

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking

Petition for the Department to Adopt Rules to Modify the Coastal Zone Management Rules

N.J.A.C. 7:7-2.4

Petitioner: Hudson River Waterfront Conservancy of NJ, Inc.

Take notice that on January 22, 2024, the Department of Environmental Protection (Department) received a petition for rulemaking from Hudson River Waterfront Conservancy of NJ, Inc. (Petitioner). The Petitioner requests that the Department promulgate rules to modify how the Department allows construction under the Coastal Zone Management (CZM) rules, N.J.A.C. 7:7-2.4. The Petitioner seeks amendments to the CZM Rules, specifically to N.J.A.C. 7:7-2.4(a)1 and (d), to allow for the construction of temporary and limited pathways to fill in “gaps” on the Hudson River Walkway (Walkway) without requiring a Waterfront Development (WFD) Permit. Petitioner asserts such a modification would assist in providing pathways to allow the public to enjoy uninterrupted access to the waterfront and use of the Walkway, without having to detour around areas of the Walkway that are under construction (the gaps), but not yet completed.

The public trust doctrine (PTD) ensures the public access to tidal waterfront areas generally, and certain of the Walkway’s areas are subject to the public trust doctrine. The Walkway is designed to be a public space from the Bayonne Bridge to the George Washington Bridge, constructed along the Hudson River, the Upper New York Harbor, the Kill Van Kull tidal strait, and their respective tributaries. The completed Walkway will span approximately 18 miles and facilitate orderly development and public access.

In the process of developing the Walkway, there are sections of the project which remain incomplete and have created obstacles to public access. These incomplete or construction areas of the Walkway present an ongoing interruption of public access. This issue, according to the Petitioner, is in part because certain properties holding WFD permits have taken the position their WFD permits take precedence over the public trust doctrine and by having a WFD permit, it allows them to prevent access as required by the public trust doctrine. The Petitioner remarks on this problem by stating the WFD permit holders have no obligation to commence construction and can therefore block public access to the waterfront within their permitted Walkway area, essentially choosing inaction to impede development and exclude public access.

Currently the CZM rules, N.J.A.C. 7:7-2.4(a) and (d), require that any “excavation or filling” located within 100 feet of the waterfront area requires a waterfront development permit. The Petitioner seeks a modification of the CZM rules to allow for a ‘permit-by-rule’ or exemption that would apply under N.J.A.C. 7:7-2.4(d) in the following way:

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:
 - i. Pavers, and/or
 - ii. asphalt laid over crushed stone, which stone shall be set no more than eight inches high and/or
 - iii. 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:
 - i. flow directly into the Hudson River,
 - ii. Percolate into soils under the path,
 - iii. Directed to drainage pipes on the land side of the path which, in turn, lead to the waterside of the path, and/or
 - iv. 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

Petitioner asserts these modifications to the CZM rules would allow the Walkway to be functionally complete, even while those permitted properties or “gaps” remain passively stagnant and ensure that public access under the public trust doctrine is preserved. Further, the Petitioner’s January 25, 2024, Petition addenda asserts the modification sought would be in the spirit of the 2019 amendment to the Waterfront Development Act.

This notice and the full text of the petition filed in this matter are available on the Department’s website at <http://www.nj.gov/dep/rules/petition.html>.

In accordance with N.J.A.C. 1:30-4.2, the Department will subsequently mail to the Petitioner and file with the Office of Administrative Law a notice of action on the petition.