walkway for those segments pursuant to WDP's issued to the private landowners who will be responsible for such construction. The Petitioner proposes, in the alternative, that (i) the Department issue a 'permit-by-rule' to allow construction of temporary Walkways under the conditions described herein, or (ii) determine that the construction of a temporary Walkway as described above in "Relief South", does not constitute "excavation or filling", as referenced in N.J.C.A. 7:7-2.4 (d).

As noted above in the Summary, the Petitioner believes that this proposal will not in any way undermine the Department's goal of minimizing adverse impacts to marine and waterfront



resources, but will, in fact, enhance the public's use and enjoyment of marine and waterfront resources.

The Administrative Procedure Act requires that the Department act on this Petition within 60 days of receipt. We therefor look forward to hearing from you.

Sincerely,  
HUDSON RIVER WATERFRONT CONSERVANCY OF NJ, INC.



By: \_\_\_\_\_  
Ronald A. Klemptner, Vice President

Attachment Photographs

CC (via email)  
Jennifer Moriarty, NJDEP  
Paul Stofa, NJDEP  
Paul Hague, NJDEP

ATTACHMENT PHOTOGRAPHS





